RENDERED: DECEMBER 21, 2001; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002470-MR

LAKESHORE VILLAGE, INC. — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 95-CI-04009

DON R. BUNDY — APPELLEE

AND: NO. 2000-CA-002558-MR

DON R. BUNDY — CROSS-APPELLANT

v.

CROSS-APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 95-CI-04009

LAKESHORE VILLAGE, INC. — CROSS-APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: McANULTY, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: These appeals spring from a judgment of the Fayette Circuit Court entered August 30, 2000 upon a jury verdict. Lakeshore Village, Inc. brings Direct Appeal No. 2000-CA-002470-MR. Don R. Bundy brings Cross-Appeal No. 2000-CA-

002558-MR. We affirm on Direct Appeal 2000-CA-002470-MR, and affirm as moot Cross-Appeal No. 2000-CA-002558-MR.

The facts of the case are these. The appellee/cross-appellant, Don R. Bundy, was the owner of Unit 131 in the Lakeshore Village, Inc. (Lakeshore) Condominium Complex located in Lexington, Kentucky. On January 6, 1995 at approximately 5:30 p.m., Bundy returned from work and parked his vehicle in the carport. He commenced traversing the walkway between the carport and his condominium. It had been raining and freezing throughout the day. The walkway was laden with ice. Bundy slipped and fell, receiving very severe injuries.

Through arrangements with the owners of the condominiums, Lakeshore was responsible for external maintenance of the complex, including walkways and common areas. For this service, the condominium owners, including Bundy, paid a maintenance fee of $137.00 per month. Maintenance was carried on under the supervision of a property manager, to wit, Carol Del Bello. Lawn Works, a company owned and operated by one Mike Clarkson, was employed by Lakeshore as a snow removal contractor. Clarkson came on the morning of January 6, at the hour of 6:30 a.m. and applied a urea compound as an ice melt to certain areas of the driveway. He discussed the grave weather conditions and the matter of deicing the walkways with Del Bello. Apparently, he decided that deicing would be futile inasmuch as it was still raining. It was thought that the falling rain would wash the ice melt down the storm drain without effect. There is evidence that Clarkson appeared again about 11:00 a.m. and a final time at

approximately 4:00 p.m. In neither event were measures taken to deice or prevent ice from forming on the walkways. Within an hour or so after Clarkson's final departure, and under the same icy conditions, Bundy's mishap occurred.

On December 15, 1995, Bundy filed the instant litigation against Lakeshore alleging negligence in maintaining the exterior premises as a causative factor in his falling on the icy walkway. The matter came on for trial on August 21, 2000, resulting in the jury verdict and judgment from which this appeal is taken.

Lakeshore contends that it should be exonerated from liability under the principle enunciated in Standard Oil Company v. Manis, Ky., 433 S.W.2d 856 (1968), Corbin Motor Lodge v. Combs, Ky., 740 S.W.2d 944 (1987), and Ashcraft v. Peoples Liberty Bank & Trust Co. Inc., Ky. App., 724 S.W.2d 228 (1987). Under the rule of those cases, the owner of real property is not liable to a business invitee who is injured by natural outdoor hazards, which are as obvious to him as the owner. The owner is said to have no duty to the invitee.

We reject the appellant's contention. We are not of the opinion that the facts at hand come within the purview of the foregoing authorities. We think, rather, it comes within the purview of Daviess v. Coleman Management Co., Ky. App., 765 S.W.2d 37 (1989). Clearly, we have before us a situation where Lakeshore, as owner of the condominium complex, retained control of the sidewalks and common areas of the external premises. The obvious purpose of retaining control of those areas was to have

central responsibility for their maintenance, thus ensuring the safety and habitability of the complex.

Moreover, we are convinced that by undertaking to maintain the external premises of the condominium complex, Lakeshore has exposed itself to liability. It is a fundamental principle that one who undertakes to act must act free of negligence. See Estep v. B.F. Saul Real Estate Investment Trust, Ky. App., 843 S.W.2d 911 (1992). As the facts demonstrate, Lakeshore not only undertook to act in maintaining the external premises, but actually contracted to perform the maintenance in exchange for a monthly fee paid by members of the condominium complex. Lakeshore, by this undertaking, clearly created a duty to the respective owners of the condominiums. We think the applicable law, therefore, is whether Lakeshore acted in an ordinary prudent manner in performing this duty and ensuring the safety of residents of the condominium complex, including Bundy. On this issue, we think the matter was properly submitted to the jury.

Lakeshore complains that Bundy's case should have failed because he did not demonstrate that application of chemicals upon the sidewalk would have been effective. Thus, Lakeshore contends there was no causal relation between its failure to apply chemicals and Bundy's fall. We reject this argument. It is common knowledge that application of salt or other compounds upon icy walkways is a reasonably effective measure to combat slippery conditions. It is also common

knowledge that slippery walkways are a fertile source of slip and fall accidents.

Lakeshore complains that Instruction No. 2 setting forth the general duty of Lakeshore violated the "bare-bones" concept of Kentucky Law relating to instructions. Instruction No. 2 provided as follows:

> You will find for Don Bundy if you are satisfied from the evidence as follows:
>
> A) that by reason of inclement weather the sidewalk was not in a reasonably safe condition for use by pedestrians;
>
> B) that such condition had existed for a sufficient length of time before the accident that in the exercise of ordinary care the employees of Lakeshore Village should have remedied it; AND
>
> C) that their failure to do so was a substantial factor in causing Don Bundy's injuries.

We do not interpret the foregoing instruction as placing specific duties upon Lakeshore in violation of any authority to which we have been directed. Cf. Rogers v. Kasdan, Ky., 612 S.W.2d 133 (1981). In fact, Instruction No. 2 defining the duty of Lakeshore is no more onerous than Instruction No. 5, which imposes a similar duty upon Bundy. Instruction No. 5 provided as follows:

> It was the duty of the Plaintiff, Don Bundy, to exercise ordinary care for his own safety and protection, including generally observing the surface upon which he was about to walk.
>
> You will find for Lakeshore Village Inc., if you are satisfied from the evidence that Don Bundy did not exercise ordinary care for his own safety and protection and that

this was a substantial factor in causing his injuries.

Finally, the only other issue preserved for review is whether the verdict and judgment is supported by the evidence. There is a presumption in favor of a jury verdict. See Pope's Administrator v. Terrill, 308 Ky. 263, 214 S.W.2d 276 (1948). On appeal, we are bound to review the evidence most favorable to the prevailing party. See Horton v. Union Light, Heat & Power Company, Ky., 690 S.W.2d 382 (1985). Upon these premises, we perceive no merit in appellant's contention.

CROSS-APPEAL NO. 2000-CA-002558-MR

Bundy brings this cross-appeal complaining that the trial court erroneously excluded certain expert testimony. In view of our decision in the direct appeal, it seems to us that this issue is now moot.

For the foregoing reasons, the judgment of the Fayette Circuit Court in Direct Appeal No. 2000-CA-002470-MR is affirmed. Cross-Appeal No. 2000-CA-002558-MR is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-APPELLEE, LAKESHORE VILLAGE, INC.:

Robert E. Stopher
Louisville, Kentucky

BRIEF FOR APPELLEE/CROSS-APPELLANT, DON R. BUNDY:

Douglas T. Logsdon
Lexington, Kentucky