STATE OF MICHIGAN

COURT OF APPEALS

TAMMIE FITCH,

Plaintiff-Appellant,

v

WEST OAK ASSOCIATES, d/b/a NOVI VILLAGE PARTNERSHIP, and LEISURE CENTERS, INC.,

Defendants/Third-Party Plaintiffs-Appellees,

and

APARTMENT SERVICES COMPANY,

Third-Party Defendant-Appellee.

UNPUBLISHED
March 16, 2001

No. 216290
Oakland Circuit Court
LC No. 96-515934-NO

Before: Murphy, P.J., and Hood and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for a directed verdict. We reverse.

Plaintiff, a home health aid, went to the premises owned by defendant West Oak Associates and managed by defendant Leisure Centers, Inc. Plaintiff provided care to residents of the premises that included giving baths, lifting patients, housekeeping, shopping, running errands and transferring patients. When plaintiff arrived for work between 9:00 and 10:00 a.m., the condition of the parking lot was slushy and wet. The parking lot did not appear to be plowed or salted when she arrived that day. When plaintiff left work at 3:30 p.m., it was cold outside, and the slush had turned to ice. Plaintiff looked around the parking lot to try to determine the best way to get to her car, but the enitre parking lot was covered with frozen ice. Plaintiff was careful as she walked to her car, but her foot got caught in a frozen tire rut, and she suffered injury. At the close of plaintiff's proofs, the trial court held that plaintiff had failed to present evidence regarding the measures defendants had taken to clear the parking lot. Specifically, the trial court held that plaintiff failed to present evidence of breach of duty.

Plaintiff argues that the trial court erred in granting defendants' motion for a directed verdict when the jury could have inferred from the facts that defendants failed to take reasonable measures within a reasonable period of time. We agree. Our review of a trial court's ruling regarding a directed verdict motion is de novo. *Braun v York Properties, Inc*, 230 Mich App 138, 141; 583 NW2d 503 (1998). We review the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000). In negligence cases, directed verdicts are viewed with disfavor. *Berryman v K Mart Corp*, 193 Mich App 88, 91; 483 NW2d 642 (1992). Where reasonable jurors could disagree regarding the evidence, the trial court may not substitute its judgment for that of the jury. *Lamson v Martin*, 216 Mich App 452, 455; 549 NW2d 878 (1996). A directed verdict is appropriate only where reasonable jurors could not reach different conclusions regarding the evidence. *Braun, supra*. Sufficient proof of negligence may be established by circumstantial evidence and permissible inferences therefrom. *Pontiac School District v Miller, Canfield, Paddock & Stone*, 221 Mich App 602, 623; 563 NW2d 693 (1997).

> To establish a prima facie case of negligence, a plaintiff must demonstrate:
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> (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, (3) the defendant's breach of its duty was the proximate cause of the plaintiff's injuries, and (4) the plaintiff suffered damages. [*Richardson v Michigan Humane Society*, 221 Mich App 526, 528; 561 NW2d 873 (1997).]

The trial court concluded that plaintiff failed to present sufficient evidence of breach of duty of care by defendants. Before considering that element, however, it is necessary to determine the protections owed to plaintiff based on the status of her entry.

The trial court determined that plaintiff presented sufficient evidence to show that she was an invitee at the time she was injured.[1] A landowner's duty of care to an invitee has been explained as follows:

> A possessor of land has a duty to exercise reasonable care for the protection of the invitee. *Schuster v Sallay*, 181 Mich App 558, 565; 450 NW2d 81 (1989); SJI2d 19.03. Further, it is the duty of a possessor of land to take reasonable measures within a reasonable period after an accumulation of snow and ice to diminish the hazard of injury to an invitee. *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; 235 NW2d 732 (1975); SJI2d 19.05. However, the possessor of land is not an absolute insurer of the safety of an invitee. *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 500; 418 NW2d 381 (1988). Further, the existence of a legal duty is a question of law for the court to decide. *Trager v Thor*, 445 Mich 95; 516 NW2d 69 (1994). [*Anderson v Wiegand*, 223 Mich App 549, 553-554; 567 NW2d 452 (1997).]

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[1] Defendants do not take issue with the trial court's conclusion on appeal.

An invitor has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation. *Quinlivan, supra* at 261. As noted above, an invitor must take reasoanble measures within a reasonable time after an acumulation of ice and snow to diminish the hazard of injury to an invitee. *Id*. The general standard of care requires a defendant to shovel, salt, sand or otherwise remove snow. *Lundy v Groty*, 141 Mich App 757, 760; 367 NW2d 448 (1985). In *Anderson, supra* at 557-558, we held that the invitor's duty to take reasonable steps to clear hazards on its property extends to hazards caused by ice that forms after snow melts and then refreezes. Whether a defendant may wait until the weather clears or must take interim action to protect an inviteee is a question for the jury to decide. *Lundy, supra* at 760-761.

In the present case, plaintiff presented documentary evidence to demonstrate that hours passed and there was nothing done to address the accumulation of snow and ice in the parking lot. A breach of duty may be premised on the creation of an unreasonable condition or *omission*. *Hampton v Waste Management of Michigan, Inc*, 236 Mich App 598, 604; 601 NW2d 172 (1999). Viewed in the light most favorable to plaintiff, there was sufficient evidence to enable the jury to infer that defendants failed to take any action to address the accumulation of snow and ice or failed to take reasonable action to clear the parking lot of snow and ice within a reasonable time after the snow stopped failing. *Wilkinson, supra*. Accordingly, the trial court erred in granting defendants' motion for a directed verdict.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Jessica R. Cooper