Circuit Court for Worcester County
Case No. C-23-CV-17-000339

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0037

September Term, 2019

ELLA HUBBERMAN, ET VIR.

v.

COUNCIL OF UNIT OWNERS OF TEAL MARSH CONDOMINIUM, ET AL.

Leahy,
Wells,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: February 20, 2020

Ella Hubberman was a spry septuagenarian who walked her dog two or three times per day through a shopping center and business park owned by the Council of Unit Owners of Teal Marsh Condominium ("Teal Marsh").[1] On August 11, 2015, she was walking her dog on their usual route through Teal Marsh when she suffered a fall and shattered the bones in her right knee and elbow. On September 29, 2017, Mrs. Hubberman and her husband, Alan Hubberman, (collectively, "Appellants") filed a negligence action, accompanied by a derivative claim for loss of consortium, in the Circuit Court for Worcester County against Teal Marsh, Mann Properties, Inc. ("Mann"), and Naylor R. Harrison, III (collectively, "Appellees"). The complaint alleged that Ms. Hubberman tripped over a "thin metal rod that was projecting out of the asphalt surface" of the parking lot where she was walking.

On motion filed after the close of discovery, the circuit court granted summary judgment in favor of Appellees. Appellants had stipulated that if Mrs. Hubberman was determined to be a bare licensee, then Appellees had breached no duty to her. Relying primarily on *Deboy v. City of Crisfield*, 167 Md. App. 548 (2006), the court ruled that Mrs. Hubberman was a bare licensee on the Teal Marsh premises because she did not intend to purchase anything on the day of her injury, and "there was no sidewalk, no dog path, nor any signs inviting dog walkers" onto the premises. The only issue raised on appeal is

[1] Teal Marsh is a commercial shopping center and business park that is comprised of six buildings covering 8.6 acres. At the time of Mrs. Hubberman's accident, the businesses located there included a golf shop, a dry-cleaner, a restaurant, and an insurance office.

whether Mrs. Hubberman's legal status was determined appropriately at the summary judgment stage.

We conclude that the court erred by granting summary judgment because the material facts in this case are susceptible to multiple reasonable inferences regarding Mrs. Hubberman's legal status on the Teal Marsh property. Accordingly, we reverse the judgment of the circuit court and remand to the circuit court for further proceedings.

BACKGROUND

Mrs. Hubberman's Deposition

In 2015, Mr. and Mrs. Hubberman had lived fulltime in their townhouse in Ocean City, Maryland for approximately five or six years. At that time, she had owned her dog, Buddy, a Shih Tzu-Poodle mix, for about seven years. And, since moving to Ocean City, she would take him on two or three daily walks. Mrs. Hubberman and Buddy had a standard route. They would walk out the end of the driveway of Mrs. Hubberman's development and onto Old Bridge Road. Then they would cross over Old Bridge Road and "go around the telephone company's building, go behind it, come out through a little wooded area there, make a left into Teal Marsh, enter Teal Marsh, go up and make a left, go behind the buildings, walk all the way in the back behind all the buildings to the first opening[.]" Mrs. Hubberman and Buddy would walk through the opening and walk around the shopping center, greeting "everybody" along the way. Finally, they would "walk through another set of buildings, go around where the dry-cleaner is, say hi to them, and then come out through the other end and go out to where [Mrs. Hubberman] had [her] fall." "That would be facing, of course, [Old Bridge Road] coming out of the Teal Marsh little

shopping center, coming out the back way." In her deposition, Mrs. Hubberman noted that many of the unit owners and employees at Teal Marsh brought their dogs to work and, at least one of the store owners, would bring his dog outside to say hello to Buddy. Additionally, other unit owners had on occasion placed water bowls outside for passing dogs to drink.

Mrs. Hubberman testified at her deposition that around 3:00 p.m., on August 11, 2015, she was walking Buddy on the Teal Marsh property. The only items she had on her person were her cell phone and her reading glasses. She recalled that it was a nice, sunny day, and the ground was dry. She remembered noticing that the asphalt looked fresh. As she exited the complex, she walked close to the bushes to avoid traffic. Mrs. Hubberman described what happened next:

> I was walking along enjoying our walk together, and all of a sudden [] something stopped me and made me go forward, and I tried to step faster – you know, faster to catch up with the fact that I'm now plummeting or falling, however you want to phrase it.
>
> I'm going very fast towards the ground, so I – in my mind, I'm thinking I can't let go of the leash because there's traffic and the dog would get killed, and yet I didn't want to mash my face into the asphalt.
>
> So I put my arm up to cover my face and trying to catch up with, you know, the falling forward, and I just went down. I just knew something was there and that was it.
>
> And the next thing I [] thought my life was changed forever, because now I'm in excruciating pain, and I can't move. My knee is done in, and I'm in like a fetal – or like a ball trying to think about what I'm going to do now. My husband is home waiting for me, he's been on chemo, we're waiting for his operation to take place, and I'm laying here on the ground now.

Several people stopped to help Mrs. Hubberman and call her an ambulance. Mrs. Hubberman recounted that she tried to get up but was unable. She recalled that there were two women at the scene, but she never saw their faces. She was eventually transported to

Atlantic General where she was x-rayed, and it was determined that both her elbow and knee were shattered. She was later transferred to Shock Trauma by ambulance. She admitted that she did not see what caused her to trip. She could not recall how far she was from the bushes at the time of her fall.

No one at the scene indicated that they had witnessed Mrs. Hubberman's fall. One of the women at the scene, however, took a photo of a metal object protruding from the ground in the general vicinity where Mrs. Hubberman had fallen. She later showed the photo to the Hubbermans, and, though Mrs. Hubberman had not previously seen the object in question, she felt like she definitely had tripped over this object because she "wouldn't trip over [her] own feet." She added that, because she was very active prior to her injury, she did not expect that she had tripped over her feet on this occasion.

When questioned at her deposition, Mrs. Hubberman could not identify exactly where she fell on the road but testified that she was somewhere near the bushes that lined the driveway that connected Teal Marsh with Old Bridge Road. She did testify, however, that she remembers that she was walking on smooth asphalt at the time of the accident and that there were pine needles on the ground. She also felt certain that she tripped over an object or that something caught her shoe because of the abrupt nature of the fall and the fact that she had never fallen before. She admitted that at no time before, during, or after her fall did she see the piece of metal over which she is alleged to have tripped. When questioned about the photographs of the metal wire, Mrs. Hubberman testified that it appeared to be protruding from the seam between the old asphalt and the new asphalt. She

could not recall specifically where she had been walking on the day of the injury or whether she had been walking directly on the seam.

Mr. Harrison's Deposition

Naylor Harrison, the sole proprietor for his paving company, testified extensively about his company's paving procedures. He explained that in 2015 he had contracted with Mann to repave the driveway at Teal Marsh that connected to Old Bridge Road. His company would lay new asphalt to align with older asphalt as neatly as possible, and his team would sweep and clean all of the seams before tarring the blacktop. After the Teal Marsh job was completed, Mr. Harrison said his team inspected the seam and did not see a wire. He also testified that based on his company's paving method, it would be very difficult, if not impossible, for a wire to be "jammed in" the pavement after the new pavement was put in.

Ms. Gismondi's and Ms. Maphis's Depositions

Beth Gismondi testified as the corporate designee for Teal Marsh. She agreed that many people, including condominium unit owners, walk their dogs on the property, which covers 8.6 acres in total. When asked, she confirmed that there were no signs on the property prohibiting such activity. She also noted that she would walk her Golden Retriever on the driveway that connected up with Old Bridge Road but that it was a fairly busy access point, so she stayed off to the side. She admitted that, although people walking their dogs on the property was a problem, Teal Marsh had not taken any action to stop or prevent people from doing so. She qualified that she had, on one occasion, asked a woman with a rescue pit bull not to walk the dog on the property anymore because there were "too

many dogs" in the complex. Ms. Gismondi also agreed with Mrs. Hubberman's counsel that generally it is not bad for business to have foot traffic in the shopping center and to be friendly to people. But she also noted that, "as a condominium unit owner and as a Board spokesperson," she did not approve of people walking through the property if they had no business there.

Counsel also deposed Deborah Maphis, who assisted Mrs. Hubberman on the day of her injury. Ms. Maphis was another unit owner who regularly brought her Beagle mix to work and walked him on the premises. She testified that Teal Marsh is a dog-friendly environment.

Motions for Summary Judgment

On October 12, 2018, Mr. Harrison filed a motion for summary judgment. Teal Marsh and Mann Properties also filed a motion for summary judgment on October 12, which Mr. Harrison joined. Mrs. Hubberman filed an opposition, and the parties appeared in the Circuit Court for Worcester County on November 26, 2018 for a hearing.

The attorney for Teal Marsh and Mann Properties began by noting that Mrs. Hubberman's legal status was defined by her reason for being on the property. He argued that Mrs. Hubberman was on Teal Marsh's property solely to walk her dog and pointed out that she stated as much in her deposition. Counsel explained that Mrs. Hubberman did not bring anything with her onto Teal Marsh's property that day aside from her dog and her eyeglasses. Relying on *Deboy v. City of Crisfield*, 167 Md. App. 548 (2006), counsel argued that Mrs. Hubberman was a bare licensee on the property. He contended, under *Deboy*, that there would need to be some evidence that Teal Marsh intended or designed

its property be used for dog walking in order for Mrs. Hubberman to have held the legal status of an implied invitee at the time she was walked Buddy on the property and fell.

Counsel for Teal Marsh and Mann Properties continued that the affidavits submitted by Appellants were nothing but speculative hearsay that would not be admissible at trial and thus could not refute a motion for summary judgment. From this, he concluded that the facts of the case required summary judgment in favor of Teal Marsh and Mann Properties because there was no evidence that the property was intended or designed for dog walking, and Mrs. Hubberman was on the property solely to walk her dog. At the end of his argument, counsel added that regardless of her status, Mrs. Hubberman still could not make out a prima facie case of negligence because she cannot prove that there was a dangerous condition or that the property owner or operator had knowledge of it.[2]

Counsel for Mr. Harrison argued next, asserting that Mrs. Hubberman's testimony was susceptible to only one interpretation—that solely for her own purposes—she was on the property to walk her dog. Counsel argued that Mrs. Hubberman was not an implied invitee because she did not confer any economic benefit when she walked her dog on the Teal Marsh premises on the day of her injury. Counsel further maintained that, contrary to Mrs. Hubberman's assertions, the Teal Marsh premises is not conducive to walkers.

[2] The circuit court's opinion and order addressed only Mrs. Hubberman's legal status on the property and did not address the other elements necessary to establish a prima facie case of negligence. Accordingly, we do not express any opinion on the other legal issues raised at the summary judgment stage. *See Macias v. Summit Management, Inc.*, 243 Md. App. 294, 313 (2019) (explaining that an appellate court reviews only the grounds relied upon by the circuit court in ruling on a motion for summary judgment).

Mrs. Hubberman's counsel responded that, based on the undisputed facts of the case, a trier of fact could reasonably infer that Mrs. Hubberman was an implied invitee. He contended that Mrs. Hubberman's purpose for being on the property was not dispositive and that the arrangement and design of the premises permitted a reasonable inference that Mrs. Hubberman was induced to walk her dog there. Counsel also conceded that Mrs. Hubberman was not alleging any willful or wanton misconduct in the event that she was found to be a bare licensee.

Circuit Court Opinion and Order

The circuit court ruled on Appellees' motions for summary judgment in a written opinion and order. The court ruled solely on the issue of Mrs. Hubberman's legal status on the Teal Marsh property. The court opined that the facts in the *Deboy* case and in Mrs. Hubberman's case were nearly identical, noting that in both, the store owners were aware that the injured parties regularly walked their dogs on the respective premises, although there were no express invitations to do so. The court expounded that, at the place where Mrs. Hubberman was injured, there was no sidewalk, no dog path, nor any signs inviting dog walkers onto the premises. Given these facts, the court stated that Teal Marsh only passively acquiesced to Mrs. Hubberman's presence but did not invite her onto the property or induce her to walk her dog there**.**

Because it was undisputed in the record that Mrs. Hubberman's sole purpose for being on the property was to walk her dog, and there was nothing that the court could find in the record to distinguish Teal Marsh from the convenience store in *Deboy*, the court ruled that Mrs. Hubberman was a bare licensee. From there, the circuit court granted

summary judgment in favor of Appellees, as the parties had previously stipulated that Appellees had not breached any duty to Mrs. Hubberman if she were a bare licensee.

Appellants timely noted their appeal and present the following question for our review:

> Whether the trial court erred in granting summary judgment in favor of Appellees after finding as a matter of law that the only reasonable inference that could be drawn from the evidence was that Mrs. Hubberman's status on the premises was that of a "bare licensee[?]"

DISCUSSION

I.

Summary Judgment

A. Standard of Review

Maryland Rule 2-501(f) provides, in pertinent part, that a circuit court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." In an appeal from a grant of summary judgment, we review the circuit court's legal conclusions without deference. *Zilichikhis v. Montgomery Cty.*, 223 Md. App. 158, 176 (2015). In doing so, first, we independently ascertain whether a dispute of material fact exists in the record before us. *Macias v. Summit Management, Inc.*, 243 Md. App. 294, 313 (2019). If there are no disputed material facts in the record, then we will proceed to review the circuit court's determinations of law. *Remsburg v. Montgomery*, 376 Md. 568, 579 (2003).

We consider "[t]he facts and inferences that can be drawn from those facts . . . in the light most favorable to the non-moving party." *Sutton-Witherspoon v. S.A.F.E. Mgmt., Inc.*, 240 Md. App. 214, 232 (2019) (citation omitted). "When analyzing the decision of the circuit court, we consider only the grounds for granting summary judgment relied upon by the court." *Macias*, 243 Md. App. at 313 (citation omitted). "Before we can set aside the trial court's ruling granting summary judgment in favor of Appellees, Appellants must show either that there was a material fact in dispute involving one of the elements of negligence, or that Appellees were not entitled to judgment as a matter of law." *Id.* at 314 (citing *Wells v. Polland*, 120 Md. App. 699, 709 (1998)). "If the facts are subject to more than one inference, those inferences should be submitted to the trier of fact." *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 635 (2009) (quotations and citation omitted).

B. Legal Status

Parties Contentions

Appellants contend that there exists a genuine dispute of material fact as to whether Mrs. Hubberman was an invitee while walking her dog on the Teal Marsh premises. They argue that the facts were susceptible to a reasonable inference that Mrs. Hubberman was an implied invitee because the layout of the Teal Marsh premises was conducive to dog walking, Teal Marsh was aware that people often walked their dogs on the premises, unit owners and their employees placed water bowls outside their business for dogs, and there were no signs prohibiting dog walking.

Appellees respond that summary judgment in their favor was proper because they did not induce Mrs. Hubberman to walk her dog on the premises, they merely passively

acquiesced to this conduct. They argue, further, that Mrs. Hubberman could not be an invitee because her sole purpose on the premises that day was to walk her dog and not to confer any economic benefit on Teal Marsh.

Premises Liability

Appellants present only one issue for our review. As explained above, however, our decisional law demands that we consider two questions on review of a grant of summary judgment: first, whether a genuine dispute of material fact exists, and; second, if no material facts are in dispute, whether Appellees are entitled to judgment as a matter of law.

"A material fact is one that, depending on how it is decided by the trier of fact, will affect the outcome of the case." *Macias*, 243 Md. App. at 315 (quotations and citation omitted). The party opposing summary judgment bears the burden to show that there are disputed material facts, and this showing requires more than "bare allegations or 'a mere scintilla' of evidence." *Warsham*, 189 Md. App. at 634 (2009) (citation omitted). "The status of an entrant, and the legal duty owed thereto, are questions of law informed by the historical facts of the case." *Macias*, 243 Md. App. at 315; *see also Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 495 (2011). Before we can determine whether the material facts regarding Mrs. Hubberman's status as an entrant are in dispute, we must explain some foundational concepts of premises liability law.

> Although grounded in common-law principles, the analysis we must undertake in premises-liability cases is distinct from other classes of negligence at the outset because the duty owed by the possessor or owner of property to a person injured on the property is determined by the entrant's legal status at the time of the incident.

Macias, 243 Md. App. at 316. Maryland courts "apply the general common-law classifications of invitee, social guest (or licensee by invitation), and trespasser (or bare licensee)." *Id.* at 317. "The highest duty is that owed to an invitee[,]" and it requires that the landowner "use reasonable and ordinary care to keep the premises safe for the invitee and to protect the invitee from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for the invitee's own safety will not discover." *Deboy v. City of Crisfield*, 167 Md. App. 548, 555 (2006) (citation and brackets omitted). By contrast, the only duty owed to bare licensees or trespassers is to refrain from willful or wanton misconduct or entrapment. *Richardson v. Nwadiuko*, 184 Md. App. 481, 489 (2009).

There are two theories under which a person can establish invitee status: (1) mutual benefit and (2) implied invitation. *Deboy*, 167 Md. App. at 555. The mutual benefit theory applies to persons who enter business establishments to purchase goods or services and focuses on the subjective intent of the entrant. *Wells v. Polland*, 120 Md. App. 699, 710 (1998). The relevant question is: "Did appellants intend to benefit the land owner in some manner?" *Id.* The implied invitation theory, on the other hand, is an objective inquiry that does not require that the entrant intend to benefit the property owner in any way. *Id.* at 710-11. "[I]t gains its vitality from such circumstances as custom, the habitual acquiescence of an owner, the apparent holding out of premises for a particular use by the public, or the general arrangement or design of the premises." *Howard Cty. Bd. of Educ. v. Cheyne*, 99 Md. App. 150, 156 (1994).

This Court has cited the Restatement (Second) of Torts with approval for the proposition that "the important thing is the desire or willingness to receive that person which a reasonable man would understand as expressed by the words or other conduct of the possessor." *Doehring v. Wagner*, 80 Md. App. 237, 244 (1989) (citing Restatement (Second) of Torts § 332, comment c.). The heart of the implied invitation theory is whether there was mere acquiescence or direct or implied inducement. *Wells*, 120 Md. App. at 711. This theory stresses "custom and the appearance of things[]" as determinative factors. *Hutzler Bros. Co. v. Taylor*, 247 Md. 228, 234 (1967).

Maryland's seminal case on the theory of implied invitation is *Crown Cork & Seal Co. v. Kane*, 213 Md. 152 (1957). In that case, the Court of Appeals held that there was sufficient evidence to support that the appellee-truck driver's helper was an implied invitee while using a smoking room on Crown Cork & Seal Company's premises. *Id.* at 162-63. The appellee contended that he had used the smoking room approximately 30 times in the past. *Id.* at 156. He had been advised to use it by employees of Crown Cork & Seal, and there was evidence that other truckers used the room as well. *Id.* The foreman of the company, however, testified that the room was for employees only and that if he saw truckers using the room he would chase them out, further noting that the other employees of the company did not have the authority to give the truckers permission to use the room. *Id.* The Court reasoned that, because the area of the premises in question was "set aside for smoking, [ ] its location was made known to the plaintiff [ ] on two occasions, [ ] this fact was known to the foreman and the other employees" and there was no "notice to the

plaintiff that [the room] was intended solely for employees[,]" there was "legally sufficient evidence" to support an implied invitation and to submit the case to a jury. *Id.* at 162.

The *Kane* Court instructed that when a landowner "directly or *by implication* induces persons to enter on and pass over his premises" he assumes a responsibility to make sure they are in safe condition. *Id.* at 160. "The gist" of the liability, the Court explained,

> [C]onsists in the fact that the person injured did not act merely on motives of his own, to which no act or sign of the owner or occupier contributed, but that he entered the [sic] premises because he was led by the acts or conduct of the owner or occupier to believe that the premises were intended to be used in the manner in which he used them, and that such use was not only acquiesced in, but was in accordance with the intention or design for which the way or place was adapted and prepared or allowed to be used.

Id. (citation omitted).

Maryland appellate courts have since considered the implied invitation theory in a number of cases. In *Richardson v. Nwadiuko*, 184 Md. App. 481 (2009), the plaintiff-appellant slipped and fell on a wet floor in the waiting room of her and her husband's doctor's office. *Id.* at 485-86. On the day of the injury, Mrs. Richardson did not have an appointment, but was accompanying her husband to the doctor. *Id.* at 485. In the past, the Richardsons had frequently escorted one another to the doctor's office, where they would sign in together, and the receptionist would invite them both to have a seat in the waiting room. *Id.* This Court noted that the Richardsons had never been told that the waiting room could not be used by persons who did not have an appointment, and there were no signs posted to that affect. *Id.* We held that the circuit court erred in determining that Mrs. Richardson was a bare licensee and that she was instead an invitee under the implied

invitation theory. *Id.* at 491. We reasoned that "[f]rom this set of facts, it [was] reasonable to conclude that an invitation ha[d] been implied from the circumstances because it was Mr. and Mrs. Richardson's custom to accompany each other to appellee's office and appellee never discouraged them from doing so." *Id.* at 492.

In *Deboy*, this Court reached the opposite conclusion, finding that the plaintiff-appellant was a bare licensee instead of an invitee under the implied invitation theory. 167 Md. App at 553. In that case, Ms. Deboy was walking her dogs on the property of a convenience store, and she stepped on a loose water meter housing cover that shifted and caused her to fall to the ground. *Id.* Ms. Deboy testified that, prior to the day of her injury, she drove to Crisfield daily to walk her dogs. *Id.* She generally walked across the convenience store property and would sometimes stop to buy a newspaper or cigarettes. *Id.* at 553-54. She did not, however, enter the convenience store on the day she was injured. *Id.* at 554. Ms. Deboy also testified in her deposition that she had no intention of stopping to purchase anything that day and that she was on the property for the sole purpose of walking her dogs. *Id.* at 558. Based on these facts, the Court concluded that there was no indication that the convenience store "intended, let alone induced, visitors to use its property for dog walking." *Id.*

In a slightly older case, *Hutzler Bros. Co. v. Taylor*, the Court of Appeals considered whether a woman who was injured at a shopping center was a bare licensee or an invitee. 247 Md. at 229. In that case, Mrs. Taylor was injured at the top of a staircase by an outdoor parting lot owned by the Hutzler Brothers Company when she stepped into a depression and twisted her ankle. *Id.* at 229-31. Mrs. Taylor was a regular customer of the Hutzlers

department store, but, on that day, had no intention of buying anything there. *Id.* at 231, 237. The Court of Appeals examined the plat upon which the staircase was built and noted that it appeared that "no effort ha[d] been spared to make access to the premises easy and safe, and the general arrangement of the parking area as well as the large number of spaces insure the likelihood that a place to park will be available." *Id.* at 236-37. The Court stated that it seemed obvious "that the public [wa]s invited to enter, make use of the parking area and visit the stores, [] and that lookers may become buyers." *Id.* at 237. The Court held that Mrs. Taylor could have established invitee status under either the implied invitation or the mutual benefit theory. *Id.* at 236.

Most recently, in *Macias*, this Court examined the legal status of a young boy who was injured while climbing a stone wall located on the property of a residential condominium complex, where his grandparents were unit owners. *Macias*, 243 Md. App. at 328. Unlike Ms. Hubberman in the case on appeal, the boy enjoyed invitee status on the condominium grounds as a guest of his grandparents. *Id.* at 328-29. However, because there was no mulched tire tread surrounding the wall or signs indicating that the wall was a play area, the appellees argued that they did not induce the boy to climb the sign and that therefore, he was a bare licensee or trespasser while he played upon it. *Id.* at 333-34. To the contrary, appellants argued that, because there were no signs prohibiting the boy from playing around or climbing the wall, he was an invitee at the time he was injured. *Id.* We rejected both parties' arguments regarding whether the boy was invited to climb the sign. *Id.* at 327-8. "[W]e [could] no more conclude that property owners invite children to climb structures in common areas that are not surrounded by signs and barriers than we [could]

conclude that property owners forbid climbing on all structures in common areas not surrounded by mulched tire tread." *Id.* at 334-35. We resolved, based on material facts not in dispute, that the record did not support a determination that the boy was a bare licensee for several reasons, including that the wall was located in the common area of the condominium complex, there was no evidence adduced to show that there were hard limits on where children were allowed to play, and there was evidence that the boy habitually played on and around the sign. *Id.* Even considering all material facts and inferences in the light most favorable to the appellees, we concluded that, without more facts to suggest that the boy was not allowed to play in the area where he was injured, "it is reasonable and conceivable that a child may climb a stone sign that blends naturally into the grounds upon which the child is accustomed to playing." *Id.* at 334-35. Accordingly, we determined that the boy maintained his invitee status the entire time that he played in the common areas of the complex, including when he climbed the stone wall. *Id.* at 327-8.

Returning to the case before us, we must first determine whether Appellants offered sufficient evidence to generate a genuine dispute of material fact. *Id.* at 313. Alternatively, we may decide that though the facts are undisputed, they are susceptible to more than one reasonable inference. *Woodward v. Newstein*, 37 Md. App. 285, 290 (1977). It may seem at first blush that the facts of this case bear the most striking similarity to *Deboy*; however, they are distinguishable. In *Deboy*, there was little to no evidence of inducement other than the fact that Ms. Deboy habitually walked her dogs across the convenience store premises. 167 Md. App at 553. There was no evidence of the owners or employees bringing their own dogs to work, providing water bowls, or coming outside to greet Ms. Deboy and her

dogs. *Id.* We cannot agree with the circuit court's conclusion that there is nothing to distinguish the Teal Marsh premises as a whole from the area surrounding the convenience store in *Deboy*.

We think there is a strong comparison to *Richardson* and *Kane*, though again, the facts of both cases are distinguishable. In *Richardson* and *Kane*, as in the case before us, there were well-established courses of acquiescence to injured parties' presence on the respective properties. Mrs. Richardson had visited the doctor's office with her husband on numerous past occasions and was always treated as a welcome guest by the receptionist. *Richardson*, 184 Md. App. at 485. While we note that Mrs. Richardson's status at the doctor's office, as a guest of her husband, may be a distinguishing factor, this Court focused also on the fact that no one on the staff had ever indicated that she was unwelcome. *Id.* at 494. The *Richardson* Court also clarified that no direct pecuniary benefit is required to support a finding of implied inducement.[3] *See* 184 Md. App. at 485. The facts of that case were stark enough that this Court conclusively held that Mrs. Richardson was an implied invitee. *Id.* The facts of the instant case are not as clear-cut.

In *Kane*, the trucker testified that he had used the smoking room approximately 30 times before. 213 Md. at 156. Here, Mrs. Hubberman testified that she had walked the Teal Marsh premises, with her dog Buddy, two or three times daily for five or six years at the time of her injury. There is evidence in the record that the unit owners and their

[3] We acknowledge that in *Richardson*, this Court noted that Mrs. Richardson was on the premises for the purpose of obtaining medical care for her husband, which was the appellee's business. 184 Md. App. at 494. However, no added pecuniary benefit was bestowed upon appellee through Mrs. Richardson's presence on the premises. *Id.*

employees did not object to this practice, and, in fact, it seems that some of them welcomed it by providing water bowls for passing dogs. Additionally, many of the unit owners and their employees brought their dogs to work with them.

Appellees make much of the fact that Ms. Gismondi testified that she did not approve of people walking their dogs on the Teal Marsh premises if they did not intend to make a purchase. They believe this conclusively shows that there was no inducement for anyone to walk their dog on the Teal Marsh premises. The emphasis on this point focuses on the subjective intent of Teal Marsh and misunderstands the crux of the implied invitation doctrine. *See Doehring*, 80 Md. App. at 244 (noting that the important inquiry is whether a reasonable person would understand the landowners conduct as an invitation). The salient question is whether a reasonable person would understand that dog walkers were permitted on the Teal Marsh premises, based on the general arrangement and design of the premises, the apparent holding out of the premises for a particular use, or the habitual acquiescence of the owner. *See Cheyne*, 99 Md. App. at 156.

The facts relevant to this inquiry are: Teal Marsh is a public, open-air shopping/business park, several of the unit owners or their employees bring their dogs to work, some of the unit owners or their employees provide water to people walking their dogs on the premises, residents of nearby communities have been allowed to walk their dogs on the premises for a number of years without objection, and at least one unit owner testified that the complex is dog friendly. The fact that Ms. Gismondi—a member of the Council of Owners—asked the owner of a rescue pit bull not to bring the dog back onto the premises, may suggest to the fact finder that she made it clear that dogs are not

welcome. On the other hand, the fact finder may infer from this set of facts that Teal Marsh was comfortable asking undesired members of the public not to use the premises and, therefore, implicitly invited the other dog owners who continually walked their dogs on the property. We think these facts are susceptible to more than one reasonable inference regarding Mrs. Hubberman's status as an entrant. *Woodward*, 37 Md. App. at 290.

As explained above, the implied invitation theory is controlled by an objective standard. *Wells*, 120 Md. App. at 710-11. Thus, we do not think the fact that Mrs. Hubberman did not plan to purchase anything that day is dispositive when there are other factors that might support a reasonable inference of inducement. *Kane* is instructive here because, while the Court of Appeals noted that the truck driver's helper was initially on the Crown Cork & Seal premises for a business purpose, the Court utilized the implied invitation doctrine when considering his use of the smoking room. 213 Md. at 162. In listing the factors that the Court found sufficient to submit to a trier of fact, the Court did not mention any pecuniary benefit that Crown Cork & Seal derived from the truck driver's helper's presence on the premises. *Id.*

While we do not opine that the facts presented thus far compel a finding that Mrs. Hubberman was an implied invitee, we think that a trier of fact might reasonably infer that she was. In other words, a jury could find that dog walkers were impliedly invited onto the Teal Marsh premises based on: 1) the habitual acquiescence of Teal Marsh to persons walking dogs on the property; 2) unit owners and their employees bringing their own dogs to work; 3) the provision of hydration for visiting dogs; and, 4) the open-air nature of the 8.6-acre property. It is equally possible that a trier of fact might credit Ms. Gismondi's

testimony, or find no evidence of inducement, and determine that Mrs. Hubberman was a bare licensee when she walked her dog through the shopping/business park. Because the material facts of this case are subject to more than one reasonable inference, the circuit court was required to draw all inferences in favor of Mrs. Hubberman as the non-moving party when it evaluated Appellees' motions for summary judgment. Accordingly, we must reverse and remand to the circuit court for further proceedings.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY REVERSED AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.