STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1035

Richard L. Johnson,
Appellant,

vs.

MSP Commercial Real Estate Fund I - Eagan, LLC, et al.,
Respondents.

Filed February 8, 2011
Affirmed
Minge, Judge

Ramsey County District Court
File No. 62-CV-09-12461

Richard L. Johnson, Crookston, Minnesota (pro se appellant)

John B. Casserly, Andrea P. Hoversten, Geraghty, O'Loughlin & Kenney, P.A., St. Paul, Minnesota (for respondents)

Considered and decided by Minge, Presiding Judge; Lansing, Judge; and Kalitowski, Judge.

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

MINGE, Judge

Appellant challenges the district court's grant of summary judgment to respondents on his negligence claim, arguing that the district court erred by determining that respondents did not owe him a duty of care. We affirm.

FACTS

On September 30, 2005, at about 2:00 a.m., appellant Richard L. Johnson was riding his bike home from a friend's house in St. Paul when he decided to take a shortcut toward the next street from Rice Street through the Capital Bank parking lot and across what he apparently thought was a continuous rideable surface in the adjacent parking lot of respondent HealthEast Rice Street Clinic. Unfortunately, after Johnson rode across the Capital Bank lot, the paved area ended and he rode over the lip of a retaining wall, falling into a sunken "rain garden" located on the premises of the Rice Street Clinic. Johnson landed on his head, suffering serious injuries.

The Rice Street Clinic's rain garden was recommended and approved by the City of St. Paul and was constructed in 2004 to hold storm-water runoff and alleviate stress on the city sewer system. The rain garden is bordered on the street side by a fence, and on all other sides by landscaping up to and level with the retaining wall level. The near-by parking area has a curb.

In August 2006, appellant filed suit against the Rice Street Clinic and others.[1] In his complaint, Johnson alleged "carelessness and negligence in failing to maintain and properly warn of a dangerous condition existing on its premises."

[1] The other defendants were MSP Commercial Real Estate Fund I - Eagan, LLC, an entity that claimed in its answer to have no involvement with the subject property, and the Rice Street Professional Building LLC, the entity that owns the clinic property. MSP Metro Operating Company, LLC, the entity that manages the clinic property, participated in discovery, though it was not named in the lawsuit. We note that there is no issue over the identity of the proper defendant or on appeal, the proper respondent. For simplicity, we refer to the defendants (respondents on appeal) collectively as Rice Street Clinic or clinic.

At a July 2009 deposition, Johnson testified that there were lights on Rice Street, and one or two lights in the Capital Bank parking lot. However, he emphasized that it was a dark night, that there were no other lights in the area, and that he was unable to see the path ahead of him more than 25 to 30 feet into the Capital Bank parking lot. Johnson indicated that he had never used this route before, nor had he seen anybody else use it, that he did not have a bike light to illuminate the area ahead of him, and that he assumed the whole area was "just a parking lot."

Rice Street Clinic moved for summary judgment, arguing that Johnson failed to establish a prima facie claim of negligence. In support of their motion, the clinic submitted, among other documents, a transcript of appellant's July 2009 deposition and an affidavit. Johnson opposed the motion, submitting, among other documents, photographs of the rain garden.

Following a February 24, 2010 hearing, the district court granted the clinic's motion for summary judgment. Specifically, the district court concluded that the Rice Street Clinic did not owe Johnson a duty to keep their property safe because Johnson was an unknown trespasser. This appeal followed.

D E C I S I O N

The issue in this case is whether the district court erred by granting summary judgment in favor of the Rice Street Clinic and others. On appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). There is no genuine issue of material fact when there is evidence that

"merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). And we must view the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). In a negligence action, a defendant is "entitled to summary judgment when the record reflects a complete lack of proof on any of the four elements necessary for recovery: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of that duty being the proximate cause of the injury." *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001).

Here, the district court ordered entry of summary judgment, dismissing Johnson's negligence claim on the ground that he was a trespasser, and thus none of the defendants owed him a duty of care. *See Rieger v. Zackoski*, 321 N.W.2d 16, 20 (Minn. 1982) (defining a trespasser as "one who enters or remains on the premises without the express or implied consent of the possessor of land"); *see also Reider v. City of Spring Lake Park*, 480 N.W.2d 662, 666 (Minn. App. 1992) (providing that, in general, a landowner does not owe a duty of care for the safety of trespassers), *review denied* (Minn. April 13, 1992). Johnson argues that he was an "innocent trespasser" because he believed the clinic parking area was a public parking lot belonging to the nearby library.

A landowner owes an entrant a duty of reasonable care for the safety of the entrant, taking into account factors such as the circumstances under which the entrant entered the land, foreseeability of harm, and reasonableness of inspection, repair, or

warning. *Peterson v. Balach*, 294 Minn. 161, 164, 199 N.W.2d 639, 642 (1972) (abolishing the common-law distinctions between licensees and invitees). In considering whether a landowner exercised reasonable care in maintaining premises, we consider "the risks which might reasonably be anticipated" with respect to the property. *Callahan v. City of Virginia*, 230 Minn. 55, 59, 40 N.W.2d 841, 843 (1950) (determining that landowners were not negligent where "reasonable care did not require [landowners] to anticipate that a pedestrian using the sidewalk adjoining the entryway would be forced backwards into it by a strong wind" and the "entryway was safeguarded against accidents which might reasonably be foreseen"). In general, inability to see a condition because of darkness does not make it hidden where it is not reasonable to expect entrants to be on the premises in the dark. *See, e.g.*, *Champlin v. Walker*, 249 N.W.2d 839, 842 (Ia. 1977) ("Maintenance of an open hole which is not concealed other than by darkness has generally been held not to constitute wanton conduct within the meaning of [Iowa's rule for trespassers]."), *cited with approval in Watters v. Buckbee Mears Co.*, 354 N.W.2d 848, 851 (Minn. App. 1984).

Here, Johnson failed to present any facts showing that the property owners had reason to anticipate or foresee that, in the middle of the night, he would ride his bike through various private parking lots, onto an unpaved, unlighted area, and into the sunken rain garden. The property manager submitted an affidavit stating that it was not aware of any other person using the unpaved area adjacent to the parking lot as a bicycle shortcut or being injured by falling into the rain garden. And the photographs in the record show that the rain garden was clearly visible to people in the parking lot, with a fence on the

street side, and curb and grass leading up to the lip of the retaining wall on the other three sides. At his deposition, Johnson admitted that the rain garden was not hidden, explaining that he rode into it because it was "pitch black just about" and that he did not have a bicycle light to illuminate his path.

Landowners cannot reasonably be expected to anticipate and guard against falls by bicycling strangers who, without having any light source, venture in the middle of the night into a dark area that is not a path. Here, we conclude Johnson has not made a prima facie showing of facts sufficient to establish that the Rice Street Clinic or any others breached any duty of care by failing at 2:00 a.m. to warn Johnson of, or to protect Johnson against, the presence of the rain garden in the parking lot. Therefore, regardless of Johnson's argument that he was an innocent trespasser, the district court properly dismissed his negligence claim on summary judgment. We agree with the district court that the record "reflects a complete lack of proof" that the Rice Street Clinic or others breached a duty of care.

Affirmed.

Dated: