[Cite as *Workman v. Linsz*, 2015-Ohio-2524.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102473

ADRIENNE WORKMAN

PLAINTIFF-APPELLANT

vs.

WILLIAM LINSZ

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-821846

BEFORE: Keough, P.J., Boyle, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: June 25, 2015

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} This appeal is before the court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1; App.R. 11.1(E).

{¶2} Plaintiff-appellant, Adrienne Workman, appeals from the trial court's judgment granting the motion for summary judgment of defendant-appellee, William Linsz, in her action for personal injuries arising from a slip and fall. Finding no merit to the appeal, we affirm.

I. Background

{¶3} On February 15, 2012, Workman arrived at Linsz's home at approximately 9:30 a.m. to perform housecleaning services. According to Workman, it was a very cold day but the driveway was clear of snow. She parked in the driveway, got out of her car, and walked up the driveway to the back door of the residence. As she reached the stairs leading to the back door, she "turn[ed] like on an angle," and her "right foot caught the ice, which [she] was unaware of and [she] went down." After she fell, Workman saw "like a rim of black ice, which [her] right foot caught and took her down." According to Workman, "the ice was formed around a crack in the driveway and also gathered near the driveway's drain"; and as she was "laying(sic) on the ground and also immediately following the incident, [she] observed that there were no other areas on patches of ice on the driveway, except in and around the location where she fell."

{¶4} In 2014, Workman filed suit against Linsz, alleging negligence. The trial court subsequently granted Linsz's motion for summary judgment, from which judgment Workman now appeals.

II. Analysis

{¶5} We review summary judgment rulings de novo, applying the same standard as the trial court. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Under Civ.R. 56(C), summary judgment is appropriate where (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to only a conclusion that is adverse to the nonmoving party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977).

{¶6} The party seeking summary judgment bears the burden of demonstrating that no issues of material fact exist for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 330, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988). The burden then shifts to the nonmoving party to provide evidence showing a genuine issue of material fact does exist. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). The nonmoving party may not rely on its pleadings, but must produce some evidence in support of its claim. *Id.*

{¶7} In order to establish actionable negligence, a plaintiff must show the existence of a duty, a breach of that duty, and an injury proximately caused by the breach. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 81 Ohio St.3d 677, 680, 693 N.E.2d 271 (1998).

{¶8} It is undisputed that Workman was a business invitee of Linsz. Property owners owe invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition, including warning invitees of latent or hidden dangers so as to avoid unnecessarily and unreasonably exposing invitees to risk of harm. *Perry v. Eastgreen Realty Co.,* 53 Ohio St.2d 51, 52, 372 N.E.2d 335 (1978).

{¶9} Nevertheless, it is well-settled that a property owner is under no duty to protect a business invitee against dangers that are known to the invitee or are so obvious and apparent to the invitee that he may reasonably be expected to discover them and protect himself against them. *Sidle v. Humphrey*, 13 Ohio St.2d 45, 233 N.E.2d 589 (1968), paragraph one of the syllabus. Normal winter weather conditions in Ohio are considered obvious dangers. As the Ohio Supreme Court has stated, "[t]he dangers from natural accumulations of ice and snow are ordinarily so obvious and apparent that an occupier of premises may reasonably expect that a business invitee on his premises will discover those dangers and protect himself against them." *Id.* at paragraph two of the syllabus.

{¶10} Thus, in Ohio, a property owner has no duty to remove natural accumulations of ice and snow from private driveways, walks, and steps on the premises. *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 644, 597 N.E.2d 504 (1992).

{¶11} There are exceptions to the general rule, however. If a property owner is shown to have had notice, actual or implied, that a natural accumulation of snow and ice on his premises has created a condition substantially more dangerous than what the business invitee should have expected in light of generally prevailing conditions,

negligence may be proven. *Debie v. Cochran Pharmacy-Berwick, Inc.*, 11 Ohio St.2d 38, 227 N.E.2d 603 (1967); *Watts v. Richmond Run #1 Condominium Unit Owners Assoc.*, 8th Dist. Cuyahoga No. 99031, 2013-Ohio-2695, ¶ 16. A second exception exists where the owner is actively negligent in creating or permitting an unnatural accumulation of ice and snow. *Bailey v. St. Vincent DePaul Church*, 8th Dist. Cuyahoga No. 71629, 1997 Ohio App. LEXIS 1884, *5 (May 8, 1997), citing *Lopatkovich v. Tiffin*, 28 Ohio St.3d 204, 503 N.E.2d 154 (1986).

{¶12} In his motion for summary judgment, Linsz noted that Workman had testified in her deposition that she saw the black ice immediately upon falling, thereby indicating that the condition was open and obvious. Accordingly, Linsz argued that there were no genuine issues of material fact for trial because the evidence demonstrated that the black ice upon which Workman fell was an open and obvious danger for which he owed no duty of care.

{¶13} Although Workman made no mention whatsoever during her deposition of a defective drain or crack in Linsz's driveway, in her brief in response to Linsz's motion, Workman argued that the second exception to Ohio's "no duty winter rule" applied because the black ice on Linsz's driveway was an unnatural accumulation caused by the defective condition of the drain in the driveway and a crack in the driveway. Workman contended that the affidavit attached to her brief in response, in which she asserted that "the black ice was formed around a crack in the driveway and also gathered near the driveway's drain," coupled with her assertion that when she was lying on the ground after her fall, she "observed there were no other areas or patches of ice on the driveway, except

in and around the location where [she] fell," created an issue of fact regarding whether Linsz was negligent for allowing an unnatural accumulation of ice on his driveway. The trial court rejected Workman's argument, finding that a party's mere assertion that the ice was an unnatural accumulation is insufficient to create an issue of fact, and without any other evidence, Linsz was entitled to summary judgment.

{¶14} On appeal, in her single assignment of error, Workman contends that the trial court erred in granting summary judgment because her affidavit "created genuine issues of material fact that remain to be litigated." Specifically, Workman contends that her affidavit created an issue of fact regarding whether Linsz's "improper maintenance of the driveways cracks and drain resulted in an unnatural accumulation of precipitation," which led to her fall. We disagree.

{¶15} As this court has stated, "'[a]n accumulation of ice does not become "unnatural" merely because of a party's assertion.'" *Roth v. Ponderosa Steakhouse*, 8th Dist. Cuyahoga No. 82817, 2003-Ohio-6336, ¶ 11, quoting *Theobald v. Normandy Towers*, 8th Dist. Cuyahoga No. 62106, 1993 Ohio App. LEXIS 1978, *5 (Apr. 8, 1993). In *Roth*, the plaintiff slipped and fell while walking down a handicap ramp outside the restaurant. She filed a complaint alleging that Ponderosa was negligent in preventing an unnatural accumulation of ice from forming on the handicap ramp. This court affirmed the trial court's grant of summary judgment to Ponderosa, finding that Roth's "mere speculation" that an uneven intersection of the sidewalk and handicap ramp had created an unnatural accumulation of ice was insufficient. The court found that "without more evidence (either through expert testimony or evidence so distinct that a layperson can see

the unnatural accumulation without the aid of an expert), we cannot find that uneven pavement, standing alone, results in an unnatural accumulation of ice." *Id.* at ¶ 13.

{¶16} Likewise, in this case, Workman's assertion that the alleged defective drain and depression in the driveway created an unnatural accumulation of ice is merely speculation. Without any expert testimony or other evidence, Workman's speculation is insufficient to create an issue of fact that the drain or crack in Linsz's driveway were defective so as to cause an unnatural accumulation of ice.

{¶17} Workman's reliance on *Harden v. Villas of Cortland Creek*, 11th Dist. Trumbull No. 2012-T-0088, 2013-Ohio-4629, is unavailing. In *Harden*, the plaintiff suffered a broken hip after falling on black ice that had formed in a trough in a pedestrian crossway. In considering the defendant's motion for summary judgment, the trial court noted that the plaintiff's expert had opined that placing the trough in the pedestrian crossway was a violation of Ohio Building Code and Americans With Disabilities Architectural Guidelines, and in violation of reasonable standards of maintenance and care. *Id*. at ¶ 25. The court opined that the expert's report was sufficient to raise a genuine issue of material fact regarding whether the ice the plaintiff fell on was an unnatural accumulation resulting from a construction defect. *Id*. at ¶ 26. Here, however, Workman produced no expert report — and indeed no evidence other than her self-serving affidavit — demonstrating the drain and depression in Linsz's driveway were defective and caused an unnatural accumulation of ice. Without more, Workman's self-serving affidavit is insufficient to establish a genuine issue of material fact.

{¶18} Furthermore, even if the accumulation of ice on the driveway were

considered an unnatural accumulation, Workman failed to produce any evidence that Linsz was "actively negligent in permitting or creating" the unnatural accumulation. *Lopatkovich*, 28 Ohio St.3d 204 at 207, 503 N.E.2d 154. "By definition, an unnatural condition is man-made or man-caused. Unnatural accumulations are caused by a person doing something that would cause ice and snow to accumulate in an unexpected place or way." *Watts*, 8th Dist. Cuyahoga No. 99031, 2013-Ohio-2695, at ¶ 13. Workman produced no evidence that Linsz did anything to cause the alleged defect, much less that he had actual or constructive notice of the alleged defective drain and crack in his driveway. Without any evidence that Linsz permitted, created, or even knew about the alleged defective conditions in his driveway, there is no genuine issue of fact that he was "actively negligent in permitting or creating an unnatural accumulation of ice." *Bailey*, 8th Dist. Cuyahoga No. 71629, 1997 Ohio App. LEXIS, at *5.

{¶19} Because there are no genuine issues of material fact that Workman fell on an open and obvious natural accumulation of ice, for which Linsz owed no duty of care, the trial court properly granted summary judgment to Linsz. The assignment of error is therefore overruled.

{¶20} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of

the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

MARY J. BOYLE, J., and
SEAN C. GALLAGHER, J., CONCUR