IN THE COURT OF APPEALS 9/17/96

OF THE

STATE OF MISSISSIPPI

NO. 93-CA-01287 COA

BERNICE BELL

APPELLANT

v.

JANIE BARBER AND RANDALL BARBER

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. GEORGE C. CARLSON, JR.

COURT FROM WHICH APPEALED: TATE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

DAVID L. WALKER

ATTORNEY FOR APPELLEES:

H. RICHMOND CULP, III

NATURE OF THE CASE: PREMISES LIABILITY

TRIAL COURT DISPOSITION: DIRECTED VERDICT IN FAVOR OF THE DEFENDANTS

BEFORE THOMAS, P.J., COLEMAN, AND SOUTHWICK, JJ.

THOMAS, P.J., FOR THE COURT:

Bernice Bell filed a complaint against Janie and Randall Barber for personal injuries she sustained while traversing the premises of the Barbers' home. After Bell rested her case in chief the trial court granted the Barbers a directed verdict on the ground that as a matter of law Bell was not entitled to a

verdict. From this ruling, Bell appeals to this Court arguing that: (1) the trial court erred in granting a directed verdict, and (2) this Court should abolish the common law distinction between the duties owed by a landowner to a licensee, invitee, and trespasser and establish one standard of care. Finding her arguments to be without merit, we affirm.

FACTS

On July 20, 1991, Bernice Bell, a lifelong friend to Janie Barber, went to the Barbers' home for a social visit. Bell frequently visited the Barbers' home and was welcome there at any time. As Bell was leaving, Mrs. Barber advised her to watch out for a hole in the porch. As Bell stepped around the hole, she stepped on a set of concrete steps which led to the porch. When Bell's foot landed on the step, the step gave way and her right leg fell through causing an injury to Bell's ankle.

Approximately six months prior to this incident Mr. Barber HAD replaced the then existing set of wooden steps with the steps in question; a set of used concrete pre-cast steps he obtained from a vacant home. This was done based in part on a comment that Bell HAD made concerning the safety of the wooden steps.

After installing the new steps, Mr. Barber tested the steps by walking and stomping up and down the steps to determine how sturdy they were. He did not notice any cracks in the steps and determined that the steps were sufficient for use on the premises of his home. Mrs. Barber testified that she did notice that there was a crack in the steps, but that the crack was less than a foot long.

DISCUSSION

Bell argues that the trial court erred in granting the Barbers a directed verdict because the Barbers exposed Bell to a hidden peril, i.e. a cracked step, of which the Barbers were aware prior to Bell's injury. She argues that the issue of whether the step created a hidden peril should have been decided by the jury.

Under Mississippi premise liability law a social guest, like Bell, "who enters upon the property of another for his own convenience, pleasure or benefit pursuant to the license or implied permission of the owner" is considered a licensee. *Skelton v. Twin County Rural Elec. Ass'n*, 611 So. 2d 931, 936 (Miss. 1992) (quoting *Payne v. Rain Forest Nurseries, Inc.*, 540 So. 2d 35, 37 (Miss. 1989)). As to licensees, the owner of the premises owes the licensee no duty except to refrain from willfully and wantonly injuring the licensee. *Id.* "Willful and wanton conduct exceeds 'mere inadvertence or lack of attention' characteristic of ordinary negligence, and means that the possessor consciously disregards a known, serious danger." *Id.* at 936. As our supreme court has stated:

> [A] social guest injured by defect in the premises may not recover against his host in the absence of evidence establishing something more than ordinary negligence and maintenance of the premises. The guest is permitted to recover only where his injury is the result of active and affirmative negligence of the host. 'In other words, the host should treat the guest as a member of the family, and the guest, on the other hand, should accept the conditions ordinarily

present in the host’s home without cavil or complaint.’

Raney v. Jennings, 248 Miss. 140, 158 So. 2d 715, 718 (1963) (citation omitted).

Given the above, our focus necessarily must turn to whether the Barbers’ knowledge of the crack in the step amounts to a "conscious disregard of a known, serious danger." We find that under the facts of this case that it does not.

While Mrs. Barber did see a crack in the concrete steps, she, her family, and social guests had walked upon the steps without incident for approximately six months. Mr. Barber testified that the steps were sturdy and that he tested the steps by stomping up and down on them. There was no evidence presented at trial which would show that this small crack in a concrete step was a "serious danger." Therefore, the trial court was correct in ruling that as a matter of law Bell was not entitled to a judgment.

Bell next argues to this Court that we should abolish the long standing distinctions as to the duties owed by a landowner to an invitee, licensee, and trespasser. In support of this argument, Bell cites to us other jurisdictions which have abolished such distinctions and have placed on a landowner the duty of reasonable care, no matter what type of person was on his property. While such arguments are interesting, we have no authority to disturb clear existing authority from our supreme court.

THE JUDGMENT OF THE TATE COUNTY CIRCUIT COURT IS AFFIRMED. COSTS OF APPEAL ARE TAXED TO THE APPELLANT.

FRAISER, C.J., BRIDGES, P.J., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.