

STATE OF MICHIGAN  
COURT OF APPEALS

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PERRY M. KANTNER, d/b/a KANTNER &  
ASSOCIATES,

Plaintiff-Appellant,

v

ANN ARBOR TOWER PLAZA  
CONDOMINIUM ASSOCIATION, KRAMER  
TRIAD MANAGEMENT GROUP, and TRIAD  
MANAGEMENT CORPORATION,

Defendant-Appellees.

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UNPUBLISHED  
November 16, 2004

No. 250202  
Washtenaw Circuit Court  
LC No. 01-000032-NI

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

HOEKSTRA, J., (*dissenting*).

I respectfully dissent.

The question in this case is essentially the same as that presented in *Kenny v Kaatz Funeral Home Inc*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (Docket No. 248720, issued October 12, 2004): “[C]an it be said, *as a matter of law*, that a reasonably prudent person with ordinary intelligence would have been able to perceive and foresee the dangerous condition.” *Id.* at slip op p 6. [emphasis in original] However, because there are significant factual differences from those presented in *Kenny*, I conclude that the answer in this case is “yes.”

Here, plaintiff was aware that on the day of this occurrence, January 12, 1998, it rained and sleeted while he was indoors working. Plaintiff left work at 7:15 p.m. and was injured walking to his car. Any reasonably prudent person living and working in Michigan during the winter months understands that rain and sleet during the daylight hours can result in the formation of black ice, particularly as temperatures drop during the nighttime. Thus, plaintiff had sufficient knowledge to foresee the possibility of ice forming and should have been on the lookout for it. Additionally, no covering of snow, nor any other circumstance prevented plaintiff from discovering the icy condition.

Further, the majority’s analysis regarding whether defendants had notice of the icy condition is immaterial because plaintiff makes no claim that special aspects existed that would have made the icy condition unreasonably dangerous. *Mann v Shusteric Enterprises Inc*, 470 Mich 320, 332-333; 683 NW2d 573 (2004). Nor could such a claim be made successfully under

the circumstances of this case. The black ice that plaintiff slipped on was not covered or obscured. And the location of plaintiff's fall was on decorative paving bricks located between the curb and sidewalk. Thus, the location of plaintiff's fall was easily avoidable. Consequently, I would affirm.

/s/ Joel P. Hoekstra