STATE OF MICHIGAN

COURT OF APPEALS

JOSE HOLGUIN, Plaintiff-Appellant,	UNPUBLISHED March 1, 2012
v	No. 302170 Washtenaw Circuit Court
FORD MOTOR CO., Defendant-Appellee.	LC No. 09-001484-NO

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals as of right the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). For the reasons set forth in this opinion, we affirm.

Plaintiff's claim arises from injuries he sustained when, while working as an independent truck driver, he slipped and fell on a patch of ice as he was getting out of his truck in the shipping and receiving lot at defendant's automobile plant. The trial court granted defendant's motion for summary disposition of plaintiff's claim pursuant to MCR 2.116(C)(10), based on a finding that the condition was open and obvious as a matter of law.

"A trial court's decision to grant or deny a motion for summary disposition is reviewed de novo on appeal." *Young v Sellers*, 254 Mich App 447, 449; 657 NW2d 555 (2002) (citation omitted). "The threshold issue of the duty of care in negligence actions [is] decided by the trial court as a matter of law." *Riddle v McLouth Steel Prods Corp*, 440 Mich 85, 95; 485 NW2d 676 (1992). Questions of law are also reviewed de novo. *Rapistan Corp v Michaels*, 203 Mich App 301, 306; 511 NW2d 918 (1994). MCR 2.116(C)(10) provides that summary disposition is proper when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When the party moving for summary disposition supports the motion with documentary evidence, the nonmoving party "may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in [the] rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

A claim of negligence requires proof that (1) the defendant owed a legal duty to the plaintiff; (2) the defendant breached that duty; (3) the plaintiff suffered damages; and (4) the breach was a proximate cause of the plaintiff's damages. *Schultz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993), citing *Roulo v Auto Club of Mich*, 386 Mich 324; 192 NW2d 237 (1971). Plaintiff was an invitee on defendant's property. See *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). In the context of premises liability claims, "[t]he invitor's legal duty is 'to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land' that the landowner knows or should know the invitees will not discover, realize, or protect themselves against." *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995) (citations omitted). Generally, and as applicable to this case, "[a] premises possessor is [ ] not required to protect an invitee from open and obvious dangers." *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 478; 760 NW2d 287 (2008) (citation omitted).

The standard applied to determine whether a danger is open and obvious is whether an average user with ordinary intelligence would have been able to discover the danger upon casual inspection. *Slaughter*, 281 Mich App at 478 (citation omitted). The determination is an objective one, and involves an evaluation of "whether a reasonable person in the plaintiff's position would have foreseen the danger." *Id*. at 479 (citation omitted). "[A]bsent special circumstances, Michigan courts have generally held that the hazards presented by snow, snow-covered ice, and observable ice are open and obvious and do not impose a duty on the premises possessor to warn of or remove the hazard." *Id*. at 481. In cases involving black ice, which by its very definition is not observable on casual inspection, the danger is considered open and obvious only "when there are 'indicia of a potentially hazardous condition,' including the 'specific weather conditions present at the time of the plaintiff's fall.'" *Janson v Sajewski Funeral Home, Inc*, 486 Mich 934, 935; 782 NW2d 201 (2010), quoting *Slaughter*, 281 Mich App at 483. Factors considered by Michigan courts to be indicative of the potential for black ice include: visible snow in the area, recent precipitation (e.g., snow or freezing rain), freezing temperatures, and evidence that the plaintiff saw others slip or fall before the plaintiff's own injury. See *Janson*, 486 Mich at 935; *Slaughter*, 281 Mich App at 483.

Although plaintiff contends that his injury was caused by black ice, defendant supported its summary disposition motion by pointing to plaintiff's deposition testimony that, after the fall, he could see the patch of ice, which was about three feet around.

> *Q:* After you fell and -- eventually, did someone have to help you up?
> *A*: No.
> *Q*: I think they found you sitting up, right?
> *A*: They find me sitting up on one leg and over by the truck, by the step, I just--
> *Q*: So you kind of pushed yourself over to the step --
> *A:* Yes.
> *Q:* -- and you're sitting on the step of the truck?
> *A*: I stand up. I stand up against the steps.
> *Q*: And you could see that there was about a three foot patch of ice?

A: Yes.

Plaintiff's own testimony was that the ice in question was observable. Hence it was not black ice as defined by this Court in *Slaughter*, 281 Mich App at 482-483. Additionally, the type of ice that was readily observable to plaintiff following his fall is the type of ice which this Court has held presents an open and obvious danger. *Slaughter*, 281 Mich App at 481; *Perkoviq v Delcor Homes-Lake Shore Pointe, Ltd*, 466 Mich 11, 16; 643 NW2d 212 (2002). For these reasons, the trial court did not err in granting summary disposition to defendant.[1]

Because we find that the trial court did not err in finding that the danger was open and obvious, summary disposition was proper regardless of whether defendant had constructive notice of the issue. Therefore, resolution of the notice issue is not necessary to the disposition of this case and we decline to address it.

Affirmed. Defendant being the prevailing party may tax costs. MCR 7.219(A).

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello

[1] Although it is not clear, based on the lower court record, whether the trial court based its finding on a determination that the ice in question was observable ice or on a finding that the ice was black ice that was rendered open and obvious by evidence of other indicia of the danger, this Court may affirm a trial court order "where the right result issued, albeit for the wrong reason." *Gleason v Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003), citing *Mulholland v DEC Int'l Corp*, 432 Mich 395, 411 n 10; 443 NW2d 340 (1989).