

STATE OF MICHIGAN
COURT OF APPEALS

ELI WEISS,

Plaintiff-Appellant,

v

MICHAEL JACOBS and MARLA JACOBS,

Defendants-Appellees.

UNPUBLISHED
February 17, 2004

No. 243967
Oakland Circuit Court
LC No. 01-035578-NO

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After a social visit with defendants, plaintiff slipped and fell on a snow-covered path shoveled along defendants' driveway. Plaintiff brought this action alleging that defendants breached their duty to warn him about ice hidden underneath the snow covering the pathway. The trial court granted defendants' motion for summary disposition, finding that plaintiff failed to present evidence establishing that defendants actually saw the ice prior to his fall, and that general knowledge of the ice could be imputed to plaintiff as well as defendants.

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating the motion, the trial court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 108, 120; 597 NW2d 817 (1999).

A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). To prevail on his claim, plaintiff was required to show that defendants knew or had reason to know about the existence of ice underneath the snow. *Altairi v Alhaj*, 235 Mich App 626, 639; 599 NW2d 537 (1999). Insofar as a plaintiff uses general knowledge of local weather conditions to show that a defendant should have known about hidden ice, the same knowledge can be imputed to the plaintiff, and does not support a duty to warn. *Id.*, 640.

Defendant's deposition testimony that there would probably be certain areas that were slipperier and icier because of all the snowfall does not suggest that defendant knew before the accident that there was ice under the snow. *Id.* Rather, this statement is based on general knowledge of conditions that were equally available to plaintiff, and did not trigger a duty to warn. Plaintiff failed to present evidence raising a question of fact regarding defendants' knowledge of a dangerous condition, and the trial court properly granted summary disposition.

Affirmed.

/s/ Bill Schuette

/s/ Patick M. Meter

/s/ Donald S. Owens