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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2085

Jennifer Hegge,
Appellant,

vs.

R.Z.M.P. Corporation, d/b/a Schuller's Tavern,
Respondent.

Filed April 22, 2013
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CV-12-233

John T. Sullivan, Scott D. Eller, Best & Flanagan LLP, Minneapolis, Minnesota (for appellant)

Paul S. Hopewell, Jenna M. Powers, O'Meara, Leer, Wagner & Kohl, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Connolly, Judge; and Stauber, Judge.

U N P U B L I S H E D   O P I N I O N

CONNOLLY, Judge

Appellant challenges the summary-judgment dismissal of her negligence claim arising out of her slip and fall on respondent's icy steps during a winter storm. Citing

Mattson v. St. Luke's Hosp. of St. Paul, 252 Minn. 230, 89 N.W.2d 743 (1958), she asserts that under the extraordinary circumstances of this case – including respondent's knowledge that its steps were icy and its failure to apply salt, which was kept by the steps – respondent breached its duty of reasonable care to appellant. Because, as a matter of law, respondent did not breach its duty of care to appellant by waiting to remedy the icy conditions while the storm continued, we affirm.

FACTS

On the evening of November 20, 2010, appellant Jennifer Hegge and a group of her relatives went to Schuller's Tavern, a business owned and operated by respondent R.Z.M.P. Corp. When the group arrived at Schuller's shortly after 9:00 p.m., there was no snow or rain falling. Around 10:15 p.m., some of appellant's relatives went outside to smoke and noticed that freezing rain had begun to fall. The relatives alerted two employees that the steps leading to the entrance and the area near the door were getting slippery. A third employee, who was working the door, was also alerted about the slippery condition. A bucket of salt was located by the door.

Around 10:55 p.m., appellant and some of her relatives went outside to smoke. Appellant slipped as soon as she stepped outside, falling and landing with her head on the bottom step and her body on the ground. It is undisputed that freezing rain began before appellant's fall and continued during and after her fall.

Appellant filed a complaint, alleging that respondent's negligence caused her injury while she was on respondent's premises. Respondent moved for summary judgment. Relying upon *Mattson*, the district court granted the motion for summary

judgment, holding that as a matter of law, respondent did not breach its duty of reasonable care to appellant. This appeal follows.

DECISION

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. On appeal from summary judgment, an appellate court reviews de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012). A reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted. *Id.*

In a well-reasoned and thoughtful opinion, the district court granted respondent's motion for summary judgment, holding that respondent was not negligent as a matter of law because respondent was entitled to wait a reasonable time after the storm abated to correct the icy conditions without violating its duty to exercise reasonable care.

"Negligence is generally defined as the failure to exercise such care as persons of ordinary prudence usually exercise under such circumstances." *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011) (quotation omitted). To establish a prima facie case of negligence, a plaintiff must show the existence of a duty of care, a breach of that duty, an injury, and "that the breach of the duty of care was a proximate cause of the injury." *Id.*

A possessor of land has an "affirmative duty to exercise reasonable care in inspecting and maintaining the premises in a reasonably safe condition [for business

guests or invitees]." *Mattson*, 252 Minn. at 231, 89 N.W.2d at 745. In *Mattson*, the Minnesota Supreme Court articulated the standard of care owed by a business owner to invitees during a storm:

> Absent extraordinary circumstances, . . . it is the general rule that a business establishment or other inviter may, without violating its duty to exercise reasonable care for the safety of business guests or invitees, await the end of a freezing rain or sleetstorm and a reasonable time thereafter before removing ice and snow from its outside entrance walks, platform, or steps.

Id. at 233, 89 N.W.2d at 745.

Appellant argues that extraordinary circumstances existed in this case because respondent "knew that the steps were icy, that the freezing rain had only just started to fall, that patrons and employees would be continually walking on the steps, and that customers repeatedly asked respondent to take the minimal step of salting the steps." Therefore, appellant argues that despite the general rule articulated in *Mattson*, respondent breached its duty to appellant by failing to remove ice from the entrance during the storm.

But these facts do not constitute extraordinary circumstances under Minnesota law. In *Mattson*, a woman slipped on the ice-covered steps outside a hospital's only public entrance during a freezing rain storm. *Id.* at 231, 89 N.W.2d at 744. She had entered the hospital before the rain and sleet began, and a janitor knew of the slippery conditions of the steps and had applied sand and chemicals to the steps approximately two hours before the woman fell, but had made no further attempts to clear the steps. *Id.*

Similarly, in this case, the freezing rain conditions began after appellant entered the business establishment, there was a single entrance and exit designated for her to use

while smoking, and employees knew of the slippery condition of the stairs. But *Mattson* held that, as a matter of law, these facts did not constitute extraordinary conditions. Rather, *Mattson* concluded that "[r]easonable care for the safety of an invitee does not require an inviter to engage in an unending and impractical, if not useless, contest with the uncontrollable forces of nature while a storm is in progress." *Id.* at 235, 89 N.W.2d 746-47. Because, as a matter of law, respondent did not breach its duty of reasonable care owed to invitees by waiting to remedy the icy conditions at Schuller's Tavern until after the storm abated, the district court did not err by granting respondent's motion for summary judgment.

Affirmed.