

STATE OF MICHIGAN
COURT OF APPEALS

VICKI LYNN BARR,

Plaintiff-Appellant,

v

FRANKLIN RIVER APARTMENTS, LLC, d/b/a
FRANKLIN RIVER APARTMENTS,

Defendant-Appellee.

UNPUBLISHED

May 10, 2005

No. 260399

Oakland Circuit Court

LC No. 2004-055286-NO

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition and dismissing this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At approximately 10:00 p.m. on March 6, 2003 plaintiff, a tenant in defendant's complex, was walking to a dumpster provided by defendant when she slipped on black ice on the sidewalk and fell to the ground, sustaining injuries. She filed suit alleging that defendant negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it was entitled to summary disposition because no evidence created a question of fact as to whether it had actual or constructive notice of the dangerous condition. The trial court agreed and granted the motion, finding that defendant owed no duty to plaintiff because no evidence created an issue of fact as to whether defendant created or had knowledge of the unsafe condition.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Berryman v K-Mart Corp*,

193 Mich App 88, 92; 483 NW2d 642 (1992), quoting *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

The issue of duty is a question of law for the court. *Moning v Alfonso*, 400 Mich 425, 437; 254 NW2d 759 (1977). The concept of duty encompasses whether the defendant owes the plaintiff an obligation to avoid negligent conduct. In deciding whether a duty should be imposed, the court must look at several factors, including the relationship of the parties, the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented. If no duty exists, there can be no actionable negligence. *Hakari v Ski Brule, Inc*, 230 Mich App 352, 359; 584 NW2d 345 (1998).

A possessor of land is liable for an injury to an invitee resulting from an unsafe condition on the land caused by the active negligence of the landowner or, if otherwise caused, was known to the landowner or was of such character or had existed for such time that it should have been known to the landowner. *Hampton v Waste Mgt*, 236 Mich App 598, 604; 601 NW2d 172 (1999).

We affirm. Evidence that defendant's maintenance personnel shoveled snow and applied salt on the morning of March 5, 2003 demonstrated that defendant was aware of the existence of a potentially unsafe condition at that time; however, that fact does not establish that defendant had actual or constructive knowledge that black ice existed at the time of plaintiff's accident, which occurred some thirty-six hours later. Plaintiff's allegation that defendant breached a duty imposed by either common law or statute by failing to take reasonable steps to cure a defective condition of which it was aware or should have been aware was based on speculation. The possibility that a breach of duty by defendant caused plaintiff to sustain injuries is not sufficient to establish causation. *Skinner v Square D Co*, 445 Mich 153, 165-166; 516 NW2d 475 (1994); *Ritter, supra*. The trial court correctly decided the issue as one of law and granted summary disposition in favor of defendant. *Reeves v K-Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter