[Cite as *Klein v. Ryan's Family Steak House*, 2002-Ohio-2323.]

STATE OF OHIO) IN THE COURT OF APPEALS
)ss: NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT)

STEVEN KLEIN, et al.

Appellants

v.

RYAN'S FAMILY STEAK HOUSE

Appellee
C.A. No. 20683

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 00 03 1351

DECISION AND JOURNAL ENTRY

Dated: May 15, 2002

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

CARR, Judge.

{¶1} Appellant-plaintiff Steven M. Klein appeals the order of the Summit County Court of Common Pleas granting summary judgment to Ryan's Family

Steak House ("Ryan's"). This Court affirms.

{¶2} On March 23, 2000, Klein filed a complaint against Ryan's alleging that on January 10, 1999, in the Arlington Road, Akron restaurant, he slipped and fell on Ryan's icy parking lot because of Ryan's negligence in creating an unnatural accumulation of ice. Ryan's filed an answer on May 23, 2000. On February 1, 2001, Ryan's filed a motion for summary judgment. Klein responded, and filed his own motion for summary judgment.

{¶3} On July 18, 2001, the trial court granted Ryan's motion for summary judgment.

{¶4} Klein timely appeals, raising a sole assignment of error.

ASSIGNMENT OF ERROR

{¶5} "THE TRIAL COURT ERRED BY DENYING THE APPELLANT'S MOTION FOR SUMMARY JUDGMENT AND GRANTING THE APPELLEE'S MOTION FOR SUMMARY JUDGMENT."

{¶6} In his sole assignment of error, Klein argues that the trial court improperly granted summary judgment in favor of Ryan's, and should have instead granted summary judgment in his favor. Specifically, Klein alleges liability on the part of Ryan's Family Steak House because of failure to remove an allegedly unnatural accumulation of ice from the parking lot. This Court disagrees.

A. Standard of Review

{¶7} Pursuant to Civ.R. 56(C), summary judgment is proper if: (1) No genuine issue as any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. An appellate court's review of a lower court's entry of summary judgment is de novo, and, like the trial court, it must view the facts in the light most favorable to the non-moving party. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. Any doubt must be resolved in favor of the non-moving party. *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12.

{¶8} The party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying portions of the record that demonstrate an absence of genuine issues of material fact as to an essential element of the non-moving party's claims. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The movant must point to some evidence in the record of the type listed in Civ.R. 56(C) in support of the motion. Id. If the moving party meets this burden of proof, the burden then shifts to the non-moving party, as set forth in Civ.R. 56(E), to offer specific facts showing a genuine issue for trial. Id. The

non-moving party may not rest upon the mere allegations and denials in the pleadings, but instead must point to or submit some evidentiary material that shows a genuine dispute over the material facts exists. Id.; Civ.R. 56(E).

B. Natural Accumulations v. Unnatural Accumulations

{¶9} This Court has previously surveyed the law governing this question:

{¶10} "It is axiomatic that in Ohio a property owner owes no duty to a business invitee to remove natural accumulations of snow and ice from sidewalks, steps and parking lots. *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, paragraph three of the syllabus; *Jeswald v. Hutt* (1968), 15 Ohio St.2d 224, 239, paragraph one of the syllabus ("One who maintains a private motor vehicle parking area, for the accommodation of those he serves in a professional or business way, is *** under no legal obligation *** to remove a natural accumulation of snow and ice therefrom."). There is no such duty because "the dangers from natural accumulations of ice and snow are ordinarily so obvious and apparent that an occupier of premises may reasonably expect that a business invitee on his premises will discover those dangers and protect himself against them." *Sidle*, at paragraph two of the syllabus. On the other hand, a property owner may be liable for the unnatural accumulations of ice and snow where there is evidence of an intervening act by that owner which perpetuates or aggravates the pre-existing, hazardous presence of ice and snow. *Porter v. Miller* (1983), 13

Ohio App. 3d 93, 95. An "unnatural accumulation" of ice is, by definition, one that is man-made. See *id*.

{¶11} "***

{¶12} "The Ohio Supreme Court once observed that no liability will attach for insubstantial defects on a premises which are commonly encountered, are to be expected and which are not unreasonably dangerous. *Raflo v. Losantiville Country Club* (1973), 34 Ohio St.2d 1, 4. Likewise, such reasoning demands that liability should not automatically attach when ice forms in an insubstantial, commonly encountered hollow in the center of a parking lot. The fact that a pool of ice has formed in a two-to-three inch depression will not, in and of itself, change the natural accumulation of ice into an unnatural one. In this Court's view, ice is ice, whether it has accumulated in a cracked depression in the center of a commercial parking lot or on a residential sidewalk which is entirely flat. So long as the depression and ice formations are not artificially cultivated or man-made, when the temperature dips below freezing, ice accumulation in natural.

{¶13} "***

{¶14} "As noted previously, "an owner of property is not liable to business invitees for personal injuries caused by natural accumulations of snow and ice. The law presumes that reasonable people will naturally

exercise caution when confronted with obvious dangers." (Citations omitted.) *Carter v. Lorain Bd. of Edn.* (May 6, 1987), Lorain App. No. 4153, unreported. However, as this Court once observed, when ice has accumulated by natural means, a property owner shall be liable if that party had superior knowledge, *i.e.* notice, that the accumulation of ice created a condition substantially more dangerous to its business invitees than they should have anticipated by reason of their knowledge of conditions prevailing generally in the area. *Bozzelli v. Brucorp* (Oct. 30, 1996), Summit App. No. 17886, unreported, citing *Debie v. Cochran Pharmacy-Berwick, Inc.* (1967), 11 Ohio St.2d 38, 227 N.E.2d 603, paragraph one of the syllabus. See, also, *Mikula v. Slavin Tailors* (1970), 24 Ohio St.2d 48, 263 N.E.2d 316, paragraph five of the syllabus ("Where an owner in control of a business parking area has notice, actual or constructive, that a natural accumulation of snow thereon has, by reason of covering a hole in the surface thereof, created a condition substantially more dangerous to a business invitee than that normally associated with snow, such owner's failure to correct the condition constitutes actionable negligence."). In other words, a property owner will be held liable for ice hazards caused by a natural accumulation of ice if that owner has superior knowledge of the injury causing hidden danger because an invitee may not reasonably be expected to protect himself or herself from such harm. See *Bozzelli*, citing

Coletta v. Univ. of Akron (1988), 49 Ohio App. 3d 35, 37, 550 N.E.2d 510." *Goodwill Indus. of Akron v. Sutcliffe* (Sep. 13, 2000), 9th Dist. No. 19972.

{¶15} The parties do not contest that the week of January 10, 1999, had freezing temperatures with a snowfall of approximately 7.3 inches, that Ryan's cleared and salted the parking lot including the area of the carport where Klein fell, and that Ryan's applied more salt to the parking lot every hour or two.

{¶16} Klein entered Ryan's without issue, but slipped and fell when he returned to his car under the carport. Klein claims that only part of the top portion of the carport was salted, causing ice to melt and run down the decline of the carport to reform as an unnatural accumulation of ice. Klein stated that the ice he slipped upon appeared "really shiny," and from this he presented his belief that the ice was "just wet," and must have come from snow melted by salt and then reforming as ice. Klein also described the ice as not white ice that could be seen.

{¶17} The evidentiary material accompanying Ryan's motion for summary judgment described the ice that Klein slipped upon as white ice that could not be seen. Ryan's indicated the pavement in the carport sloped away from the main building, and that if the ice resulted from snow melting in the salted carport area nearest the main door such ice was still a natural accumulation as a matter of law. In response, Klein alleged in his motion for summary judgment that the slope of the carport and uneven salting meant that melted snow ran down the slope and

reformed as ice on the bottom side of the carport where Klein fell, making the ice an unnatural accumulation.

{¶18} This Court recognizes the inherent difficulty that property owners face in guarding against the hazardous omnipresence of ice and snow on blustery days as in this case, and conclude that prior shoveling or salting does not render subsequent accumulations of ice to be unnatural. See, e.g., *Myers v. Forest City Ent., Inc.* (1993), 92 Ohio App.3d 351, 354; *Community Ins. Co. v. McDonald's Restaurants of Ohio, Inc.* (Dec. 11, 1998), 2nd Dist. No. 17053. "In cases involving an unnatural accumulation of ice and snow, a plaintiff must show that the defendant created or aggravated the hazard, that the defendant knew or should have known of the hazard, and that the hazardous condition was substantially more dangerous than it would have been in the natural state. Melting snow that refreezes into ice is natural, not an unnatural accumulation of ice." (citations omitted.) *Myers*, supra, at 353-354. This Court concludes that the ice in question was a natural accumulation of ice for which Ryan's is not liable.

{¶19} Klein also argues that Ryan's had superior knowledge of the slippery conditions in the carport. Yet Klein could offer no evidence of this below beyond inferential innuendo, as the record demonstrates Ryan's dutiful efforts to keep the entire parking lot, carport included, clear and salted and checked every hour or two. "[T]he spreading of de-icing materials on certain portions of a parking lot will, as a matter of law, neither create a hidden danger nor impute superior

knowledge thereof to a property owner." (citation omitted.) *Goodwill Industries of Akron, Inc.*, supra. Accordingly, this claim is without merit.

{¶20} Klein's sole assignment of error is overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

DONNA J. CARR
FOR THE COURT

SLABY, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

RICHARD E. DOBBINS, Attorney at Law, Ridgwood Centre, Suite 105, 1000 S. Cleveland-Massillon Rd., Akron, Ohio 44333, for appellants.

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