[Cite as *Walker v. 24570 Lakeshore Property, L.L.C.*, 2017-Ohio-2762.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105017

TERRY WALKER

PLAINTIFF-APPELLANT

vs.

24570 LAKESHORE PROPERTY L.L.C., ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-16-856870

BEFORE: Kilbane, J., Keough, A.J., and Blackmon, J.

RELEASED AND JOURNALIZED: May 11, 2017

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MARY EILEEN KILBANE, J.:

{¶1} Plaintiff-appellant, Terry Walker ("Walker"), appeals from the trial court's judgment granting summary judgment in favor of defendants-appellees, 24570 Lakeshore Property, L.L.C., d.b.a. Greenwood Apartments ("Lakeshore"). For the reasons set forth below, we affirm.

{¶2} Lakeshore is the owner and landlord of a multi-unit apartment building located at 24570 Lakeshore Boulevard in Euclid, Ohio ("the premises"). Walker was a new tenant of Lakeshore's. On February 14, 2015, Walker left her apartment and was walking to her car. She was not able to exit the building through the rear door because it was frozen shut with ice. As a result, she exited from the front door. Outside the front door were two steps and a sidewalk leading to the parking lot where Walker's car was parked.

{¶3} On the day of the incident, it had been snowing. Walker described the weather as somewhat of a blizzard, cold, snowy, and icy, with up to seven inches of snow on the ground. It was snowing and icy a couple days before then. As a result, there was ice and snow everywhere. When Walker walked down the stairs and onto the sidewalk, she began to slide on the icy sidewalk. She then lost her balance and fell to the ground.

{¶4} In January 2016, Walker filed a complaint against Lakeshore, alleging that Lakeshore was negligent and violated its statutory duties under R.C. 5321.04, requiring a landlord to keep all common areas of the premises in a safe condition. Lakeshore filed an answer, denying the allegations and asserting that the condition of the sidewalk was

open and obvious.

{¶5} After discovery, Lakeshore moved for summary judgment. In its motion, Lakeshore argued that Walker fell because of a natural accumulation of snow and ice, which constitutes an open-and-obvious danger. As an open-and-obvious danger, Lakeshore argued that it had no duty to warn Walker or remove the snow. Attached to its motion was a copy of an article from cleveland.com discussing the heavy snowfall in the Cleveland area on February 14, 2015. Walker opposed the motion and filed a motion to strike this article as an unauthenticated exhibit. The trial court denied the motion to strike and granted summary judgment in Lakeshore's favor. The court found that Lakeshore is "entitled to summary judgment because the cause of [Walker's] fall was an open and obvious natural accumulation of ice and snow on a sidewalk."

{¶6} It is from this order that Walker appeals, raising the following two assignments of error for review.

Assignment of Error One

> [Walker] was denied due process of law when the court granted a motion for summary judgment as there were genuine issues of material facts which precluded a grant of summary judgment.

Assignment of Error Two

> The court erred in not striking Exhibit A.

Motion for Summary Judgment

{¶7} We review an appeal from summary judgment under a de novo standard of review. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671

N.E.2d 241; *Zemcik v. LaPine Truck Sales & Equip. Co.*, 124 Ohio App.3d 581, 585, 706 N.E.2d 860 (8th Dist.1998). In *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 369-370, 1998-Ohio-389, 696 N.E.2d 201, the Ohio Supreme Court set forth the appropriate test as follows:

> Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 1995-Ohio-286, 653 N.E.2d 1196, paragraph three of the syllabus. The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107, 662 N.E.2d 264.

{¶8} Once the moving party satisfies its burden, the nonmoving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E); *Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385, 1996-Ohio-389, 667 N.E.2d 1197.

Doubts must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359, 1992-Ohio-95, 604 N.E.2d 138.

{¶9} In order to defeat summary judgment on a negligence claim, a plaintiff must establish that a genuine issue of material fact exists as to whether: 1) the defendant owed a duty of care to the plaintiff; 2) the defendant breached that duty; and 3) the breach of duty proximately caused the plaintiff's injury. *Texler v. D.O. Summers Cleaners & Shirt*

Laundry Co., 81 Ohio St.3d 677, 680, 1998-Ohio-602, 693 N.E.2d 271, citing *Fed. Steel & Wire Corp. v. Ruhlin Constr. Co.*, 45 Ohio St.3d 171, 173, 543 N.E.2d 769 (1989), citing *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 472 N.E.2d 707 (1984).

{¶10} Walker argues that the trial court erred in granting summary judgment because, in addition to the common law duty, Lakeshore had a duty to Walker as its tenant under R.C. 5321.04(A)(2), which provides that: "[a] landlord who is a party to a rental agreement shall * * * [m]ake all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition[.]" Walker contends that Lakeshore failed to provide adequate railing leading from the steps of the front door to the walkway and failed to clear the snow and ice accumulated on the sidewalk of the premises.

{¶11} With regard to R.C. 5321.04, the Ohio Supreme Court has held that this statute does not impose a duty on landlords to keep common areas of the premises clear of natural accumulations of ice and snow. *LaCourse v. Fleitz*, 28 Ohio St.3d 209, 503 N.E.2d 159 (1986), syllabus. Under Ohio law, ice and snow are a natural part of wintertime in Ohio as is the freezing and refreezing of ice and snow. *Lopatkovich v. Tiffin*, 28 Ohio St.3d 204, 206-207, 503 N.E.2d 154 (1986). The reluctance to impose liability on property owners for slip-and-fall cases resulting from natural accumulations of snow and ice was spelled out in *Brinkman v. Ross*, 68 Ohio St.3d 82, 85, 1993-Ohio-72, 623 N.E.2d 1175, as follows:

> Living in Ohio during the winter has its inherent dangers. Recognizing this, we have previously rejected the notion that a landowner owes a duty to

> the general public to remove natural accumulations of ice and snow from public sidewalks which abut the landowner's premises, even where a city ordinance requires the landowner to keep the sidewalks free of ice and snow. * * * To hold otherwise would subject Ohio homeowners to the perpetual threat of (seasonal) civil liability any time a visitor sets foot on the premises, whether the visitor is a friend, a door-to-door salesman or politician, or even the local "welcome wagon."

{¶12} In *La Course*, the Ohio Supreme Court addressed the "sole question" of whether a landlord has a duty, at common law or by virtue of the Landlord and Tenant Act, to keep common areas of the leased premises free of natural accumulations of ice and snow. The *La Course* court found that no such duty exists. *Id.* at 210. Explaining, the Supreme Court stated, "[i]t is only where it is shown that the owner had superior knowledge of the particular danger which caused the injury that liability attaches, because in such a case the invitee may not reasonably be expected to protect himself from a risk he cannot fully appreciate." *Id.* The court specifically found, however, that the principle of "superior knowledge" does not apply in the context of natural accumulations of ice and snow. It stated, "[t]his natural and unconcealed condition is distinguishable from other conditions, such as a loose stair railing or open elevator shaft, which are often not obvious to the user." *Id.* at 211. The court reasoned that said accumulations are "obvious and apparent" so that a landlord may reasonably expect that a tenant will take measures to protect himself or herself against them. *Id.* at 210, citing *De Amiches v. Popczun*, 35 Ohio St.2d 180, 299 N.E.2d 265 (1973).

{¶13} In the instant case, Walker admitted that she knew there was snow on the ground the day of the incident. At her deposition, she testified that it had been snowy

and icy on the morning of the incident and three days prior to the date of the incident. She described the weather as a mini-blizzard. Walker has resided in Northeast Ohio her entire life. Walker knew the sidewalk was icy and covered in snow and proceeded to step onto the icy and snow-covered sidewalk despite knowing the inherent risks. Based on these facts, even construing this evidence in a light most favorable to Walker, no reasonable factfinder could find that Lakeshore's knowledge of the danger was superior to Walker's. Thus, the trial court properly awarded summary judgment to Lakeshore as no genuine issue of material fact exists.

{¶14} Accordingly, the first assignment of error is overruled.

Motion to Strike

{¶15} In the second assignment of error, Walker argues the trial court erred in not striking Exhibit A of Lakeshore's summary judgment motion. Walker argues that the exhibit, which she purports to be a posting on Twitter, contained various weather reports that were not authenticated. As a result, she contends that it could not be properly considered in a motion for summary judgment.

{¶16} However, Exhibit A is immaterial in determining summary judgment in this matter. Specifically, Walker testified to the weather conditions in Northeast Ohio area on the day of her fall. Walker recounted the weather as somewhat of a blizzard, cold, snowy, and icy, with approximately four- to seven-inches of snow on the ground.

{¶17} Therefore, the second assignment of error is overruled.

{¶18} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
PATRICIA ANN BLACKMON, J., CONCUR