STATE OF MICHIGAN

COURT OF APPEALS

LORI S. SULLIVAN and
RICKY H. SULLIVAN,

Plaintiffs-Appellants,

v

DARREN JOHNSON and LUTHER TUCKER, d/b/a SUBWAY, and MOHAMMED H. MERHI,

Defendants-Appellees.

UNPUBLISHED
March 10, 1998

No. 198781
Wayne Circuit Court
LC No. 94-414576-NO

Before: Gage, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Plaintiffs[1] appeal as of right from a judgment of no cause of action, following a bench trial, against defendants, Darren Johnson and Luther Tucker, doing business as Subway. Plaintiffs also appeal from a separate order granting defendant Mohammed H. Merhi's motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs present three issues for our review; however, we find that none require reversal.

This is a slip and fall case. While walking in front of a Subway Sub Shop, operated by Johnson and Tucker, plaintiff slipped and fell on a patch of ice that had formed on the ground directly below an overhead awning attached to the building. Plaintiff's right ankle was broken as a result of the fall. The building was owned by Merhi and leased to Johnson and Tucker. Pursuant to the terms of the lease, Merhi retained responsibility for the maintenance of the building's exterior and walkways, however, Johnson and Tucker, with Merhi's approval, installed the awning. At the point where plaintiff fell, the concrete sidewalk sloped toward the street. Plaintiffs contended because the awning had a flat horizontal surface, snow accumulated on the top of the awning. Plaintiffs further contended that the snow gradually melted and water then dripped to the ground where refreezing occurred. Plaintiffs contended that the excessive slope of the sidewalk and the icy conditions combined to create an unreasonably dangerous condition for pedestrians.

Plaintiffs first argue that the trial court's factual finding that the awning did not cause or contribute to the formation of the ice patch upon which plaintiff slipped and fell was clearly erroneous.

This Court reviews findings of fact in a bench trial under a clearly erroneous standard. *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 98; 535 NW2d 529 (1995); MCR 2.613(C). After reviewing the record, we cannot say that the trial court's findings of fact were clearly erroneous. There was no evidence of water dripping from the awning and the only ice patch in the area was that upon which plaintiff fell. Additionally, plaintiff's testimony that while laying on the ground after the fall she noticed ice patches on the awning (i.e., a potential source of moisture) was discredited by plaintiff's deposition testimony that she did not even realize that the restaurant possessed an awning until a week after the fall. Moreover, plaintiff's own inconsistent testimony with respect to the location of the ice patch rendered her theory of liability less than plausible. Under these circumstances, we cannot say that the trial court's factual findings were clearly erroneous.

Plaintiffs next argue that the trial court erred in granting summary disposition in favor of Merhi.

We find that summary disposition was properly granted in favor of Merhi. It is uncontested that plaintiff possessed the status of a licensee. Under the natural accumulation doctrine, a landowner has no duty to a licensee to remove the natural accumulation of ice and snow from any location. *Zielinski v Szokola*, 167 Mich App 611, 615; 423 NW2d 289 (1988); see also *Preston v Sleziak*, 383 Mich 442, 448-452; 175 NW2d 759 (1970). There are two exceptions to the doctrine. The first exception provides that liability to a licensee may attach where a property owner has taken affirmative action to alter the natural accumulation of ice and snow, and in doing so, increases the hazard of travel for the public. *Zielinski, supra* at 617. The second exception provides that liability may arise where a party takes affirmative steps to alter the condition of the sidewalk itself, which in turn, causes an unnatural or artificial accumulation of ice on the sidewalk. *Id.* at 617. We agree with the trial court that neither exception applies to the facts in this case. Although the sloped sidewalk might have made passage across the area more difficult once ice had accumulated thereon, plaintiff presented no evidence that the slope itself caused an unnatural or artificial accumulation of ice on the sidewalk.

Lastly, plaintiffs argue that the trial court abused its discretion when it precluded their expert witness from testifying as to the manner in which the layer of ice formed on the sidewalk.

The qualification of a witness as an expert and the admissibility of the witness' testimony are in the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 402; 443 NW2d 340 (1989). A witness may be qualified as an expert by knowledge, skill, experience, training, or education. MRE 702; *Mulholland, supra* at 403. The party offering the expert has the burden of showing that the expert has the necessary qualifications. *McDougall v Eliuk*, 218 Mich App 501, 508; 554 NW2d 56 (1996). In this case, plaintiffs did not satisfy their burden. The expert, a licensed architect, had no expertise in the area of accident reconstruction or meteorology. Therefore, we cannot say that the trial court abused its discretion in precluding the proffered testimony.

Affirmed.

/s/ Hilda R. Gage
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

[1] Ricky H. Sullivan's claim for loss of consortium is derivative in nature; thus, in this opinion, "plaintiff" will refer to Lori S. Sullivan only.