STATE OF MICHIGAN

COURT OF APPEALS

BECKY J. MOORE,

Plaintiff-Appellant,

v

HERALD COMPANY, INC., d/b/a BAY CITY TIMES,

Defendant-Appellee.

UNPUBLISHED
September 11, 1998

No. 201811
Bay Circuit Court
LC No. 93-003663 NO

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

In this slip-and-fall negligence action, plaintiff appeals by right from an order granting defendant's motion for summary disposition under MCR 2.116(C)(10). The trial court ruled that defendant was not negligent as a matter of law in removing snow from a public sidewalk and thereby exposing ice on which plaintiff fell. We affirm.

Plaintiff argues that by removing a layer of snow from the sidewalk in question, defendant exposed a sheet of ice and made the sidewalk a greater hazard than it had been prior to the snow removal; these actions, she argues, were sufficient to make out a prima facie case of negligence such that summary disposition was inappropriate. A landowner owes no duty, even to a business invitee, to keep a public sidewalk abutting his or her property free from natural accumulations of ice and snow. *Morton v Goldberg*, 166 Mich App 366, 368-369; 420 NW2d 207 (1988). However, if a landowner begins to clear ice or snow from a public sidewalk and in so doing increases the hazard to passersby, liability may be found. *Id*. at 369. Our question, therefore, is whether defendant's clearing of snow from the sidewalk increased the hazard to those traversing it such that defendant could be deemed negligent.

Applicable case law leads us to answer this question in the negative. In *Weider v Goldsmith*, 353 Mich 339, 340; 91 NW2d 283 (1958), the plaintiff slipped and fell on a patch of snow and ice in a "heave" of the sidewalk in front of the defendant's building. The plaintiff alleged that the defendant increased the hazard posed by the sidewalk by shoveling it. *Id*. at 340-341. The Supreme Court held

that summary disposition for the defendant was appropriate because the evidence showed only that the plaintiff fell on a public sidewalk hours after it had been shoveled. *Id*. at 343-344. The Court indicated that the existence of the "ice heave" did not support even a reasonable inference that "the attempted cleaning itself, as distinguished from the normal operation of the forces of nature upon this sidewalk . . . created the ice patch . . . and thus increased normal hazards, or caused . . . an artificial accumulation of ice." *Id*. at 343. As in *Weider*, there is no reasonable inference in this case that the ice on the sidewalk was formed other than by "normal operation of the forces of nature." The following passage from *Weider* supports summary disposition for defendant:

> The holding in the case of *Golub v City of New York*, 201 Misc 866, 868-869; 112 NYS2d 161 (1952), is particularly appropriate to the facts before us:
>
> > The precise issue raised in this case is whether an abutting owner is liable for an ice condition remaining or arising after a snow and ice removal operation, without a showing that that ice condition, assuming it to be hazardous, was caused directly or indirectly by defendant through some affirmative act or omission.
> >
> > None of the authorities examined by the court goes that far. In each case where plaintiff has been permitted to recover against an abutting owner, the ice condition following snow and ice removal was either directly or indirectly the result of an act or omission by the abutting owner. On the other hand mere incompleteness of snow or ice removal, or unexplained presence of ice or snow after snow or ice removal, have resulted in the discharge of the defendant as a matter of law." [*Weider, supra* at 343-344.]

A theory similar to that accepted in *Weider* was used in *Woodworth v Brenner*, 69 Mich App 277, 279-281; 244 NW2d 446 (1976), in which we ruled that summary disposition for the defendants was appropriate when they had merely removed snow from a sidewalk and piled it up at the sides. Our ruling was in spite of the fact that the plaintiff claimed that the piled snow melted, flowed back down, refroze, and created an icy condition. *Id*. at 279. Here, defendant did not pile snow up, and plaintiff does not allege that any refreezing took place. Thus, the facts in the case at hand support summary disposition for defendant even more than did the facts in *Woodworth*. Defendant cannot be found liable as a matter of law because if defendant did in fact remove snow so as to expose an ice surface, it did not insert any new, human-made element of danger into walking on the sidewalk but merely removed snow from a naturally icy surface. See *Davis v Morton*, 143 Mich App 236, 241; 372 NW2d 517 (1984). Therefore, the trial court properly granted defendant's motion for summary disposition under MCR 2.116(C)(10).

Plaintiff also argues that the trial court used an improper standard of review when ruling on defendant's summary disposition motion. Specifically, she alleges that the court resolved conflicts in testimony, thereby acting like a "one man jury," and that the court improperly viewed the evidence in the light most favorable to defendant. Although at one point during the summary disposition hearing the trial judge did fail to consider the evidence in the light most favorable to plaintiff (when he used the low end of plaintiff's estimate regarding the amount of snow on the ground), he later corrected himself and

based his ruling on a proper view of the evidence. The ruling essentially amounted to the following: "Assuming that defendant shoveled three to four inches of snow off the sidewalk and thereby exposed preexisting ice (which is all that plaintiff alleged), this activity, as a matter of law, cannot give rise to liability." The ruling evidenced a proper standard of review.

Plaintiff further alleges that the trial court based its decision to grant defendant's motion on impermissible political considerations. Although at times during the motion hearing, the trial judge expounded on his personal philosophies regarding snow removal, his ultimate ruling was based on proper reasoning. That is, the trial court properly determined that plaintiff's proofs failed to make out a prima facie case of negligence on the part of defendant. Even if the judge's reasoning *had* been improper, reversal of his ruling would not be required as long as he reached the correct result, *Leszczynski v Johnston*, 155 Mich App 392, 396; 399 NW2d 70 (1986). As discussed above, the decision to grant defendant's motion for summary disposition under MCR 2.116(C)(10) was correct.

Next, plaintiff argues that she should have been granted leave to amend her complaint, which she concedes is defective in that it refers to the law of general premises liability as opposed to the law concerning public easements on sidewalks. Although MCR 2.116(I)(5) indicates that a trial court must give parties a chance to amend their pleadings in order to avoid dismissal under MCR 2.116(C)(8), this need not be done if the amendment would be futile. *Jenks v Brown*, 219 Mich App 415, 421; 557 NW2d 114 (1996). Even if plaintiff's complaint had been amended to allege the correct duty owed her by defendant, summary disposition under MCR 2.116(C)(10), as discussed above, would still have been granted. Therefore, plaintiff's amendment would have been futile, and the trial court did not abuse its discretion by disallowing it.

Finally, plaintiff argues that the trial court erred in ruling that United States Weather Service records would be excluded from a potential future trial and in refusing to allow the use of the circumstantial evidence doctrine. The weather records in question were arguably relevant in that they tended to corroborate plaintiff's testimony that there was snow on the ground on the date and at the location of her accident. However, there also was a reasonable justification for the trial court's ruling to exclude them, since they referred to a location at least ten miles away from the accident's location. Since a reasonable justification for the ruling existed, there was no abuse of discretion. See *Phillips v Deihm*, 213 Mich App 389, 394; 541 NW2d 566 (1995). Nor did the trial court abuse its discretion in implicitly concluding that the circumstantial evidence doctrine was inapplicable in this case. The circumstantial evidence doctrine -- otherwise known as *res ipsa loquitur*, *Mitcham v Detroit*, 355 Mich 182, 186; 94 NW2d 388 (1959) -- is used to create an inference of negligence when a plaintiff is unable to prove that a negligent act occurred. *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 193-194; 540 NW2d 297 (1995). This doctrine is inapplicable to plaintiff's case because in order to make use of it, she would have to show that the event in question -- here, slipping on ice -- would not ordinarily occur in the absence of negligence. *Id*. at 194. Slipping on ice is an event that *often* occurs in the absence of negligence, and therefore the *res ipsa loquitur* doctrine was inapplicable.

Affirmed.

/s/ William B. Murphy
/s/ Roman S. Gribbs
/s/ Hilda R. Gage