

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

John Hall et al., :  
 :  
 Plaintiffs-Appellants, :  
 :  
 v. : No. 12AP-900  
 : (C.P.C. No. 11CVC-04-5200)  
 Circle K, : (ACCELERATED CALENDAR)  
 :  
 Defendant-Appellee. :

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D E C I S I O N

Rendered on September 3, 2013

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*Vickery, Riehl and Alter, and Lawrence A. Riehl, for appellants.*

*Crabbe, Brown & James, LLP, Vincent J. Lodico and Robert C. Buchbinder, for appellee.*

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APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Plaintiffs-appellants, John Hall and Amy Hall, husband and wife, appeal from a judgment of the Franklin County Court of Common Pleas granting defendant-appellee, Circle K's, motion for summary judgment.

**I. FACTS AND PROCEDURAL HISTORY**

{¶2} Amy Hall ("appellant"), slipped and fell on an accumulation of ice and snow on the sidewalk in front of a Circle K gas station owned and operated by appellee. The undisputed facts reveal that on April 25, 2011, appellant stopped on her way to work to purchase gas. It was approximately 5:30 a.m. on a very cold morning. After filling her gas tank, appellant walked toward the front of the building to pay for her purchase.

When appellant reached the sidewalk leading to the front door, she slipped on ice and fell, suffering an injury to her right wrist.

{¶3} On April 26, 2011, appellants' filed their complaint against appellee, alleging negligence and loss of consortium. On September 24, 2012, the trial court granted appellee's motion for summary judgment.

## **II. ASSIGNMENTS OF ERROR**

{¶4} Appellants have appealed to this court, asserting the following assignments of error:

[I.] The Trial Court committed reversible error in granting summary judgment on the grounds that Plaintiff-Appellant Amy Hall fell on a natural accumulation of ice and snow.

[II.] The Trial Court committed reversible error in granting summary judgment on the grounds that Defendant-Appellee's agents rendered the accumulation unforeseeably dangerous to her or unnatural in derivation.

## **III. STANDARD OF REVIEW**

{¶5} Appellate review of summary judgment motion is de novo. *Helton v. Scioto Cty. Bd. of Commrs.*, 123 Ohio App.3d 158, 162 (4th Dist.1997). "When reviewing a trial court's ruling on summary judgment, the court of appeals conducts an independent review of the record and stands in the shoes of the trial court." *Mergenthal v. Star Bank Corp.*, 122 Ohio App.3d 100, 103 (12th Dist.1997). We must affirm the trial court's judgment if any of the grounds raised by the movant at the trial court are found to support it, even if the trial court failed to consider those grounds. *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41-42 (9th Dist.1995).

{¶6} Summary judgment is proper only when the party moving for summary judgment demonstrates that: (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 could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in that party's favor. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997).

{¶7} When seeking summary judgment on the ground that the nonmoving party cannot prove its case, the moving party bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on an essential element of the nonmoving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). A moving party does not discharge this initial burden under Civ.R. 56 by simply making a conclusory allegation that the nonmoving party has no evidence to prove its case. *Id.* Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that the nonmoving party has no evidence to support its claims. *Id.* If the moving party meets this initial burden, then the nonmoving party has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party. *Id.*

#### **IV. SUBSTANTIVE LAW**

{¶8} To establish a cause of action for negligence, plaintiffs were required to show (1) the existence of a duty, (2) a breach of that duty, and (3) an injury resulting proximately therefrom. *Menifee v. Ohio Welding Prod., Inc.*, 15 Ohio St.3d 75, 77 (1984), citing *Di Gildo v. Caponi*, 18 Ohio St.2d 125 (1969); *Feldman v. Howard*, 10 Ohio St.2d 189 (1967). A trial court properly grants a motion for summary judgment "[w]hen the defendants, as the moving parties, furnish evidence which demonstrates the plaintiff has not established the elements necessary to maintain his negligence action." *Feichtner v. Cleveland*, 95 Ohio App.3d 388, 394 (8th Dist.1994), citing *Keister v. Park Centre Lanes*, 3 Ohio App.3d 19 (5th Dist.1981).

{¶9} "Whether a duty exists is a question of law for the court to determine." *Mussivand v. David*, 45 Ohio St.3d 314, 318 (1989). A defendant's duty of care is determined by the relationship between the plaintiff and defendant and the foreseeability of injury. *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642 (1992). A business owner owes a business-invitee the duty of ordinary care in maintaining the premises in a reasonably safe condition so that she was not unnecessarily and unreasonably exposed

to danger. *See Cordle v. Bravo Dev., Inc.*, 10th Dist. No. 06AP-256, 2006-Ohio-5693, ¶ 9.

{¶10} As a general rule, when injuries are caused by natural accumulations of ice and snow, Ohio law provides that an owner or occupier owes no duty either to remove such accumulations or warn users of the dangers associated therewith. *Thatcher v. Lauffer Ravines, L.L.C.*, 10th Dist. No. 11AP-851, 2012-Ohio-6193, ¶ 15. A natural accumulation of ice or snow is that which is formed solely as a result of meteorological forces such as rain, snow, or a thawing and re-freezing cycle. *Id.* *See also Bailey v. St. Vincent DePaul Church*, 8th Dist. No. 71629 (May 8, 1997), citing *Hoeningman v. McDonald's Corp.*, 8th Dist. No. 56010 (Jan. 11, 1990) ("the freeze and thaw cycle \* \* \* remains a natural accumulation").

{¶11} We have referred to this rule of law as the "no-duty rule." *Ervin v. Case Bowen Co.*, 10th Dist. No. 07AP-322, 2008-Ohio-393. "The rationale is that individuals are assumed to appreciate the inherent risks associated with ice and snow arising during typical Ohio winters and protect themselves against such dangers." *Thatcher* at ¶ 15, citing *Brinkman v. Ross*, 68 Ohio St.3d 82, 83-84 (1993). Accordingly, with respect to a slip and fall on ice or snow, "the threshold question is whether the accumulation of ice is natural." *Lawrence v. Jiffy Print, Inc.*, 11th Dist. No. 2004-T-0065, 2005-Ohio-4043, ¶ 12.

{¶12} In *Kaepfner v. Leading Mgt.*, 10th Dist. No. 05AP-1324, 2006-Ohio-3588, ¶ 11, we stated that "[t]o survive a properly supported motion for summary judgment in this type of case, the plaintiff must produce evidence to establish either that: (1) the natural accumulation of ice and snow was substantially more dangerous than the plaintiff could have anticipated and that the land owner had notice of such danger; or (2) that the land owner was actively negligent in permitting an unnatural accumulation of ice and snow to exist." *Id.*, citing *Sasse v. Mahle*, 11th Dist. No. 98-L-157 (Nov. 19, 1999); *Martin v. Hook SuperX, Inc.*, 10th Dist. No. 92AP-1649 (Mar. 18, 1993).

## **V. LEGAL ANALYSIS**

{¶13} The trial court, relying on our opinion in *Kaepfner*, concluded that the "no-duty rule" applied to this case inasmuch as the only reasonable conclusion to be drawn

from the evidence *was* that appellant slipped and fell on a natural accumulation of ice and snow, and that none of the recognized exceptions to the no-duty rule applied.

{¶14} Appellant's two assignments of error raise a single issue for appellate review: Whether the trial court erred in granting summary judgment in favor of appellee. Accordingly, we will consider the assignments of error jointly.

{¶15} When construed in appellants' favor, the evidence establishes the following: the outside temperature was below freezing on the day in question; there had been a snow storm about one week prior to appellant's fall but the parking area had been cleared; an accumulation of snow still remained in the area of the pumps; appellant described the ice upon which she slipped and fell as "black ice"; at least one of appellee's employees applied salt to the sidewalk on the morning of appellant's fall; appellant observed the salt pellets when she lay on the sidewalk after her fall; the *salt* was somewhat effective in melting the ice as there were portions of the sidewalk that were free of ice; the lights inside the building did not illuminate the sidewalk; and there was a hole or slit in the canopy above the sidewalk in the area where appellant fell.

{¶16} In her deposition, appellant testified as follows:

[Appellee's counsel:] All right. Okay. Now, you were kind of alluding to the fact that you ended up flat on the ground. I want to talk to you a little bit about this - - how this accident happened.

As you were walking up to this area, towards the front door, just tell me what happened.

[Appellant:] I pumped my gas, got out to go in to pay, walked across the driveway and proceeded up the sidewalk, and it was like I didn't even know what hit me, I was down so fast, I'm laying on the ground thinking, what the heck?

[Appellee's counsel:] All right. Let me stop you - - let me stop you there. It's the laying on the ground part that I want to talk to you a little bit about. Did your feet go out from under you and you landed on your back, or did you fall forward?

[Appellant:] Fell forward on both hands.

[Appellee's counsel:] Now, can you - - can you recall - - and I know it all happened real quick, but can you recall as to what made you fall forward? What happened to you that caused you to fall forward?

[Appellant:] There was like black ice. I didn't - - no warning or nothing, just down.

[Appellee's counsel:] Okay. So the entire sidewalk area was coated with - - with a coating of ice; is that what you're saying?

[Appellant:] Yes.

[Appellee's counsel:] All right. Was there any salt on the sidewalk, or anything that looked like it had been put down in an attempt to melt that ice?

[Appellant:] Yes, because there was no ice - - it was just the river part that ran under this awning. There was no ice on the other sides. It was - - when I was laying there and getting ready to get up, you could just see it like a stream down the sidewalk.

Hall deposition, 18-20.

{¶17} Appellant argues that the evidence in the record gives rise to a factual issue whether the two recognized exceptions to the no-duty rule apply. "Specifically, the issue of whether the salt was effective and whether it rendered the accumulation an unnatural accumulation of ice and/or snow." Appellants' brief, 6.

{¶18} On the morning of appellant's fall, there were two employees working at the Circle K, Thomas Payne and Denise Buehler. Payne testified that he salted the sidewalk on the morning of appellant's fall and that the salt was melting the ice in the area where appellant fell. Buehler testified that she applied salt to the area where appellant fell, but that the salt was having no effect on the ice due to the extremely low temperature that morning. Buehler also stated that she was the only employee who spread salt in the area on the morning of appellant's fall. As noted above, appellant testified that she observed the salt while she lay on the sidewalk after her fall.

{¶19} Appellant claims that the conflict in the testimony prevents summary judgment in appellee's favor. We disagree.

{¶20} While there is a genuine dispute whether one or both of appellee's employees salted the sidewalk on the morning of appellant's fall, and whether the salt was effective in melting the ice, we do not believe this factual dispute is material to the case. In the opinion of the court, it is simply unreasonable to conclude that the act of spreading salt on an icy area of sidewalk renders the sidewalk substantially more dangerous than an invitee could have anticipated. Nor is it permissible to infer, upon this record, that appellee's employee(s) was/were negligent for making a reasonable effort to mitigate the hazard created by the ice. The recognized exceptions to the no-duty rule should not be applied so as to "discourage the diligence of [owners] to exercise ordinary care in undertaking to clear their properties of ice and snow in a reasonable manner." *See Goode v. Mt. Gillion Baptist Church*, 8th Dist. No. 87876, 2006-Ohio-6936, ¶ 26, citing *Yanda v. Consol. Mgt., Inc.* 8th Dist. No. 57268 (Aug. 16, 1990). *See also Cunningham v. Thacker Serv., Inc.*, 10th Dist. No. 03AP-455, 2003-Ohio-6065, ¶ 14 ("Salting or shoveling does not turn a natural accumulation into an unnatural accumulation; moreover, it is unwise as a matter of public policy to punish business owners who, as a courtesy, attempt to maintain safe sidewalks.").

{¶21} Appellant next contends that appellee was on notice that the accumulation of ice on the sidewalk was substantially more dangerous than appellant would have expected. Appellant points to the testimony that the sidewalk was not well lit and the fact that other portions of the lot and sidewalk were free of ice. However, while appellant testified that she did not see the ice prior to her fall, she admitted in her deposition that she could see the accumulation of ice on the sidewalk when she exited the store after paying for her gas. Hall deposition, 21. She also acknowledged that she was able to see the salt on the sidewalk immediately after she fell.

{¶22} Similarly, to the extent that appellant contends that the hole or slit in the canopy above the sidewalk created an unnatural accumulation of ice, there is no evidence to support the inference that the accumulation of ice upon which appellant slipped and fell was caused by the relatively small opening in the canopy. As appellant stated in her deposition, the stream of ice running down the sidewalk was one and one-half feet wide, and it extended the whole length of the sidewalk. Additionally, even if we were to assume

that the defect in the canopy caused the accumulation of ice upon which appellant slipped and fell, there is no evidence that appellee knew of this fact. Appellant presented no evidence of a prior slip and fall incident caused by an alleged accumulation of ice on the sidewalk, nor was there any evidence of prior complaints of ice in the area.

{¶23} In short, the only reasonable conclusion to be drawn from the evidence is that appellant slipped and fell on a natural accumulation of ice and that appellee owed appellant no duty either to remove the ice or to warn her of its existence. Accordingly, appellants' first and second assignments of error are overruled.

## **VI. DISPOSITION**

{¶24} Having overruled both of appellants' assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

TYACK and McCORMAC, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the Ohio Constitution, Article IV, Section 6(C).

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