STATE OF MICHIGAN

COURT OF APPEALS

ROBERT NICHOLS,

Plaintiff-Appellant,

v

LINDA BALL,

Defendant-Appellee.

UNPUBLISHED
February 22, 2000

No. 210859
Oakland Circuit Court
LC No. 96-517162-NO

Before: Cavanagh, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

In this slip and fall case, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, admissions, and documentary evidence filed in the action or submitted by the parties in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

The trial court ruled that defendant owed no duty to plaintiff to remove or warn him of the naturally accumulated ice and snow on the concrete stones alongside the walk outside defendant's residence. On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition because there were genuine issues of material fact as to whether defendant breached the duty owed by her to plaintiff. The parties agree that plaintiff had the status of a licensee.

We conclude that, under the current state of the law, the "natural accumulation doctrine" does not bar plaintiff's claim. Nonetheless, we affirm because the trial court reached the right result, albeit for the wrong reason. See *Yerkovich v AAA*, 231 Mich App 54, 68; 585 NW2d 318 (1998), lv gtd 461 Mich 873 (1999). Assuming for the purposes of this opinion that defendant was in possession of the

area on which plaintiff slipped and fell, defendant was still entitled to summary disposition of plaintiff's claim.[1]

This Court recently clarified the proper scope of the natural accumulation doctrine. The natural accumulation doctrine was meant to shield possessors from liability with regard to the natural accumulation of snow and ice on *public* sidewalks which abutted private property, not with regard to injuries that occurred on private property. *Altairi v Alhaj*, 235 Mich App 626, 630-638; 599 NW2d 537 (1999). The *Altairi* Court explained, "Ordinarily, a possessor owes at least a marginal duty of care to his licensees." *Id*. at 634, citing *Preston v Sleziak*, 383 Mich 442, 453; 175 NW2d 759 (1970). In *Preston*, the Supreme Court adopted 2 Restatement Torts, 2d, § 342, as the best expression of a property owner's duty to a licensee:

> A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,
>
> (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and
>
> (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
>
> (c) the licensees do not know or have reason to know of the condition and the risk involved. [*Preston*, *supra* at 451-453, quoting 2 Restatement Torts, 2d, § 342, p 210.]

Applying the above, the *Altairi* Court concluded that "the natural accumulation doctrine does not apply to the licensor-licensee context where the injury occurred on the possessor's private property." *Id*. at 638. Thus, assuming that plaintiff's injury occurred on private property possessed by defendant, in light of *Altairi* we conclude that defendant was not entitled to summary disposition on the basis of the natural accumulation doctrine.[2]

However, under the Restatement formulation of a landowner's duty to a licensee, a possessor of land can only be liable for dangers of which she knew or had reason to know; she has no obligation to inspect the land to protect a licensee from unknown dangers. *D'Ambrosio v McCready*, 225 Mich App 90, 95-96; 570 NW2d 797 (1997). Any danger that is not obvious is not likely to be known to the landowner. *Altairi*, *supra* at 639.

The nature of any hazard arising from naturally occurring snow and ice is usually readily apparent. However, where ice is covered by a layer of snow, hiding it from casual inspection, the ice may present a hidden danger. See *id*. A landowner's duty to a licensee is only to warn of any hidden dangers she knows or has reason to know of, if the licensee does not know or has no reason to know of the dangers involved. *Wymer v Holmes*, 429 Mich 66, 77, n 1; 412 NW2d 213 (1987). Here, plaintiff presented no evidence to indicate that defendant actually knew or had reason to know that there

was ice under the light dusting of snow on the concrete stones. There is nothing in the record to indicate that defendant saw ice on the concrete stones prior to plaintiff's accident or that there was any reason for her to know that there was ice under the snow.

Moreover, even if defendant had known that the concrete stones were covered with snow and ice, there is nothing to indicate that it was foreseeable that plaintiff would walk on them. Defendant testified at her deposition that she viewed the stones as part of the landscaping and had never seen anyone walk on them. Under the circumstances, plaintiff has failed to show that defendant knew or should have known that the concrete stones presented an unreasonable risk of harm to plaintiff. See Restatement, § 342(a).

Plaintiff's claim that defendant had a duty to provide lighting in the area where plaintiff fell and breached that duty also must fail.[3] Although the parties dispute whether defendant's porch light was on at the time of plaintiff's fall, defendant stated that, even if the porch light had been on, it would not have illuminated the area where plaintiff's accident occurred. Plaintiff testified at his deposition that before his accident he noticed that it was "very dark" outside. Therefore, whether the porch light was on or off is immaterial because plaintiff was aware of the hazard posed by the darkness.[4] See *Wymer*, *supra*.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

[1] The parties dispute whether defendant, as the tenant of the upper flat, had possession of the concrete stones on which plaintiff slipped and fell. Defendant's lease required her to obtain written permission from the landlord before making any changes to the landscaping; it is undisputed that defendant never obtained such permission. However, we need not decide whether defendant was in possession of the area in order to resolve this case.

[2] We note that the trial court did not have the benefit of this Court's decision in *Altairi* when it ruled in the instant matter.

[3] Plaintiff has supplied the affidavit of his expert, Steven Ziemba, who has averred that defendant had the duty to provide adequate lighting in the area and to inspect the concrete stones for the presence of snow and ice. However, whether a defendant owes any duty to a plaintiff to avoid negligent conduct in a particular circumstance is a question of law. *Hughes v PMG Building, Inc*, 227 Mich App 1, 5; 574 NW2d 691 (1997). The duty to interpret and apply the law has been allocated to the courts, not to the parties' expert witnesses. *Hottmann v Hottmann*, 226 Mich App 171, 179; 572 NW2d 259 (1997).

[4] Plaintiff relies on *Knight v Gulf & Western Properties, Inc*, 196 Mich App 119; 492 NW2d 761 (1992). However, in *Knight*, the plaintiff was an invitee, rather than a licensee, and so was owed a higher standard of care. Moreover, the salient defect in *Knight* was the existence of an unexpected drop-off that was virtually undetectable in the defendant's unlit warehouse. "The fact that defendant's

vacant warehouse was not adequately lit was both obvious and known to plaintiff . . . . Certainly there was no need to warn plaintiff of the dark." *Id*. at 127.