[Cite as *Lawson v. Scinto*, 2009-Ohio-2659.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kathleen Lawson,	:	
Plaintiff-Appellant,	:	
		No. 08AP-1125
v.	:	(C.P.C. No. 07CVC-09-012637)
Anna M. Scinto et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	
	:	

D E C I S I O N

Rendered on June 9, 2009

The Donahey Law Firm, and *T. Jeffrey Beausay*, for appellant.

Alan E. Mazur, for appellee Anna M. Scinto.

Isaac, Brant, Ledman & Teetor, LLP, and *John E. Vincent*, for appellee Benchmark Construction.

APPEAL from the Franklin County Court of Common Pleas.

TYACK, J.

{¶1} During a snowstorm in February 2007, plaintiff-appellant, Kathleen Lawson, was walking through a strip-mall parking lot when she slipped and fell, breaking her arm and wrist. Lawson sued the owner of the commercial lot, Anna Scinto, and also Benchmark Construction, the company Scinto contracted with to plow/maintain the parking lot. The defendants filed motions for summary judgment, which the trial court

granted. At issue here, is whether defendants were negligent in allowing or causing an unnatural accumulation of snow to collect on the parking lot and/or the adjoining sidewalk.

{¶2} Based on Lawson's own deposition, there was approximately a one-eighth-inch accumulation of snow on the lot at the time of her fall. Her theory of recovery was based on the fact that there was an unnatural accumulation of snow on the adjacent sidewalk, which forced her to walk through the parking lot, where she ultimately slipped. There was no evidence demonstrating that either defendant was responsible for the plowed snow that was blocking the sidewalk; in fact, the only evidence in that regard was that the city's snow plows caused the snow to pile up along the sidewalks. Viewing that evidence in a light most favorable to Lawson, the trial court concluded that defendants were not liable. We affirm that judgment.

{¶3} Lawson assigns three errors for our review:

> 1. THE TRIAL COURT ERRED IN GRANTING THE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT.
>
> 2. THE TRIAL COURT ERRED IN OVERRULING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF DEFENDANTS' NEGLIGENCE.
>
> 3. THE TRIAL COURT ERRED IN FAILING TO RULE ON THE ADMISSIBILITY OF THE LOCAL CLIMATOLOGICAL DATA MADE AVAILABLE TO IT, AND IN FAILING TO CONSIDER THIS EVIDENCE IN RULING ON THE MOTIONS FOR SUMMARY JUDGMENT.

{¶1} The first and second assignments of error are interrelated, as they both relate to summary judgment. We will therefore address them together. Lawson claims that the trial court erred in not granting summary judgment for her, and in granting summary judgment for the defendants. We review the appropriateness of granting a

motion for summary judgment de novo, using the same standard used by the trial court. *Boroff v. Meijer Stores Ltd. Partnership*, 10th Dist. No. 06AP-1150, 2007-Ohio-1495, ¶7; *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35. Under Civ.R. 56(C), summary judgment is appropriate when, after construing the evidence most strongly in favor of the nonmoving party: (1) no genuine issue of material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion—that conclusion being adverse to the nonmoving party. *Boroff* at ¶6 (citing *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St.3d 367, 369–70, 1998-Ohio-389).

{¶2} To establish a prima facie case of negligence, a plaintiff must show that: (1) defendant owed her a duty of care; (2) defendant breached that duty; and (3) damages proximately caused by defendant's breach of duty. *Boroff* at ¶8 (citing *Lydic v. Lowe's Companies, Inc.,* 10th Dist. No. 01AP-1432, 2002-Ohio-5001, ¶7; *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77).

{¶3} Damages are obviously not at issue here—Lawson fell and broke her arm. Before we may determine whether defendants breached a duty to Lawson, we must determine what duty, if any, they owed to her.

{¶4} In premises liability cases, Ohio adheres the common law classifications of invitee-licensee-trespasser to determine the scope of the legal duty that landowners owe to entrants on their property. *Bennett v. Stanley* (2001), 92 Ohio St.3d 35, 38; *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 315; *Shump v. First Continental-Robinwood Assoc*. (1994), 71 Ohio St.3d 414, 417. Currently, landowners owe invitees the duty "to exercise ordinary care and to protect the invitee by maintaining the premises in a safe condition." *Light v. Ohio Univ.* (1986), 28 Ohio St.3d

66, 68. On the other hand, to (adult) licensees and trespassers, a landowner owes no duty, except to refrain from willful, wanton, or reckless conduct that is likely to cause injury. Id. (quoting *Gladon* at 317).

{¶5} An "invitee" is someone who rightfully comes upon the premises of another by invitation, express or implied, for some purpose that is beneficial to the landowner. *Gladon* at 315 (citing *Light* at 68; *Scheibel v. Lipton* (1951), 156 Ohio St. 308, paragraph one of the syllabus). The prototypical invitee is a store patron—they enter the store as a customer, from whom the shop's owner expects to earn a profit. See, e.g., *Provencher v. Ohio Dept. of Transp.* (1990), 49 Ohio St.3d 265, 266 (quoting *Scheibel* at 328-29).

{¶6} "Licensees" are those who enter another's premises for their *own* pleasure or benefit. See *Provencher*. The ultimate key in distinguishing a licensee from an invitee is the economic (tangible) benefit test. Id. If the entrant confers some benefit on the landowner, their status may be presumed to be an invitee. If no benefit is conferred, licensee is more fitting.

{¶7} "Trespassers" are similar to licensees, in that their entrance is purely for their own benefit as opposed to the landowner's; the distinguishing factor, however, is that licensees enter with the landowner's consent or acquiescence, where trespassers do not. See *Allstate Fire Ins. Co. v. Singler* (1968), 14 Ohio St.2d 27, 29, quoting *Keesecker v. G.M. McKelvey Co.* (1943), 141 Ohio St. 162, 166. ("A 'trespasser' may be defined as one who unauthorizedly goes upon the private premises of another without invitation or inducement, express or implied, but purely for his own purposes or convenience; and where no mutuality of interest exists between him and the owner or occupant.")

{¶8} Here, Lawson claims that she entered the landowner's parking lot as an invitee, but the landowner explicitly argues that she was a trespasser. Both arguments are incorrect. First of all, Lawson's claim that she was an invitee must fail because there is no evidence that she ever intended to patronize any of the businesses serviced by the parking lot where she fell. In fact, the basis for her entire claim is that the only reason she entered the parking lot was because the sidewalk was blocked by plowed snow. Secondly, the landowner's allegation that Lawson was a trespasser also fails because Lawson's entrance onto the parking lot was not unauthorized. The parking lot is there to be used by many people, and even though the lot is provided as a convenience to customers, these customers do not need express authorization to enter the lot. Thus, Lawson was a licensee. A landowner's duty to licensees is the same as their duty to trespassers—no duty, except to refrain from willful, wanton, or reckless conduct that is likely to cause injury. See *Light*; *Gladon*, supra.

{¶9} Assuming that the owner of the parking lot owed Lawson no duty, there is no evidence in the record that supports Lawson's claim that the landowner was negligent. In fact, the evidence shows that the landowner was conscientious. The owner had arranged to have the lot plowed such that, by Lawson's own testimony, there was only a one-eighth-inch accumulation of snow at the time she fell. This minor accumulation does not give rise to the landowner's liability, and could not give rise to such liability because business owners are generally under no obligation (even to invitees) to remove natural accumulations of snow from parking lots. See, e.g., *Brinkman v. Ross* (1993), 68 Ohio St.3d 82, 84; *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, paragraph three of the syllabus.

{¶10} This properly disposes of Lawson's claim against the landowner, making summary judgment proper. We now address Lawson's claim of negligence against the snow plow company.

{¶11} As to the snow plow company, Lawson's claim is based on her allegation that the company was negligent in plowing the parking lot, by pushing the plowed snow into a place that blocked pedestrian access to and from the adjacent sidewalk. The elements of the claim are the same as above—duty, breach of duty, damages proximately caused thereby—only in this circumstance, the duty owed to Lawson by the snow plow company is not dictated by her entrant classification. In an ordinary negligence case, once the existence of a duty is found, defendant must exercise the degree of care that an ordinarily careful and prudent person would exercise under the same or similar circumstances. *Huston v. Konieczny* (1990), 52 Ohio St.3d 214, 217 (citing *Mussivand v. David* (1989), 45 Ohio St.3d 314, 318; *Di Gildo v. Caponi* (1969), 18 Ohio St.2d 125, 127; *Gedeon v. East Ohio Gas Co.* (1934), 128 Ohio St. 335, 338; *Bellefontaine Ry. Co. v. Snyder* (1874), 24 Ohio St. 670, 676).

{¶12} The problem with Lawson's claim is that there is no evidence to show that the snow plow operator did, in fact, block the sidewalk with snow. To the contrary, the snow plow operator flatly denied having pushed the snow in front of the sidewalk. Brian Chalfant is the owner of Benchmark Construction, and he was the person responsible for plowing the snow from the parking lot in question. In Chalfant's deposition, he testified that he was the only individual who plowed Scinto's lot, and further described in detail—using the same exhibits (photographs) Lawson used at her deposition—how and where he plowed the parking lot, and specifically where he pushed the plowed snow:

> Q. Brian * * * I'm looking at piles of snow and I can't tell which is which. But I have marked some photographs that I believe are photographs that depict some snow in or near the Papa John's parking lot. Tell me if I'm wrong.
>
> First one I'm showing you—we've marked as Chalfant Exhibits 1 through 7. * * * The top photograph is, I believe, the mound of snow that's actually north of the parking lot, the Papa John's parking lot, and that was snow that's in front of the dry cleaners. Is that your understanding also? And if you can't tell, say so.
>
> A. No. That is—that is looking south.
>
> Q. All right. And the snow that's depicted in this picture, * * * that is snow that is north of the Papa John's parking lot, correct?
>
> A. Correct. Yes.
>
> * * *
>
> Q. * * * The bottom photograph, then, on Exhibit 1, is that not snow that's right at the entrance of the Papa John's parking lot? Bottom photograph.
>
> A. Yes.
>
> Q. Okay. Is it your testimony that you are not responsible for having put any of that snow on the sidewalk that we see in that photograph?
>
> * * *
>
> A. I did not push snow there, no.

(Depo. of Brian Chalfant, March 18, 2008, at 31–33.)

{¶13} Thus, the only evidence before the trial court on the issue of the snow plow operator's negligence was the snow plow operator's deposition, in which he stated that he did not push the snow in front of the sidewalk. Lawson did not put forth any evidence to the contrary.

{¶14} On summary judgment, it is the movant's burden to specifically point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates that the other party has no evidence to support their claim. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. Once the party moving for summary judgment meets that burden, the burden shifts to the non-moving party to produce an affidavit "made on personal knowledge" setting forth "such facts as would be admissible in evidence" that demonstrate that a genuine issue of fact exists for trial. See id.; see also Civ.R. 56(E).

{¶15} Here, the party moving for summary judgment met its burden under Civ.R. 56(C) by presenting evidence that the snow plow operator did not block the sidewalk. Lawson, however, did not satisfy her burden under Civ.R. 56(E) to effectively rebut Chalfant's testimony, or otherwise demonstrate that a genuine issue of fact exists for trial. Obviously, Lawson did not have personal knowledge that Chalfant did in fact push snow in front of the sidewalk. But to escape summary judgment, she would have had to produce some witness with personal knowledge that Chalfant was untruthful.

{¶16} Lawson also claims that she is entitled to recover on a theory of negligence per se. She alleges that defendants are liable because they violated Columbus City Code 902.02, which prohibits anyone from placing anything on a public sidewalk without the transportation administrator's authorization, and Columbus City Code 902.03, which requires property owners to keep their sidewalks "clear of snow and ice each day." (See Appellant's brief, at 7.) After citing these ordinances, Lawson states, in conclusory fashion: "We *know* [defendant] failed to do this because there was a 6 foot mound of snow on February 20, 2007 that blocked Kathy Lawson's right to use the public sidewalk." Id. (Emphasis added.) This conclusion is flawed because *we* do

not know who put the mound of snow on the sidewalk. All we do know (or can presume from the evidence before us) is that Brian Chalfant and Benchmark Construction, did not push the mound of snow there. In fact, the only inference from the evidence before us is that the city of Columbus' municipal snow plows pushed the snow in front of the sidewalk when plowing the snow from High Street, which is also US-23, a major thoroughfare running through the city. (Chalfant Depo., at 33.)

{¶17} Additionally, even if Lawson had put forth some evidence to suggest that Chalfant had pushed the snow in front of the sidewalk, her claim is still suspect, because she did not fall as a direct result of the accumulation of snow blocking the sidewalk. She fell while walking through the parking lot, which was recently plowed. She claims that, but for the plow company's blocking the sidewalk, she would not have slipped and fallen in the parking lot. Thus, there is also an issue of proximate causation—did Chalfant's alleged pushing of snow in front of the sidewalk *proximately cause* Lawson's fall? An act of negligence is the proximate cause of an injury if the injury is the natural and probable consequence of the negligent act. *Winters v. Baltimore & O. R. Co.* (C.A.6, 1910), 177 F. 44, 50. Assuming that Chalfant blocked the sidewalk, it is unlikely that Lawson's fall in the adjacent parking lot was a foreseeable or natural and probable consequence of the sidewalk being blocked. Thus, Lawson's claim would have failed for this reason if it had not failed for the former.

{¶18} Lawson also argues that Ohio's frequenter statutes (R.C. 4101.11 and 4101.12) entitle her to recovery because the landowner was under a statutory duty to keep the parking lot in a safe condition, which she failed to do by allowing snow to accumulate on the sidewalk. This argument also fails because of proximate

causation—the accumulation of snow on the sidewalk did not cause Lawson's fall; she fell while traversing the freshly-plowed parking lot.

{¶19} We accordingly overrule the first and second assignments of error.

{¶20} Turning to the third assignment of error, which challenges the trial court's failure to rule on the admissibility of certain evidence before granting summary judgment to defendants. The evidence at issue is weather data, which Lawson submitted to demonstrate how much snow had fallen.

{¶21} "It is well-established that the admission of evidence lies within the broad discretion of the trial court." *State v. Hayes*, 10th Dist. No. 02AP-938, 2003-Ohio-2194, ¶138. We will not disturb a trial court's ruling therein absent evidence that the trial court abused its discretion. Id. An abuse of discretion is more than an error in law or judgment; rather, it implies that the trial court's attitude was arbitrary, unreasonable, or unconscionable. See id (citing *State v. Issa*, 93 Ohio St.3d 49, 64, 2001-Ohio-1290; *State v. Barnes*, 94 Ohio St.3d 21, 23, 2002-Ohio-68).

{¶22} The admissibility of meteorological data seems highly irrelevant because of Lawson's testimony as to how much snow was on the parking lot at the time she fell—one-eighth-inch. This is not a situation where defendant claims that there was no snow, and plaintiff claims that there were two feet. Since defendants have not argued otherwise, Lawson's testimony serves more or less as a stipulation of how much snow was on the ground. Meteorological data from an airport miles away or a national weather service report does not establish the conditions at the parking lot. Lawson's testimony was that one-eighth-inch was present. She had personal knowledge of the conditions.

{¶23} Accordingly, there was no reason for the trial court to consider the proffered evidence in rendering its decision. The trial court did not err, or abuse its discretion, and we overrule the third assignment of error.

{¶24} We sympathize with Lawson, because the record shows that she did suffer an injury. However, there are some injuries for which the law does not offer redress.

{¶25} What happened to Kathy Lawson is unfortunate, but no one else is legally responsible. Having overruled all assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and McGRATH, JJ., concur.

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