STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0120

Isaac C. Johnson, et al.,
Appellants,

vs.

Pulte Homes of Minnesota, LLC, d/b/a Pulte Homes, LLC,
and d/b/a Pulte Homes,
Respondent.

Filed October 4, 2021
Affirmed
Smith, John, Judge[*]

Hennepin County District Court
File No. 27-CV-19-16398

Francis J. Rondoni, Heidi M. Torvik, Chestnut Cambronne PA, Minneapolis, Minnesota (for appellants)

Douglas J. McIntyre, Thomas H. Priebe, Foley & Mansfield, P.L.L.P., Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Smith, John, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's grant of summary judgment in favor of respondent on appellant Isaac Johnson's negligence claim arising from a slip and fall because we conclude appellant failed as a matter of law to establish constructive notice of a potential hazard on respondent's premises.

FACTS

Appellant slipped and fell at a model home owned and operated by respondent Pulte Homes of Minnesota, LLC (Pulte) in January 2018. On the day of appellant's fall, a Pulte employee arrived at the model home at about 10:30 a.m. It was not snowing heavily, but there was a layer of snow on the sidewalk leading to the model home from the parking lot. The employee shoveled the walkway and did not notice any ice or slipperiness at that time or put down salt, sand, or other de-icing material. Another Pulte employee arrived at the model home between 3:00 and 3:30 p.m. that same day and noticed the walkway was clear of snow and ice.

Johnson is a real estate agent, and had arranged to meet a client at the model home at 4:30 p.m. When the client arrived, there was snow on the ground including a fresh coat of snow covering the parking lot and the walkway. When Johnson arrived, the walkway was covered with snow marked by footprints leading up to the model home. He tried to follow the path of these footprints but slipped on ice and fell where the parking lot met the sidewalk.

Johnson called for help and Johnson's client and a Pulte employee rushed out to assist him. They discovered ice underneath the snow in the area where Johnson fell. They helped him into his vehicle, and he drove to the hospital. There, he discovered he had suffered a severe leg injury which required two surgeries to repair.

Johnson initiated his lawsuit against Pulte in September 2019, claiming damages for Pulte's negligent maintenance of the model home's premises. Pulte moved for summary judgment in June 2020. The district court granted summary judgment later that year. It determined that because Johnson had not provided evidence sufficient "to establish when the ice formed . . . such that Pulte would have constructive knowledge that ice had formed," and had otherwise produced insufficient evidence of actual knowledge, summary judgment in favor of Pulte was warranted.

DECISION

The moving party is entitled to summary judgment if it "shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. We review a summary judgment decision de novo to determine whether the district court properly applied the law and whether genuine issues of material fact preclude summary judgment. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "[S]ummary judgment is appropriate against a party who fails to establish the existence of an element essential to its case." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 363-64 (Minn. App. 2000).

For Johnson's claim to survive summary judgment, he must have offered evidence sufficient to establish "(1) the existence of a duty of care; (2) a breach of that duty; (3) an

injury was sustained; and (4) breach of the duty was the proximate cause of the injury." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). Duty is therefore a "threshold question" of liability. *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012). We review de novo whether a duty exists. *Rinn*, 611 N.W.2d at 364. The district court decided Pulte did not owe Johnson a duty because Pulte had no constructive or actual notice of the dangerous condition that caused his fall. We concur that Johnson has not offered sufficient evidence of notice such that his claim survives summary judgment.

"A property owner has a duty to use reasonable care to prevent persons from being injured by conditions on the property that represent foreseeable risk of injury." *Id.* But they are not "insurers of safety." *Id.* at 365. Property owners are thus liable "only where the landowner had actual or constructive knowledge of the dangerous condition." *Id.* The burden of proof as to a property owner's knowledge is on the plaintiff. *Id.*

Johnson claims the ice existed for a sufficient period of time for Pulte to be on constructive notice of its existence. But Johnson has not provided evidence beyond the "speculative and conjectural" as to how long the ice was under the snow. *Messner v. Red Owl Stores, Inc.*, 57 N.W.2d 659, 661 (Minn. 1953). The employee who traversed the premises between 3:00 and 3:30 p.m. did not notice slippery conditions or ice. Johnson's client did not notice slippery conditions or ice when he traversed the premises less than ten minutes before Johnson's arrival. The evidence as to when the slippery conditions came into being or how long they existed at the time of Johnson's fall is thus nothing more than "speculation as to who caused the dangerous condition, or how long it existed." *Rinn*, 611 N.W.2d at 365. Appellant's speculative evidence "warrants judgment for the landowner"

as to whether Pulte had constructive notice based on the length of time the slippery conditions were present. *Id.*

Johnson further argues his claim should survive summary judgment because a reasonable inspection would have revealed the slippery conditions upon which he fell. But if a "reasonable inspection does not reveal a dangerous condition . . . the landowner is not liable for any physical injury caused . . . by the dangerous condition." *Olmanson v. LeSueur County*, 693 N.W.2d 876, 881 (Minn. 2005). And landowners are afforded "reasonable notice of the need for, and a reasonable opportunity to take, corrective action for the safety" of entrants upon their land. *Mattson v. St. Luke's Hosp. of St. Paul*, 89 N.W.2d 743, 745 (Minn. 1958). Pulte did not have reasonable notice of the need for corrective action. Pulte employees recall only that the weather on the day Johnson fell was windy, with limited snow accumulation. The only Pulte employee to notice a potentially dangerous condition promptly cleared the walkway. And Johnson's client only remembers the weather conditions as a "[t]ypical wintery day." The record establishes that the conditions were not out of the ordinary for what would be expected from a typical January day in Minnesota, and that no Pulte employee had reason to believe further inspection of the premises would be necessary. There was thus no reasonable notice to take corrective action and no basis on which to impute constructive or actual notice of the dangerous condition to Pulte. Pulte is entitled to summary judgment as a result.

Affirmed.