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Torts -- Premises liability -- Theme parks -- Duty of care -- Action stemming from injuries plaintiff's child suffered after falling off a trampoline the child had accessed through a theme park theater's closed but unlocked doors -- Trial court erred by denying defendant theme park's motions for directed verdict based on determination that child was a business invitee at all times while in theme park -- While child was a business invitee when he entered theme park and the theater itself, he lost his business invitee status and became, at most, an uninvited licensee when child crossed the bounds of his invitation and on his own initiative and for his own entertainment got onto the stage and trampoline used for theme park circus performances and proceeded to jump -- Even in the absence of signs on or near stage and trampoline explicitly prohibiting access thereto, no reasonable person would believe that child's ticket to theme park event constituted an invitation onto the elevated performance stage and professional trampoline -- Because child was not a business invitee at time of injury, the duty owed to him by defendant had lessened -- In the absence of evidence that defendant failed to avoid willful or wanton harm to child or that defendant discovered child's presence on the stage or trampoline such that it could have warned him of any known dangers not open to his ordinary observation, defendant was entitled to directed verdict -- Furthermore, by determining that child's status within the theme park was at all times that of a business invitee, trial court effectively granted directed verdict in favor of plaintiff, the nonmoving party -- To extent trial court was inclined to deny defendant's motions, the preliminary determination as to child's status at time of injury should have been submitted to the jury

SEAWORLD PARKS & ENTERTAINMENT LLC d/b/a Busch Gardens Tampa Bay, Appellant, v. ASMAA ABOUGAMAL, as parent and legal guardian of A.M., a minor, Appellee. 2nd District. Case Nos. 2D2025-0588, 2D2025-1220. (Consolidated) September 9, 2026. Appeal from the Circuit Court for Hillsborough County; Melissa M. Polo, Judge. Counsel: David B. Shelton and Candy L. Messersmith of Rumberger, Kirk & Caldwell, P.A., Orlando, for Appellant. Brian J. Lee of Morgan & Morgan, Jacksonville, for Appellee.

(BLACK, Judge.) SeaWorld Parks & Entertainment LLC d/b/a Busch Gardens Tampa Bay (Busch Gardens) appeals from two final judgments entered in favor of Asmaa Abougamal, as parent and legal guardian of A.M.: one awarding damages for negligence and one awarding attorney's fees and costs pursuant to an unaccepted proposal for settlement. A.M. sustained serious and permanent injuries after jumping from a professional circus trampoline in a theater at Busch Gardens' theme park. Because the trial court erred in denying Busch Gardens' motions for directed verdict and motion for judgment notwithstanding the verdict and in granting relief to Ms. Abougamal that was not requested, we reverse the final judgment for damages and remand for entry of judgment in favor of Busch Gardens.¹ And because we reverse the final judgment for damages, we also reverse the final judgment for fees and costs predicated on the judgment for damages.

Ms. Abougamal initiated a premises liability action against Busch Gardens on March 10, 2023, alleging in the one-count complaint that Busch Gardens had breached its duty to A.M. to exercise reasonable care for his safety, resulting in injury to A.M. A four-day jury trial was held in November 2024. The following evidence was adduced during trial.

On the night of September 23, 2022, A.M. attended a Halloween event -- Howl-O-Scream -- at Busch Gardens' theme park with his mother, Ms. Abougamal, and a friend. A.M. and his friend were twelve years old at the time. The group arrived at the theme park at approximately 7 p.m. At approximately midnight, A.M. and his friend decided to enter the Stanleyville Theater. Ms. Abougamal did not accompany them. A.M. testified that he and his friend entered the theater through a closed but unlocked door. The lights in the theater were on. A.M. acknowledged that there were no employees in the theater or actors on the stage and that no music was playing. Though A.M. had not seen the marquee indicating that the show was at 7:30 p.m., he acknowledged that it was clear to him when he entered the theater that no show was underway.

In the theater, stairs descend between bench seating to the base of an elevated stage. A large sign at the back of the stage displayed the name of the show performed in the theater on the date of the incident -- CIRQUE X-Scream. A professional circus trampoline was positioned on and toward the back of the elevated stage below the CIRQUE X-Scream sign. The trampoline was four-feet high, and no steps or ladder were affixed to it. The trampoline was designed to allow acrobats to bounce up to thirty feet in the air so that they can safely perform stunts.

A.M. and his friend descended twenty-two steps to the ground below the elevated stage. A.M. then got onto the stage,² walked to the back of the stage to the trampoline, and climbed onto the trampoline. According to A.M., he decided to jump on the trampoline because “[i]t looked fun.”³ After jumping upon the trampoline several times, A.M. attempted to dismount by first leaping high into the air. A.M. testified that as a result, he landed face-first on the ground below the stage, resulting in a laceration to his chin and abdominal pain.

A.M. returned to Ms. Abougamal outside of the theater, and she assisted him in obtaining a Band-Aid for his chin. At the time, A.M. claimed he had merely tripped on the theater steps and fallen. After the incident was documented by Busch Gardens employees, Ms. Abougamal, A.M., and A.M.'s friend left the theme park. Due to A.M.'s abdominal pain, Ms. Abougamal took A.M. to the hospital. A.M.'s chin laceration required several stitches. After taking X-rays of A.M.'s abdomen, he was released from the hospital. A couple of days after the incident, A.M. disclosed to Ms. Abougamal that he had been injured when jumping from the trampoline; he had been scared to tell her the truth. A.M.'s abdominal pain persisted, so Ms. Abougamal took him to another hospital where it was discovered that A.M. had sustained serious and permanent internal injuries.

A.M. conceded during cross-examination that he knew he should not be on the stage and that he felt like he was sneaking onto it. He also agreed during redirect examination that he knew he should not have been on the trampoline.

Busch Gardens' corporate representative testified that visitors are allowed to enter the theater even if a show is not scheduled. When no show is scheduled, one set of double doors is closed but unlocked so that the theater can be used by employees and visitors during emergencies or to take rest breaks; the other sets of double doors to the theater are kept closed and locked. The representative further explained that there are twenty-one illuminated warning signs posted throughout the theme park during Howl-O-Scream. Those warning signs instruct visitors not to “touch the actors or harm sets or props” or engage in “horseplay.” According to the representative, the trampoline was a prop, the touching of the trampoline was prohibited, and jumping upon the trampoline constituted horseplay. There were no known prior instances of visitors climbing onto and jumping upon the trampoline. During cross-examination, the representative testified that if a visitor climbed onto the stage and onto the trampoline, the visitor would be trespassing because visitor access onto the stage and trampoline is not authorized. During redirect examination, some confusion arose when counsel for Ms. Abougamal asked the representative whether A.M. had been trespassing “that night that he was on the trampoline.” As a result of the apparent confusion, counsel asked the following clarifying questions and received the following responses from the representative:

[Counsel:] I just want to make sure, to this jury you're not saying that [A.M.] was trespassing in the Stanleyville Theater that night?

[Representative:] No. Folks are allowed to go into the theater, yes.

[Counsel:] Okay. And you're not saying that him being up on the stage, on the trampoline, that he was trespassing that night. Because Busch Gardens took zero action at all, correct?

[Representative:] At that time we didn't know he was on the stage.

It was not until several months after the incident when Ms. Abougamal filed the complaint that Busch Gardens learned that A.M. had been on the trampoline and was injured when he dismounted.

Ms. Abougamal was asked during cross-examination whether she knew that visitors to the theme park were not permitted to engage in horseplay, including jumping on a trampoline, and she responded: "Of course. I read the rules and I always advise my son to follow the rules."

After Ms. Abougamal rested her case, Busch Gardens moved for directed verdict. Busch Gardens argued that while A.M.'s status was that of a business invitee when he entered the theme park, his status changed to that of an uninvited licensee or trespasser when he went onto the stage and trampoline. As a result, the duty owed to him by Busch Gardens changed. Busch Gardens explained that the duty owed to A.M. as an uninvited licensee or trespasser was to avoid willful or wanton harm to A.M. -- for which no evidence had been presented -- and upon the discovery of his presence, to warn him of known dangers not open to A.M.'s ordinary observation. Busch Gardens contended that the danger of the trampoline was open to A.M.'s ordinary observation as he knew he was not supposed to be on it and in any event that Busch Gardens could not have warned A.M. of the danger because it did not become aware of the incident until months after it happened. As such, Busch Gardens asserted that it was entitled to a verdict in its favor.

In response, Ms. Abougamal misrepresented the testimony of Busch Gardens' representative, arguing that the motion for directed verdict should be denied because Busch Gardens' representative testified that "at no time was [A.M.] trespassing." Ms. Abougamal did not dispute that there was no evidence of willful or wanton harm; nor did she dispute that the danger of the trampoline was open to A.M.'s ordinary observation. However, she asserted that if the court were to determine that A.M.'s status changed to that of an uninvited licensee or trespasser when he got onto the stage and trampoline, then the issue of attractive nuisance would arise. The court denied Busch Gardens' motion for directed verdict and in doing so concluded that A.M. was not a trespasser when he climbed onto the trampoline.

A.M.'s friend, who was called as a witness by Busch Gardens, testified that he did not get onto the stage with A.M. At trial, the friend initially denied that he had told A.M. not to jump on the trampoline, but after being confronted with his deposition testimony, the friend admitted that he had "told him not to."

A certified safety professional was also called by Busch Gardens. When asked which aspects of the warning signs posted throughout the theme park during Howl-O-Scream applied to the case, she identified the first bullet point of the signs stating, "Do not touch actors or harm sets or props" and "No horseplay." The certified safety professional testified that the trampoline is "definitely a set" and is "certainly part of the prop" and that jumping on a trampoline constitutes horseplay. When asked whether A.M. had acted in violation of the warning signs, the certified safety professional replied: "Yes. He touched the props, the sets, horseplay." With respect to the doors leading to the Stanleyville Theater, the certified safety professional testified that not only was it appropriate for a set of doors to remain unlocked when no show was scheduled, but it was safer for those doors to remain unlocked.

After Busch Gardens rested its case, it again moved for directed verdict, arguing just as it had before that A.M.'s status changed to that of an uninvited licensee or trespasser when he got onto the stage and the trampoline. In response, Ms. Abougamal again misrepresented the testimony of Busch Gardens' representative. The court denied the motion, finding as follows:

So there's only been evidence that this child was a business invitee. He bought a ticket, entered the park. The only evidence that there is establishes that [A.M.'s] status on the property at Busch Gardens was as a business invitee. There is no evidence that the minor child entered the premises for his own convenience without expressed or implied invitation. The only undisputed evidence is that he bought a ticket to the amusement park, entered for purposes connected with the property owner's business.

As a result of the trial court's ruling on Busch Gardens' motions for directed verdict, the jury was instructed only on the duty of care owed to an invitee. The jury was not instructed to determine as a preliminary matter A.M.'s status at the time of injury, nor was it instructed as to the burden of proof on this preliminary matter. *See* Fla. Std. Jury Instr. (Civ.) 401.16(a); Fla. Std. Jury Instr. (Civ.) 401.17. Though the jury found Busch Gardens to be negligent, it also found A.M. and Ms. Abougamal to be comparatively negligent. The jury attributed fault as follows: 65% to Busch Gardens, 25% to A.M., and 10% to Ms. Abougamal. The total amount of damages awarded by the jury, without reduction for the comparative negligence of A.M. and Ms. Abougamal, was \$8,154,350.75.

Following trial, Busch Gardens filed a motion for judgment notwithstanding the verdict. In addition to reiterating the arguments raised during trial, Busch Gardens contended that any argument by Ms. Abougamal that the trampoline was an attractive nuisance had been waived. Ms. Abougamal did not plead negligence based on the theory of attractive nuisance, and the jury was not instructed on this theory.⁴ Following a hearing, the motion for judgment notwithstanding the verdict was denied. The court once again found that A.M.'s status was that of a business invitee at all times while at the theme park. After taking into account the comparative negligence of A.M. and Ms. Abougamal, the final judgment awarding \$5,300,327.99 in damages to Ms. Abougamal for Busch Gardens' negligence was rendered. Thereafter, the court awarded Ms. Abougamal \$375,000 for attorney's fees and costs based upon an unaccepted proposal for settlement.

We review de novo a trial court's ruling on a motion for directed verdict and on a motion for judgment notwithstanding the verdict. *R.J. Reynolds Tobacco Co. v. Giambalvo*, 386 So. 3d 251, 254 (Fla. 2d DCA 2024) (citing *Walerowicz v. Armand-Hosang*, 248 So. 3d 140, 143 (Fla. 4th DCA 2018)). “A motion for a directed verdict is not an evidentiary ruling; the motion raises the legal sufficiency of the evidence.” *Martinez v. Lobster Haven, LLC*, 320 So. 3d 873, 879 (Fla. 2d DCA 2021). “[A] motion for directed verdict ‘must be denied if the evidence is conflicting or different conclusions or inferences can be drawn from it.’” *Thompson v. Fla. Cemeteries, Inc.*, 866 So. 2d 767, 769 (Fla. 2d DCA 2004) (quoting *Azar v. Richardson Greenshields Sec., Inc.*, 528 So. 2d 1266, 1269 (Fla. 2d DCA 1988)). And so “only where there is no evidence upon which a jury could properly rely [should] a directed verdict . . . be granted. The same standard applies when a court addresses a motion for judgment notwithstanding the verdict.” *Jackson Cnty. Hosp. Corp. v. Aldrich*, 835 So. 2d 318, 326 (Fla. 1st DCA 2002) (first citing *Ticor Title Guarantee Co. v. Harbin*, 674 So. 2d 781, 782 (Fla. 1st DCA 1996); and then citing *Easton-Babcock & Assocs. v. Fernandez*, 706 So. 2d 916, 919 (Fla. 3d DCA 1998)); *see also Acosta v. Citizens Prop. Ins.*, 421 So. 3d 716, 719 (Fla. 4th DCA 2025) (“Trial courts may grant motions for [judgment notwithstanding the verdict] only when there is no evidence or inferences which may support the opposing party's position.” (quoting *Citizens Prop. Ins. v. Hernandez*, 360 So. 3d 737, 740 (Fla. 4th DCA 2023))).

At common law, a visitor's status on the property of another is either that of an invitee, an uninvited licensee, or a trespasser. *Arp v. Waterway E. Ass'n*, 217 So. 3d 117, 120 (Fla. 4th DCA 2017) (citing *Post v. Lunney*, 261 So. 2d 146, 147 (Fla. 1972)); *accord Ruiz v. Wendy's Trucking, LLC*, 357 So. 3d 292, 301 (Fla. 2d DCA 2023) (citing *Wood v. Camp*, 284 So. 2d 691, 693-94 (Fla. 1973)). “An invitee is a visitor on the premises by invitation, either express or reasonably implied, of the owner.” *Ruiz*, 357 So. 3d at 301 (quoting *Arp*, 217 So. 3d at 120). The test to determine whether a visitor is an invitee is as follows:

[T]he invitation test bases “invitation” on the fact that the occupier by his arrangement of the premises or other conduct has led the entrant to believe that the premises were intended to be used by visitors for the purpose which this entrant was pursuing, and that such use was not only acquiesced in by the owner or possessor, but that it was in accordance with the intention and design with which the way or place was adopted or prepared.

Id. (alteration in original) (quoting *Arp*, 217 So. 3d at 120); *see also* Restatement (Second) of Torts § 332 (1965) (“In determining whether a particular person is an invitee, 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.”). “A business invitee is one who is ‘invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.’ ” *Cnty. Christian Ctr. Ministries, Inc. v. Plante*, 719 So. 2d 368, 370 (Fla. 4th DCA 1998) (quoting *Post*, 261 So. 2d at 148). “[A] trespasser is a person ‘who enters the premises of another without license, invitation, or other right, and intrudes for some definite purpose of his own, or at his convenience, or merely as an idler with no apparent purpose, other than perhaps to satisfy his curiosity.’ ” *Arp*, 217 So. 3d at 121 (quoting *Post*, 261 So. 2d at 147).

And “[a]n uninvited licensee is a person who chooses ‘to come upon the premises solely for [his or her] own convenience without invitation either expressed or reasonably implied under the circumstances.’ ” *Id.* at 120-21 (second alteration in original) (quoting *Wood*, 284 So. 2d at 695). “An uninvited licensee is neither an invitee nor a trespasser, but rather, a legal status in between whose presence is neither sought nor forbidden, but merely permitted or tolerated by the landowner.” *Id.* at 121 (quoting *Bishop v. First Nat’l Bank of Fla., Inc.*, 609 So. 2d 722, 725 (Fla. 5th DCA 1992)). “Mere permission, as distinguished from invitation, is sufficient to make the visitor a licensee” Restatement (Second) of Torts § 332 (1965).

“The classification of the entrant is significant because the duty of care owed by the landowner varies according to the visitor’s status.” *Arp*, 217 So. 3d at 120 (quoting *Barrio v. City of Miami Beach*, 698 So. 2d 1241, 1243 (Fla. 3d DCA 1997)). “[I]n invitees are owed the highest duty of care” *Ruiz*, 357 So. 3d at 301 (citing *Wood*, 284 So. 2d at 694). That is, “to use reasonable care in maintaining property in a reasonably safe condition” and “to warn of concealed dangers that the landowner knows about or should know about and which are unknown to the invitee and cannot be discovered by him through the exercise of due care.” *Id.* at 301-02 (quoting *Knight v. Waltman*, 774 So. 2d 731, 733 (Fla. 2d DCA 2000)). “Places of amusement where large crowds congregate are required to keep their premises in reasonably safe condition commensurate with the business conducted.” *Walt Disney World Co. v. Goode*, 501 So. 2d 622, 623-24 (Fla. 5th DCA 1986) (quoting *Wells v. Palm Beach Kennel Club*, 35 So. 2d 720, 721 (Fla. 1948)). The duties owed by landowner to a trespasser and an uninvited licensee are the same: “to avoid willful or wanton harm to him and, upon discovery of his presence, to warn him of any known dangers which would not be open to his ordinary observation.” *Arp*, 217 So. 3d at 120 (quoting *Nolan v. Roberts*, 383 So. 2d 945, 946 (Fla. 4th DCA 1980)).

While on the property of another, the visitor’s status can change, and it is the visitor’s status *at the time of injury* that is critical to our analysis. *Byers v. Radiant Group, L.L.C.*, 966 So. 2d 506, 509 (Fla. 2d DCA 2007) (“The status of a visitor to land possessed by another may change from one of the three categories to another. The issue of the visitor’s status as an invitee, licensee, or trespasser is to be determined as of the time that the visitor is injured.”). “When the visitor crosses the boundaries of the invitation, he ceases to be an invitee. His status then changes to that of a licensee or even a trespasser. He is entitled to the status of an invitee only to the extent justified by the implied invitation.” *Steinberg v. Irwin Operating Co.*, 90 So. 2d 460, 461 (Fla. 1956). As such, the duty owed to a business invitee extends only to those

portions of the premises which are *included within the invitation and which it is necessary or convenient for the invitee to visit or use* in the course of the business *for which the invitation was extended*, and at which his presence should therefore reasonably be anticipated, or *to which he is allowed to go*.

Morris v. Cap. City Bank, 403 So. 3d 369, 373 (Fla. 1st DCA) (first emphasis added) (quoting *Hall v. Holland*, 47 So. 2d 889, 892 (Fla. 1950)), *review denied*, No. SC2025-0474, 2025 WL 2218890 (Fla. Aug. 5, 2025); *see also Byers*, 966 So. 2d at 509 (“An invitee may lose his status and become a licensee or trespasser by going to a part of the premises that is beyond the scope of his or her invitation.”).

It is undisputed that A.M. was a business invitee when he entered the theme park -- he had a ticket inviting him to Howl-O-Scream. It was even permissible for A.M. to enter the theater. However, A.M.’s status

changed when he got on the stage and then climbed onto the trampoline to engage in horseplay. *See Steinberg*, 90 So. 2d at 461. Access onto the stage and use of the trampoline for horseplay were not part of the invitation. *See Morris*, 403 So. 3d at 372 (“[T]he . . . duty to maintain a safe premises for invitees . . . is limited to the intended use of the premises as part of the invitation.”). The stage and trampoline were unnecessary for A.M. to “visit or use,” and his presence thereon for the purpose of engaging in horseplay was not reasonably anticipated. *See id.* at 373 (quoting *Hall*, 47 So. 2d at 892).

No reasonable person would believe that the ticket to Howl-O-Scream constituted an invitation onto the elevated performance stage and professional trampoline, nor should A.M.'s actions have been reasonably anticipated. The setup of the CIRQUE X-Scream performance stage and trampoline “shows conclusively that it was . . . not to be used” by invitees. *See Dramstadt v. City of W. Palm Beach*, 81 So. 2d 484, 485 (Fla. 1955). “[T]he very nature of the high” stage and trampoline -- which was not accessible by a ladder or steps and was located at the back of the stage -- “inhibited trespassing, particularly in the nighttime” when no show was going on.⁵ *See id.* And thus A.M.'s “use” of the stage and trampoline was not “in accordance with the intention and design with which” they were “prepared.” *See Ruiz*, 357 So. 3d at 301 (quoting *Arp*, 217 So. 3d at 120). This is so even in the absence of signs on or near the stage and trampoline explicitly prohibiting access thereto. *See Dramstadt*, 81 So. 2d at 485 (“Owners or holders of premises are not required to place warning signals on property where the public is not expected to go.”); *see also Arp*, 217 So. 3d at 122 (“[E]recting ‘No Trespassing’ signs ‘is purely optional to a landowner,’ so the absence of such signs does not mean that a landowner has impliedly invited the public on the land.” (citing *Bishop*, 609 So. 2d at 725)); *cf. Libby v. W. Coast Rock Co.*, 308 So. 2d 602, 603-04 (Fla. 2d DCA 1975) (holding that owner did not impliedly invite minors onto its premises -- which at one time had been used for mining -- by removing fences, barricades, and warning signs despite the owner's knowledge that minors regularly used the property as a “lover's lane”). Of course, in this case warning signs posted throughout the theme park prohibited visitors from engaging in horseplay -- which indisputably includes conduct such as jumping on a trampoline. *Cf. Satin v. Hialeah Race Course, Inc.*, 65 So. 2d 475, 475-76 (Fla. 1953) (holding that visitor, who gained access to the racetrack not by “paying the admission required of the general public” but by displaying a pass and “impliedly represent[ing] herself to be . . . a member of the working press,” was at most an uninvited licensee because “the record shows the rules of the trac[k] to be that no one other than workers around the track were to use such passes, and that if they were found doing so they would be ejected from the track”).

Busch Gardens had no knowledge of any prior visitors climbing onto and jumping upon the trampoline. And a visitor's presence on the stage was not anticipated when no show was underway.⁶ *See Hall*, 47 So. 2d at 892 (“The phrase ‘implied invitation’ imports knowledge by the defendant of the probable use by the plaintiff of the defendant's property so situated and conditioned as to be open to, and likely to be subjected to, such use.”); *cf. Dunlop v. Reynolds*, 204 So. 2d 754, 755 (Fla. 2d DCA 1967) (affirming summary judgment in favor of the defendant where “the plaintiff was inside defendants' place of business and stepped into a space not provided for customers, nor reasonably foreseeable that a customer would enter”).

“[T]he visitor has the status of an invitee only while he is on the part of the land to which his invitation extends -- or in other words, the part of the land upon which the possessor gives him reason to believe that his presence is desired for the purpose for which he has come.” Restatement (Second) of Torts § 332 (1965) (emphasis added). A.M. had no reason to believe he should be on the stage or on the trampoline. A.M. testified that he knew he was not allowed on the stage and felt as though he were sneaking onto it. He also admitted that he should not have been on the trampoline but nonetheless had climbed onto and jumped upon the trampoline anyway. *See Dougherty v. Hernando County*, 419 So. 2d 679, 681 (Fla. 5th DCA 1982) (“It is clear to us that plaintiff, although an invitee while upon the pedestrian walkway of the bridge, became something less when he climbed over the guardrail and used the bridge as a diving platform, when it was obviously (*and so known to him*) not designed or intended to be used for that purpose. In that activity he was, at best, an uninvited licensee; at worst, a trespasser.” (emphasis added)). A.M.'s testimony is evidence, and “[a] trial court . . . is not privileged to disregard evidence admitted at trial when considering a motion for

directed verdict because all evidence admitted before the jury must be considered when ruling on such a motion.” *Singer v. Borbua*, 497 So. 2d 279, 280 (Fla. 3d DCA 1986) (citing *Se. Fire Ins. v. King's Way Mortg. Co.*, 481 So. 2d 530, 531 (Fla. 3d DCA 1985)). Additionally, Ms. Abougamal acknowledged that horseplay, including jumping on a trampoline, is prohibited in the theme park and that she *always* advises A.M. to abide by the rules. And Busch Gardens' representative testified that visitors to the theme park are not authorized to climb upon the stage or the trampoline or engage in horseplay, such as jumping on a trampoline. Much like the testimony of A.M., the trial court could not simply disregard this testimony. *See Capitano v. CSX Transp., Inc.*, 698 So. 2d 652, 654 (Fla. 2d DCA 1997) (holding that where testimony “was uncontroverted and neither impeached, discredited, contradictory within itself nor physically impossible, the trial court had no discretion to disregard it as sufficient support for [the] motion for directed verdict”). That A.M. was no longer a business invitee at the time of injury is further bolstered by the testimony of Busch Gardens' witnesses -- A.M.'s friend and the certified safety professional. It could be reasonably inferred from A.M.'s friend instructing A.M. not to jump on the trampoline that the friend also knew that such conduct was prohibited. *See Azar*, 528 So. 2d at 1269. Similarly, the certified safety professional testified that A.M. had acted in violation of the warning signs by touching a prop and a set and by engaging in horseplay.

Steinberg, which is an appeal from summary judgment entered in favor of a hotel operator, is instructive. *See* 90 So. 2d at 461. Ms. Steinberg and two friends entered a hotel to visit a registered guest. *Id.* The registered guest was not present at the hotel at the time of the visit, so Ms. Steinberg and her friends began to explore lounges and other rooms near to the hotel lobby. As explained by the supreme court, “This was done for their own diversion.” *Id.* After leaving a “TV Room” because Ms. Steinberg and her friends did not enjoy the programming, they attempted to enter an adjoining “Movie Room.” The only light in the room was from that cast by the screen and projector. Ms. Steinberg fell and sustained injuries as she entered the “Movie Room” as she did not notice that the floor was several inches lower than the floor in the adjoining “TV Room.” *Id.* The supreme court held that Ms. Steinberg's status upon entering the hotel lobby was that of an implied invitee but that her invitation to visit a registered guest “extend[ed] only to appropriate usage of the means of ingress and egress, such as, the lobby, elevator, hallways and room area rented to the guest.” *Id.* And so “[w]hen, for her own pleasure and convenience, she crossed the bounds of the invitation and on her own initiative sought entertainment in the ‘TV Room,’ and later in the ‘Movie Room,’ she became at most a licensee.” *Id.* at 462.

Much like the plaintiff in *Steinberg*, when A.M. crossed the bounds of his invitation and on his own initiative and for his own entertainment got onto the stage and then the trampoline used for CIRQUE X-Scream performances and proceeded to jump, he lost his business invitee status and became, at most, and uninvited licensee.⁷ “[I]t would be stretching the doctrine of implied invitation beyond justifiable limits to hold that [A.M.'s] invitation” extended to all areas of the theme park or even to all areas of the theater, including the stage and trampoline clearly used for performances. *See Steinberg*, 90 So. 2d at 461; *cf. Sierra Orlando Props., Ltd. v. Allen*, 419 So. 3d 283, 285, 291 (Fla. 6th DCA 2025) (reversing final judgment for hotel guest -- a business invitee -- who fell and sustained injuries when, for her own convenience and in lieu of using the sidewalk, she walked through a worn grassy median surrounded by raised curbs in the parking lot and holding that the trial court erred in denying the hotel's motion for directed verdict because no evidence was produced establishing that the hotel expanded the scope of its invitation to include the grassy median); *see generally Denniser v. Columbia Hosp. Corp. of S. Broward*, 162 So. 3d 26, 28 (Fla. 4th DCA 2014) (“We affirm the trial court's order on the appellant's status as uninvited licensee or trespasser. No genuine issue of material fact was presented to dispute that the appellant lost her status as an invitee by going into a part of the premises that was beyond the scope of her invitation.”).

The undisputed facts of this case are such that A.M.'s status could be determined as a matter of law. *See Wood*, 284 So. 2d at 696 (“It may be that on the facts in a particular case the determination of the category of the plaintiff must be determined as a matter of law by the trial judge, as in other cases in this respect; other causes will present a factual issue for the jury as to whether plaintiff is [an] invitee, [a] licensee or [a]

trespasser under appropriate instructions.”). And those facts established that A.M. exceeded the scope of his ticket to Howl-O-Scream at the time of injury; no evidence was presented -- either by Ms. Abougamal or by Busch Gardens -- from which it could be inferred that A.M. was a business invitee at the time of injury. *Compare Hickory House v. Brown*, 77 So. 2d 249, 252-53 (Fla. 1955) (“[W]hen the evidence shows that an invitee goes beyond the limits of the invitation, no obligation is imposed on the owner to keep the premises in a safe condition for the benefit of the user for uses outside of the scope of the invitation. In this case while the contractor was an invitee upon the premises where he was admitted to perform the work, his invitation as an invitee did not include the right to use a structure inside the building obviously not designed to be used to support workmen or great weights. . . . Appellee insists that the facts in this case present a jury question and for that reason the judgment should not be disturbed. We cannot agree with this contention because the undisputed facts in the record failed to establish any legal liability on the part of the defendant as a matter of law. Under such circumstances, it was the duty of the lower court to take the case from the jury and direct a verdict for the defendant.” (citation omitted)), and *Norris v. Rodriguez*, 378 So. 3d 661, 664 (Fla. 2d DCA 2023) (“Here, the trial court properly granted summary judgment in favor of Mr. Rodriguez determining that Ms. Norris' status should not be elevated from an uninvited licensee to a public invitee where the undisputed facts establish that she cut across Mr. Rodriguez's property solely for her own convenience in route to the public sidewalk. And while she was on the driveway apron allegedly located within the county right-of-way, this property was not held open to the public.”), with *Cnty. Christian Ctr. Ministries, Inc.*, 719 So. 2d at 370 (“Here, at a minimum, the facts create an issue as to whether the plaintiff exceeded the scope of his invitation. Was the grassy area a place that the defendants should have reasonably anticipated that the plaintiff would go? This is a question of fact that must be resolved by the jury. We therefore conclude that the trial court erred in granting a directed verdict finding the plaintiff a business invitee as a matter of law.”). Since A.M. was no longer a business invitee at the time of injury, the duty owed to him by Busch Gardens had lessened. *See Steinberg*, 90 So. 2d at 461. And no evidence established that Busch Gardens failed “to avoid willful or wanton harm to [A.M.]” or that Busch Gardens discovered his presence on the stage or trampoline such that it could have “warn[ed] him of any known dangers . . . not . . . open to his ordinary observation” to the extent any exist. *See Arp*, 217 So. 3d at 121 (quoting *Nolan*, 383 So. 2d at 946); *cf. Wood*, 284 So. 2d at 694 (“An owner cannot . . . be held liable for a negligent condition as to an undiscovered trespasser who chooses to come upon his property without his knowledge.”). The trial court therefore erred in denying Busch Gardens' motions for directed verdict and motion for judgment notwithstanding the verdict. *See Capitano*, 698 So. 2d at 654; *see also Nationwide Mut. Fire Ins. v. Kramer*, 725 So. 2d 1141, 1142 (Fla. 2d DCA 1998) (“[W]e conclude the trial court erred in denying Nationwide's motion for directed verdict because there was no evidence adduced at trial which would support a jury verdict in the Kramers' favor.”).

Furthermore, in denying Busch Gardens' motions for directed verdict, the trial court effectively granted directed verdict in favor of Ms. Abougamal, the nonmoving party, determining that A.M.'s status within the theme park was at all times that of a business invitee. This, too, was error. To the extent the court was inclined to deny Busch Gardens' motions, the preliminary determination as to A.M.'s status as the time of injury should have been submitted to the jury. *See Fla. R. Civ. P. 1.480(b)* (“When a motion for a directed verdict is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion.”). Although Ms. Abougamal opposed Busch Gardens' motions for directed verdict, she did not seek any affirmative relief. *See Martinez, LLC*, 320 So. 3d at 880 (“The trial court had no authority to enter judgment in accordance with a motion for directed verdict that was never made.”).

Because A.M. was no longer a business invitee at the time of injury and no evidence established that Busch Gardens failed to exercise the duty of care owed to an uninvited licensee or trespasser, the trial court erred in denying Busch Gardens' motions for directed verdict and motion for judgment notwithstanding the verdict. And as no pleaded claim remains unresolved by our holding, we reverse the final judgment for damages and remand for entry of judgment for Busch Gardens. Our reversal of the underlying judgment for damages also requires reversal of the final judgment for attorney's fees and costs. *See Wagner v. Uthoff*, 868 So. 2d 617,

618 (Fla. 2d DCA 2004); *see also City of Hollywood v. Witt*, 939 So. 2d 315, 319 (Fla. 4th DCA 2006) (“[W]here an award of attorney's fees is dependent upon the judgment obtained, the reversal of the underlying judgment necessitates the reversal of the fee award.”).

Reversed and remanded. (NORTHCUTT and VILLANTI, JJ., Concur.)

¹We decline to address the other issues raised by Busch Gardens on appeal related to the damages judgment.

²There are steps leading to the stage, but A.M. did not remember if he had used the steps or had pulled himself up on the side of the stage.

³During his deposition A.M. had testified that he did not know why he had gotten on the trampoline, though at trial he indicated that he did not recall making that statement.

⁴To plead a claim of negligence based on attractive nuisance, the complaint must allege allurement. *See Johnson v. Bathey*, 376 So. 2d 848, 849 (Fla. 1979); *Concrete Constr., Inc. of Lake Worth v. Petterson*, 216 So. 2d 221, 223 (Fla. 1968); *see also Martinello v. B & P USA, Inc.*, 566 So. 2d 761, 763-64 (Fla. 1990) (explaining that under the attractive nuisance doctrine the defense of comparative negligence does not apply as it is an “all-or-nothing claim” and that “if the jury believes the child does realize the risk of intermeddling with the dangerous condition, then the attractive nuisance doctrine is inapplicable [and] the child is considered an ordinary trespasser”); *Lister v. Campbell*, 371 So. 2d 133, 136 (Fla. 1st DCA 1979) (“Often the child's own testimony is the best evidence of whether he possessed sufficient intelligence and knowledge to understand or avoid the danger.”).

⁵Even if we were to conclude that the steps leading up to the stage could be construed as an invitation to enter thereon when no show is underway, the trampoline is very clearly outside the bounds of the invitation.

⁶Busch Gardens' representative acknowledged that the standard operating procedures for the theater direct employees to remain in the theater and observe as the theater is filling for a show because visitors “may try to climb on the stage.” But he clarified that it is only during shows -- due to the excitement of the entertainment -- that children may try to climb on the stage. There was only one CIRQUE X-Scream show during the Howl-O-Scream event, the 7:30 p.m. show.

⁷For purposes of our analysis, we need not determine whether A.M. was an uninvited licensee or trespasser at the time of injury. *See Nolan*, 383 So. 2d at 946.

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