STATE OF MICHIGAN

COURT OF APPEALS

CORINNE CAPP,

Plaintiff-Appellant,

v

ROBERT REDMOND,

Defendant-Appellee.

UNPUBLISHED
July 1, 2008

No. 278137
Charlevoix Circuit Court
LC No. 06-030721-NO

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting summary disposition in defendant's favor in this premises liability case. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and her family lived in one apartment of a duplex owned by defendant. Plaintiff initially signed a twelve-month lease in May 2003, and signed another twelve-month lease in May 2004. Under that lease, plaintiff was responsible for the general maintenance, upkeep and appearance, snow plowing and removal, grass cutting, cleanliness and tidiness of the grounds. Plaintiff and her family shoveled the walks, salted the steps, and hired someone to plow the driveway.

On December 24, 2004, plaintiff and her daughters chipped ice from the main entrance steps and also put salt on the steps. Later in the day, the family went to a friend's home for dinner. When they returned between 11 p.m. and midnight, plaintiff slipped on ice, fell, and broke her ankle as she was going up the steps of the main entrance.

Plaintiff brought both a common law negligence claim and a statutory claim against defendant. Plaintiff alleged that the gutter above the main entrance was damaged in August by a falling tree and caused greater than normal accumulations of ice in the winter. Plaintiff did not, however, show that the accumulation of ice in 2004 was any different than the accumulations in 2003 when she was concerned for her children's safety due to the formation of icicles.

The trial court granted defendant's motion for summary disposition determining that plaintiff was responsible for maintaining the premises according to the lease, the icy steps were open and obvious to any reasonable observer, and another entrance was available to her.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001). A summary disposition motion brought under MCR 2.116(C)(10) tests the factual support of a claim. *Id.* When reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, affidavits, depositions, admissions, and other documentary evidence presented in the light most favorable to the nonmoving party. *Royce v Chatwell Club Apts*, 276 Mich App 389, 391; 740 NW2d 547 (2007). The moving party is entitled to judgment as a matter of law if there is no genuine issue concerning any material fact. *Id.*

A plaintiff must prove the following four elements to establish a prima facie case of negligence: (1) the defendant owed a duty to the plaintiff, (2) the defendant breached the duty, (3) the defendant's breach of the duty caused the plaintiff's injuries, and (4) the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). A tenant is considered an invitee of the landlord. *Royce, supra* at 392, n 2.

Generally, the dangers presented by snow and ice are open and obvious, and property owners do not have a duty to warn of or remove the hazard. *Teufel v Watkins*, 267 Mich App 425, 428; 705 NW2d 164 (2005). When there are special aspects to the dangers or risks such as being effectively unavoidable or imposing an unreasonably high risk of death or severe injury, then liability may be imposed on the property owner despite the danger's open and obvious characteristics. *Lugo, supra* at 518-519. Additionally, the open and obvious danger doctrine cannot be used by a landowner to avoid liability for a condition on the property that is also considered a breach of a statutory obligation. *Royce, supra* at 397. Under MCL 554.139(1), the lessor in a residential lease covenants:

> (a) That the premises and all common areas are fit for the use intended by the parties.
>
> (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants willful or irresponsible conduct or lack of conduct.

That statute also provides that "[t]he parties to the lease or license may modify the obligation imposed by the section where the lease or license has a current term of at least 1 year." MCL 554.139(2).

In the parties' twelve-month lease, plaintiff accepted responsibility for the general maintenance, upkeep and appearance, snow plowing and removal, grass cutting, cleanliness and tidiness of the grounds. Plaintiff testified that it was her responsibility as a tenant to shovel the walks. She would also put salt down on the steps and hired someone to plow the driveway. These lease provisions modified defendant's statutory duty under MCL 554.139(1). That the lease mentioned snow removal without mentioning ice removal is of no consequence because the two activities often cannot be separated; even if they could, the lease terms of general

maintenance, upkeep, and tidiness are broad enough to encompass ice removal as well. Because defendant's statutory duty stated in MCL 554.139(1)(a) and (b) was modified, as allowed by the same statute, and plaintiff accepted such responsibility, summary disposition was appropriate.

Summary disposition was also appropriate, as the ice was open and obvious, thus precluding plaintiff's common law claim of negligence against defendant. *Teufel, supra* at 428.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto