STATE OF MICHIGAN

COURT OF APPEALS

OLENA DROBOT and ROBERT DROBOT,

Plaintiffs-Appellants,

v

RICHARD WAY and WILMA WAY,

Defendants-Appellees.

UNPUBLISHED
November 21, 2006

No. 270132
Oakland Circuit Court
LC No. 2005-067249-NO

Before: Whitbeck, C.J., and Sawyer and Jansen, JJ.

PER CURIAM.

Plaintiffs appeal from an order of the circuit court granting summary disposition to defendants on plaintiffs' personal injury claim. We affirm.

Plaintiffs and defendants are neighbors. On February 14, 2003, defendants left town for a trip. They made arrangements with plaintiff Olena Drobot ("plaintiff") to watch their house during their absence and gave her a key to the front door. Plaintiff made her first visit to the house that afternoon. Plaintiff states that although there was snow on the lawn from a previous snowfall, the sidewalk appeared clear. But she does state that she saw some ice on the steps and edge of the porch on her way into the house.

After checking on the house, plaintiff exited the front door and walked off the porch. Plaintiff states that before stepping off the porch and onto the walkway, she observed the walkway and chose to step down onto the left side because it "looked clear" and "drier," while the right side looked wet. In fact, as soon as she stepped onto the sidewalk, she slipped and fell on what she describes as black ice. She states that she did not see the ice before her fall. Additionally, two paramedics who responded to the scene testified in their depositions that it was icy in the area of plaintiff's fall and that the ice was not readily observable.

The trial court granted summary disposition under MCR 2.116(C)(10) on the basis that there was no genuine issue of material fact that the icy condition was open and obvious. We agree with the trial court. We review de novo the trial court's ruling on a summary disposition motion. *Teufel v Watkins*, 267 Mich App 425, 426; 705 NW2d 164 (2005). We review all of the evidence submitted by the parties in the light most favorable to the nonmoving party. *Id.* at 427. The moving party is entitled to judgment as a matter of law if the submitted evidence fails to establish a genuine issue of material fact. *Id.*

This case is controlled by our decision in *Teufel, supra* at 428, where we stated the following:

> As a general rule, and absent special circumstances, the hazards presented by snow and ice are open and obvious, and do not impose a duty on the property owner to warn of or remove the hazard. *Corey v Davenport College of Business (On Remand)*, 251 Mich App 1, 5-6, 8; 649 NW2d 392 (2002). The danger presented by snow-covered ice is open and obvious where the plaintiff knew of, and under circumstances an average person with ordinary intelligence would have been able to discover, the condition and the risk it presented. *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329-330; 683 NW2d 573 (2004); *Joyce v Rubin*, 249 Mich App 231, 239; 642 NW2d 360 (2002). Here, plaintiff testified that he fell on ice that was obstructed by a snowpile. He concedes that he was aware of the existence of the snowpile and that it was an open and obvious condition, but he asserts that the ice he encountered on the other side of the snowpile was obstructed and therefore not open and obvious. We disagree. Even when viewing the evidence in the light most favorable to plaintiff, the evidence demonstrates that a reasonably prudent person with ordinary intelligence would have anticipated that ice and snow would be present at the bottom of a snowbank and would have been able to perceive and foresee the danger of the ice on the other side of the snowpile.

See also *Kenny v Kaatz Funeral Home, Inc.*, 264 Mich App 99, 115-122; 989 NW2d 737 (2004) (Griffin, J., dissenting), rev'd 472 Mich 969; 697 NW2d 526 (2005).

Plaintiffs attempt to distinguish *Teufel* and *Kenny* on the basis that the ice in the case at bar was not obscured by a snow pile (*Teufel*) or by snow on top of the ice (*Kenny*). We do not read either case as requiring that the ice be obscured by snow. Rather, we read those cases as standing for the proposition that where there is snow in winter in Michigan, there is likely to be ice and the presence of snow puts a person on notice that there may be slippery conditions. Indeed, in the case at bar, plaintiff testified that not only was there snow on the ground, but she also observed ice on the steps and the edge of the porch as she entered the house. Accordingly, we conclude that the condition was open and obvious and the circumstances of this case do not present any reason to depart from the "general rule" that "the hazards presented by snow and ice are open and obvious." *Teufel, supra* at 428.

Plaintiffs also argue that, even if the condition was open and obvious, that doctrine does not apply because the icy condition was unreasonably dangerous and because there was a "special aspect" under *Lugo v Ameritech Corp, Inc.*, 464 Mich 512; 629 NW2d 384 (2001), because it was effectively unavoidable. With respect to the argument that the conditions were unreasonably dangerous, plaintiffs make only the assertion without any significant argument to establish why these icy conditions were unreasonably dangerous. Furthermore, Judge Griffin's dissenting opinion in *Kenny*, which was adopted by the Supreme Court, concluded that "ice and snow do not present 'a *uniquely high* likelihood of harm or severity of harm.' " *Kenny, supra* at 121, quoting *Joyce v Rubin*, 249 Mich App 231, 241-243; 642 NW2d 360 (2002).

We also reject plaintiffs' argument that the condition was effectively unavoidable. First, there was an alternate route out of the house. While it may be true that had plaintiff chosen to

take that route, a side door instead of the front door, she would have been unable to lock the house on her departure, the route was available rather than facing the danger. Second, and more importantly, plaintiff was aware that there was some ice on the sidewalk before even entering the house. Thus, she was on notice that ice was present and that there was some danger in using the sidewalk. Yet she chose to enter the house anyway. She could have avoided the harm merely by declining to enter the house in the first place once she was on notice that there were icy conditions on the sidewalk.

Affirmed. Defendants may tax costs.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kathleen Jansen