[Cite as *Cecilia Thatcher v. Lauffer Ravines, L.L.C.*, 2013-Ohio-765.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Cecelia Thatcher,	:	
Plaintiff-Appellant,	:	
		No. 11AP-851
v.	:	(C.P.C. No. 10CVC-10-14608)
Lauffer Ravines, LLC et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on March 5, 2013

Plymale & Dingus, LLC, and *Ronald E. Plymale*, for appellant.

Caborn & Butauski Co., LPA, and *David A. Caborn*, for appellees.

ON APPLICATION FOR RECONSIDERATION

DORRIAN, J.

{¶ 1} Defendants-appellees, Lauffer Ravines, LLC and Evergreen Realty, Inc., have applied for reconsideration, pursuant to App.R. 26(A), of our prior decision in this matter rendered on December 28, 2012, *Thatcher v. Lauffer Ravines, LLC*, 10th Dist. No. 11AP-851, 2012-Ohio-6193. Plaintiff-appellant, Cecelia Thatcher, has filed a memorandum in opposition to reconsideration.

{¶ 2} The test applied to an application for reconsideration is whether the application calls to the attention of the court an obvious error in our prior determination or raises an issue that was not properly considered by the court in the first instance. *Matthews v. Matthews*, 5 Ohio App.3d 140 (1981).

{¶ 3} Our decision reversed in part the trial court's grant of summary judgment in favor of appellees in appellant's personal injury action arising out of a fall caused by icy

conditions on a sidewalk in her apartment complex. We affirmed summary judgment on appellant's common-law negligence claim, but reversed and remanded the matter to the trial court for further proceedings because we concluded that there was a genuine issue of material fact as to whether appellees had violated R.C. 5321.04(A)(1) and (2) and various Columbus City Code provisions. These statutes and ordinances generally govern maintenance and repair obligations of landlords, including the building downspout and drain systems that allegedly failed here and caused the accumulation of ice upon which appellant slipped.

{¶ 4} Appellees have moved for reconsideration on the basis that, as an explicit part of our disposition of the common-law negligence claim, we held that appellant had failed to preserve a genuine issue of material fact on the question of whether the snow and ice upon which she slipped and fell was an "unnatural" accumulation. Because landlords are not liable in Ohio for injuries caused by natural accumulations of ice and snow, an owner or occupier generally owes no duty to remove natural accumulations of snow or to warn users of the dangers associated with such accumulations. *Brinkman v. Ross*, 68 Ohio St.3d 82, 83-84 (1993). Because we found that the trial court had correctly determined that appellant's expert testimony failed to establish a link between certain defects in the building downspout and drain systems on the premises and the ice accumulation upon which appellant fell, we found that appellant had failed to preserve a genuine issue of material fact as to whether her injury was proximately caused by the alleged defects.

{¶ 5} Our decision then goes on, however, to find that there remains a genuine issue of material fact as to whether appellees were liable based upon the above-enumerated code violations. Appellees now assert that our partial reversal based upon the alleged code violations is inconsistent with our disposition of the common-law negligence claim. They argue that once we found, in disposing of the common-law negligence claim, that appellant had failed to preserve a genuine issue of material fact regarding proximate cause, this would also dispose of the statutory claims as they are negligence per se claims based on breaches of statutorily defined duties to maintain and repair.

{¶ 6} As we noted in our decision, appellees' allegations regarding violations of R.C. 5321.04(A)(1) and (2) and the City Code provisions were not well-articulated. Nevertheless, we found that they were sufficient to meet pleading standards. Upon further review of the allegations, statutes, and ordinances in question, it appears that, in this context, no claim for violation of the same exists separate from a negligence per se claim. With this in mind, appellees' assertion appears accurate and warrants reconsideration of our prior decision.

{¶ 7} Whether grounded in common law or statute, a negligence claim presents three elements: (1) existence of a duty, (2) breach of that duty, and (3) injury proximately resulting from such a breach. *Strother v. Hutchinson*, 67 Ohio St.2d 282, 285 (1981). While a statutory violation will establish negligence per se and obviates application of the open-and-obvious doctrine applicable in common-law slip-and-fall claims, it does not eliminate the need to assess the second and third basic elements of a negligence claim. In other words, while a landlord's breach of applicable statutes may establish both the existence of a duty and the breach thereof, a plaintiff must still maintain that his injuries were proximately caused by that breach in order to maintain a negligence action. *Mann v. Northgate Investors, LLC*, 10th Dist. No. 11AP-684, 2012-Ohio-2871, ¶ 25. Because of our prior conclusion that appellant had failed to preserve a genuine issue of material fact on the question of whether her injuries proximately resulted from any negligence in appellees' maintenance and repair of the building downspout and drain systems, failure to establish proximate cause remained a bar to the negligence per se action, as much as it was to the common-law negligence claim. Our distinction between the two in our prior decision was, therefore, in error. Appellees' application for reconsideration has merit, and our prior decision in this matter is modified to reflect full affirmance of the trial court's grant of summary judgment in favor of appellees.

Application for reconsideration granted; judgment affirmed.

BRYANT and CONNOR, JJ., concur.

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