[Cite as *Walker v. Newsome*, 2009-Ohio-3093.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92425

BRENDA WALKER

PLAINTIFF-APPELLANT

vs.

CORLISS A. NEWSOME, ET AL.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-643583

BEFORE: Sweeney, J., Stewart, P.J., and Boyle, J.

RELEASED: June 25, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} This appeal is before the Court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1.

{¶ 2} Plaintiff-appellant, Brenda Walker ("plaintiff"), appeals the trial court's granting summary judgment to defendant-appellee, Corliss A. Newsome ("defendant"), in this negligence action. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 3} On December 16, 2005, plaintiff went to 1881 Noble Road in East Cleveland ("the building"), to visit a friend. This seven unit apartment complex is owned by defendant. Plaintiff parked her car in the driveway, which runs adjacent to the side of the building, and walked toward the front entrance. Right before she reached the steps to the front door, plaintiff slipped and fell on ice, which covered the ground of the surrounding area. As a result of the fall, plaintiff suffered a fractured arm that required surgery.

{¶ 4} On December 4, 2007, plaintiff filed a personal injury claim against defendant. On September 15, 2008, the court granted summary judgment for defendant, stating as follows:

{¶ 5} "There is no doubt that plaintiff sustained a serious injury as a result of a fall after slipping on ice accumulated near the front door of defendant's property. However, the law applicable to injuries resulting from a natural accumulation of ice and snow does not place any duty to clear the premises upon the property owner. *LaCourse v. Fleitz* (1986), 28 Ohio St.3d 209. While there was deposition testimony which indicates that the gutters attached to the building owned by defendant were in disrepair and caused water to flow and freeze on the driveway and near the back of

the premises, there is no testimony or other evidence indicating that the overflow from gutters impacted the front door area where plaintiff fell. Therefore, as there are no genuine issues of fact which remain, the court grants defendant's motion for summary judgment."

{¶ 6} Plaintiff now appeals, raising the following assignment of error for our review.

{¶ 7} "I. The trial court erred when it granted the motion for summary judgment of the defendant Newsome as reasonable minds could reach a different conclusion when construing the evidence as mandated by Civil Rule 56."

{¶ 8} Appellate review of granting summary judgment is de novo. Pursuant to Civ.R. 56(C), the party seeking summary judgment must prove that 1) there is no genuine issue of material fact; 2) they are entitled to judgment as a matter of law; and 3) reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Dresher v. Burt* (1996), 75 Ohio St.3d 280.

{¶ 9} In *Witt v. Saybrook Inv. Corp*., Cuyahoga App. No. 90011, 2008-Ohio-2188, this Court held that "to defeat a motion for summary judgment on a negligence claim, a plaintiff must establish that a genuine issue of material fact remains as to whether: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; and (3) the breach of duty proximately caused the plaintiff's injury." (Citing *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.* (1998), 81 Ohio St.3d 677.)

{¶ 10} As noted in the court's order granting summary judgment, the Ohio Supreme Court has held that the law "does not impose a duty on landlords to keep

common areas of the leased premises clear of natural accumulations of ice and snow." *LaCourse v. Fleitz* (1986), 28 Ohio St.3d 209, 212. Therefore, to prevail in a personal injury case involving slipping on snow or ice, a plaintiff "must produce evidence that *** the appellees were actively negligent in permitting or creating an unnatural accumulation of ice and snow." *Mubarak v. Giant Eagle, Inc*., Cuyahoga App. No. 84179, 2004-Ohio-6011 (emphasis omitted). See, also, *Porter v. Miller* (1983), 13 Ohio App.3d 93, 95 (holding that an "unnatural" accumulation of ice and snow refers to accumulation made by man, rather than mother nature).

{¶ 11} In the instant case, it is undisputed that there was ice accumulation at various areas around the building on the day plaintiff fell. Anthony Brown, who owns the property next to defendant's building, testified that the gutters on the driveway side of defendant's building in the rear were in "bad shape." Brown testified that the leaking gutters caused a "big tube of ice" to form on the rear side of the building. Additionally, Brown stated that due to the slope of defendant's property, water runs into the backyard.

{¶ 12} Brown further testified that he was not referring to the gutter in the front of the building. He stated that the snow and ice accumulation at the front stairs of the building always remained "untouched," and that since 1995, he had never seen anybody shovel that area.

{¶ 13} In construing these facts in a light most favorable to plaintiff, we find that she failed to present evidence that the ice and snow accumulation at the front entrance was unnatural. Therefore, even assuming arguendo that defendant was negligent, this alleged negligence did not cause plaintiff's injury. There is simply

nothing in the record indicating that the condition of the front entrance way, where plaintiff fell, was anything but natural. As there is no issue of material fact in this case, and defendant is entitled to judgment as a matter of law, the court did not err in granting defendant's summary judgment motion.

{¶ 14} Plaintiff's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MELODY J. STEWART, P.J., and
MARY J. BOYLE, J., CONCUR