

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

Michael D. Weese

Court of Appeals No. H-12-026

Appellant

Trial Court No. CVC 20120025

v.

DKD, Inc., dba Norwalk Inn, et al.

DECISION AND JUDGMENT

Appellees

Decided: June 28, 2013

* * * * *

Reese M. Wineman, for appellant.

Kenneth A. Calderone and Emily R. Yoder, for appellees.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Michael D. Weese, appeals an award of summary judgment issued by the Huron County Court of Common Pleas to appellees, DKD, Inc. dba Norwalk Inn and Urvashi Mohan as an individual, in a slip and fall negligence suit. Because there was no evidence that the snow and ice upon which appellant fell was a

result of an unnatural accumulation or unusually dangerous, we affirm the trial court's ruling.

{¶ 2} In January 18, 2010, appellant checked into his usual room at the appellees' motel. Appellant was knowledgeable about this room, having stayed in the room four to six days each month over the past "couple years." When he checked in, appellant noted that the weather was "cold, but it was dry." On January 19, at approximately 9:00 a.m., appellant exited his room for breakfast. Appellant observed that the environment outside his room appeared cold but "looked like it was raining, wet." The portion of the lot, also owned and maintained by appellees, adjacent to appellant's room, which had not been cleared or salted, was covered by a thin layer of "black ice." As appellant walked across the lot he slipped and fell. Appellant alleges serious injury.

{¶ 3} On January 13, 2012, appellant sued both Norwalk Inn and Urvashi Mohan as the business's agent, alleging that his injury was caused by their negligence in failing to clear and salt the parking lot where he fell.

{¶ 4} Appellees moved for summary judgment, arguing that because, by appellant's own admission, the ice and snow upon which he fell was a natural accumulation and an open and obvious hazard, it could not be held liable for appellant's injury as a matter of law. Appellant responded with a memorandum in opposition, asserting that, since appellant treated the front lot with salt but failed to do so to the rear lot where appellant was located, a question of fact existed as to whether appellees owed a duty to him as a business invitee.

{¶ 5} On September 19, 2012, the trial court granted appellees’ summary judgment motion.¹ This appeal followed. Appellant sets forth a single assignment of error:

I. The trial court below erred in granting summary judgment to the defendants in this case based upon the evidence that the defendant/motel owner had superior knowledge and a resultant duty to warn or remedy based upon his own statements of the conditions of the black ice on the premises when he admitted that he had forgotten the plaintiff, Michael D. Weese, was staying in the back area of the motel, had slated the front parking lot, but not the back parking lot where the plaintiff was staying and, ultimately, fell without observing the black ice prior to his fall on the back parking lot which established a material issue of a fact.

{¶ 6} Appellate review of a summary judgment is de novo, *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996), employing the same standard as in trial courts. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989). The motion may be granted only when it is demonstrated:

¹ On August 9, 2012, appellees DKD, Inc. and Urvashi Mohan filed their summary judgment motion. In that motion, appellees referred to themselves collectively as the “Norwalk Inn.” Accordingly, although the September 19, 2012 ruling granting summary judgment refers to “Defendant” and not “Defendants,” we find that the trial court’s reference to a singular “Defendant” also referred to both DKD, Inc. and Urvashi Mohan. Therefore, the September 19 judgment disposed of this case in its entirety.

(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 67, 375 N.E.2d 46 (1978), Civ.R. 56(C).

{¶ 7} Appellant’s suit is based upon a claim of negligence by the appellees. “To establish actionable negligence, one must show in addition to the existence of a duty, a breach of that duty and injury resulting proximately therefrom.” *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989).

{¶ 8} In *Miller v. Tractor Supply Co.*, 6th Dist. No. H-11-001, 2011-Ohio-5906, ¶ 8-9, this court discussed the duty of a business owner to remove ice and snow from their premises:

It has long been established in Ohio that an owner or occupier of land ordinarily owes no duty to business invitees to remove natural accumulations of ice and snow from the premises, or to warn invitees of the dangers associated with such natural accumulations of ice and snow.

Brinkman v. Ross, 68 Ohio St.3d 82, 83-84, 623 N.E.2d 1175 (1993);

Jeswald v. Hutt, 15 Ohio St.2d 224, 239 N.E.2d 37 (1968), paragraph one of the syllabus; *Abercrombie v. Byrne-Hill Co., Ltd.*, 6th Dist. No.

L-05-1010, 2005-Ohio-5249, ¶ 12. This rule has been dubbed by some courts as Ohio’s “no-duty winter rule.” See *Bowen v. Columbus Airport Ltd. Partnership*, 10th Dist. No.07AP-108, 2008-Ohio-763, ¶ 11.

{¶ 9} The underlying rationale for the no-duty winter rule “is that everyone is assumed to appreciate the risks associated with natural accumulations of ice and snow and, therefore, everyone is responsible to protect himself or herself against the inherent risks presented by natural accumulations of ice and snow.” *Brinkman, supra*. This is a more expansive rationale than forms the basis for the open-and-obvious doctrine. “The no-duty winter rule assumes everyone will appreciate and protect themselves against risks associated with natural accumulations of ice and snow; the open and obvious doctrine assumes only those who could observe and appreciate the danger will protect themselves against it.” *Sherlock v. Shelly Co.*, 10th Dist. No. 06AP-1303, 2007-Ohio-4522, ¶ 22. Thus, the issue of which party has superior knowledge or a better appreciation of a natural accumulation of ice and snow on the premises is generally irrelevant, since the invitee is charged with an appreciation of those risks as a matter of law. *Brinkman, supra*. Absent a duty to the injured party, there can be no actionable negligence. *Mussivand, supra*.

{¶ 10} There are two exceptions to the winter rule: when the accumulation of ice and snow is unnatural because of the owner’s active negligence, *Miller* at ¶ 10, and when “the natural accumulation of snow and ice on his premises has created there a condition substantially more dangerous to his business invitees than they should have anticipated

by reason of their knowledge of conditions prevailing generally in the area.” *Id.* at ¶ 11, quoting *Debie v. Cochran Pharmacy-Berwick, Inc.*, 11 Ohio St.2d 38, 227 N.E.2d 603 (1967), paragraph one of the syllabus.

{¶ 11} In this matter, it is undisputed that the ice upon which appellant slipped was a natural accumulation. Nevertheless, appellant maintains that there is evidence by which reasonable minds could differ as to whether appellees had the duty to clear the lot. Appellant cites *Thomas v. Wyndham Hotel*, 6th Dist. No. L-02-1209, 2003-Ohio-2355, for the proposition that a business owner affirmatively holds a duty to “maintain the premises in a reasonably safe condition” due to their superior knowledge of the hazard.

{¶ 12} While *Thomas* may state a general rule imposing a duty on business owners regarding hazards, the no-duty winter rule is a specific rule that is more apropos for the situation at bar. *Brinkman* discards the “superior knowledge” portion of the analysis when dealing with a hazard under the no-duty winter rule, as everyone is on notice that a winter in Ohio is likely to contain cold, snow, and ice. Appellant’s admission that he noticed the weather to be both cold and wet is sufficient to put him on notice that ice is a possibility during the winter season. As such, appellant had knowledge equivalent to the appellees regarding ice in the parking lot.

{¶ 13} If this court were to impose an implied duty upon a business owner to remove accumulations of ice and snow, it would “discourage [owners] from ever attempting to remove ice and snow from the common areas of their premises as a courtesy to their tenants, and would, therefore, make those areas less safe.” *Hill v.*

Monday Villas Prop. Owners Assn., 2d Dist. No. 24714, 2012-Ohio-836, ¶ 23, fn. 1, quoting *Pacey v. Penn Garden Apts.*, 2d Dist. No. 17370, 1999 WL 76841 (Feb. 19, 1999). As a matter of public policy, such a holding would be unconscionable. The public would not be well served by imposing a duty upon business owners that is best met by exposing the citizenry to greater danger.

{¶ 14} The parties agree the snow and ice upon which appellant fell was a natural accumulation. Appellant presents no evidence that the snow and ice upon which he fell was substantially more dangerous than he might ordinarily expect to encounter. Thus, construing the facts most favorably to appellant, appellees were entitled to judgment as a matter of law. Appellant's sole assignment of error is not well-taken.

{¶ 15} On consideration whereof, the judgment of the Huron County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.