STATE OF MICHIGAN

COURT OF APPEALS

BOBBIE JEAN McINTOSH and ELIJAH McINTOSH,

Plaintiffs-Appellants,

v

CARLEATHIE RICHARDSON and EMMITT RICHARDSON,

Defendants-Appellees.

UNPUBLISHED
February 19, 2002

No. 227231
Ingham Circuit Court
LC No. 98-087886-NO

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from an order granting summary disposition for defendants under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At approximately 8:15 a.m. on February 28, 1995, plaintiff Bobbie Jean McIntosh slipped and fell on snow-covered ice in defendants' driveway, injuring her right leg, knee, and ankle. Defendant Emmitt Richardson testified that he observed snow on the driveway when he arrived home from work that morning, between 4:00 and 5:00 a.m. He shoveled the entire length, finishing sometime between 5:30 and 6:30 a.m., and then sometime before 7:00 a.m. his nephew salted the driveway. The excerpts of defendant Carleathie Richardson's deposition included in the record indicate that she saw the nephew salt the driveway before plaintiff's fall. In their affidavits, both defendants averred that they did not have any knowledge of ice being under snow in the portion of the driveway where plaintiff fell.

This Court's review of a decision regarding a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Id.* In deciding a motion brought under this subrule, the trial court considers the documentary evidence submitted by the parties in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

In premises liability cases, the duty owed by a landowner is determined by the plaintiff's status at the time of the injury. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596;

614 NW2d 88 (2000). For purposes of defendants' motion, the parties assumed that plaintiff was a licensee. A landowner owes a licensee a duty only to warn of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. *Id.* Under this formulation, a possessor of land must either know of the danger posed by a natural accumulation of ice and snow or have reason to know of the danger, but the danger cannot be open and obvious, "a very narrow class of risks given the usually obvious nature of any hazard stemming from naturally accumulated ice and snow." *Altairi v Alhaj*, 235 Mich App 626, 639; 599 NW2d 537 (1999).

On appeal, plaintiffs argue that the trial court erred in granting summary disposition for defendants because there was a question of material fact whether defendants should have known about the ice under the snow in the driveway. We disagree. It was undisputed that the ice on which plaintiff slipped was not open and obvious. Defendants' affidavits and deposition testimony stated that they did not know that there was ice under the snow on their driveway where plaintiff fell. There was no evidence that either defendant, the nephew, or any other member of the household slipped on the driveway before plaintiff's fall. Plaintiffs contend that there remains a question of fact whether defendants should have known of the hidden ice. However, given the nephew's spreading of salt approximately 1 ½ hours before plaintiff's fall and defendant Emmitt Richardson's maintenance of the driveway without incident shortly before that, we cannot conclude that there existed a genuine question whether they had reason to know of the danger. Accordingly, summary disposition for defendants was proper.

Affirmed.

/s/ Michael R. Smolenski
/s/ Martin M. Doctoroff
/s/ Donald S. Owens