STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1367

Scott Trautner,
Appellant,

vs.

Dale Thompson, et al.,
Respondents.

Filed March 8, 2011
Affirmed
Toussaint, Judge

Ramsey County District Court
File No. 62-CV-09-11625

Ronald F. Meuser, Jr., Meuser & Associates, P.A., Eden Prairie, Minnesota (for appellant)

Karen R. Cote, Brett W. Olander & Associates, St. Paul, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Toussaint, Judge; and Hudson, Judge.

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

TOUSSAINT, Judge

Appellant Scott Trautner challenges a district court award of summary judgment dismissing his negligence claim against respondents Dale and Lynette Thompson.

Because the record supports the district court's decision that respondents did not owe a duty to appellant, we affirm.

D E C I S I O N

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. In opposing a motion for summary judgment, general assertions are not enough to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). "A party need not show substantial evidence to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents sufficient evidence to permit reasonable persons to draw different conclusions." *Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 507 (Minn. 2006) (emphasis omitted). Conversely, a "defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

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. *Star Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). A reviewing court 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). An award of summary judgment will be affirmed if it can be sustained

on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

To establish a prima facie case of negligence, a plaintiff must show that a duty was owed, breach of that duty, causation, and damages. *Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009). Summary judgment is appropriate when the record lacks proof of "any of the four elements of a prima facie case [of negligence]." *Id.* The existence of a legal duty "is an issue for the [district] court to determine as a matter of law." *Oakland v. Stenlund*, 420 N.W.2d 248, 250 (Minn. App. 1988), *review denied* (Minn. Apr. 20, 1988).

As a general rule, a possessor of land is under an affirmative duty to exercise reasonable care in inspecting and maintaining the premises in a reasonably safe condition. *Mattson v. St. Luke's Hosp.*, 252 Minn. 230, 232, 89 N.W.2d 743, 745 (1958). This duty is limited, however, as "[i]t is only when the owner or possessor, having a duty to remove snow and ice, improperly permits an accumulation thereof to remain after a reasonable length of time for removal has elapsed, that liability may arise for the unsafe and dangerous condition created." *Id.* at 234, 89 N.W.2d at 746 (quotation omitted). *Mattson* therefore stands for the proposition that a possessor's duty to clear snow and ice is not triggered until after a reasonable length of time after formation of the snow and ice.

Moreover, to prevail on his negligence claim, appellant bore "the burden of proving either that [respondents] caused the dangerous condition or that [they] knew, or should have known, that the condition existed." *Messner v. Red Owl Stores, Inc.*, 238 Minn. 411, 415, 57 N.W.2d 659, 662 (1953). "[S]peculation as to who caused the

dangerous condition, or how long it existed, warrants judgment for the landowner." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 365 (Minn. App. 2000).

Turning our attention to the present case, appellant was unable to establish when the ice formed on the stairs. At oral argument, appellant asserted that "ice does not develop immediately," and therefore "there clearly was a time in which [moisture] has resulted in a slippery condition." We are unable to see this statement as anything more than speculation as to how long the ice existed. Given appellant's lack of evidence as to when the alleged icy condition formed, it is not clear whether a reasonable time—as allowed by the *Mattson* holding—had passed, thereby giving rise to a duty on the part of respondents. We therefore hold that respondents did not owe a duty to appellant and the district court did not err by awarding summary judgment in respondents' favor.

Appellant argues that our decision in *Frykman v. Univ. of Minn.-Duluth,* 611 N.W.2d 379 (Minn. App. 2000), requires reversal in the present case. We disagree. In *Frykman*, the plaintiff was injured after a slip-and-fall caused by slippery conditions resulting from freezing rain. 611 N.W.2d at 380. Climatological data indicated measurable amounts of freezing rain falling the night before the plaintiff's injury, as well as trace amounts of precipitation on the day the plaintiff was injured. *Id*. The facts of the present case indicate haze, mist, and light rain in the hours leading up to appellant's injury; but while there is evidence in the record that it had rained that day, it is uncontroverted that that the roads were not slippery after the precipitation had ended. Based on these facts, we conclude that *Frykman* is distinguishable as the slippery conditions in the present case were not the result of raining-and-freezing precipitation,

but rather a result of water freezing after it had either fallen or melted. Our holding in *Frykman* that the university owed a duty to the injured party therefore does not control our decision in the present case.

Because we affirm on this ground, we do not address respondents' alternative theories in support of the summary-judgment award.

Affirmed.