COURT OF APPEALS
DECISION
DATED AND RELEASED

January 14, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0715

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

Mary McCoats,

Plaintiff-Appellant,

v.

Threshermen's Mutual Insurance Company,
Hallowed Missionary Baptist Church and
Robert L. Pugh,

Defendants-Respondents,

Wisconsin Health Organization Ins., Corp.,

Defendant.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM D. GARDNER, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Curley, JJ.

PER CURIAM. Mary McCoats appeals from a judgment granted to Threshermen's Mutual Insurance Company, Hallowed Missionary Baptist Church and Robert L. Pugh. McCoats claims that the trial court erred in granting summary judgment because: (1) the defendants failed to establish a prima facie case for summary judgment; (2) Wisconsin imposes liability for negligence which foreseeably causes injury; (3) public policy does not bar McCoats's recovery; and (4) if current law does not allow her to recover, it should be changed. Because the landowners abutting a municipal sidewalk cannot be held liable for injuries sustained when McCoats slipped and fell on the sidewalk outside Hallowed Missionary, we reject each of her arguments and affirm.

I. BACKGROUND

On December 6, 1991, McCoats walked along the sidewalk in front of Hallowed Missionary Baptist Church. The caretaker of the church, Pugh, had recently shoveled snow from the sidewalk. McCoats slipped and fell and sustained injuries. She commenced a lawsuit against Pugh, the church and its insurer (Threshermen's).

The defendants filed a motion seeking summary judgment. The trial court granted the motion. Judgment was entered. McCoats now appeals.

II. DISCUSSION

When reviewing a grant of summary judgment, we apply the standards set forth in § 802.08, STATS., just as the trial court applies those standards. ***Voss v. City of Middleton***, 162 Wis.2d 737, 747-48, 470 N.W.2d 625, 628-29 (1991). The standard has been repeated so often that we decline to do so here. *See* ***id.***

We agree that it was proper to grant summary judgment in this case. It has been the longstanding law in this state that owners of premises abutting a city street are *not* responsible to individuals for injuries that result from failure to remove snow or ice from the municipal sidewalk. ***Walley v.***

Patake, 271 Wis. 530, 540, 74 N.W.2d 130, 135 (1956). Maintenance of a municipal sidewalk is a nondelegable duty and, therefore, the City, rather than the landowner, is responsible for injuries suffered while injured transversing the city sidewalk. ***Hagerty v. Village of Bruce***, 82 Wis.2d 208, 213-14, 262 N.W.2d 102, 104 (1978).

McCoats argues that the Restatement (2d) of Torts, § 324A, which says that even where a person has no duty to act, if that person chooses to act, he or she must act in a non-negligent manner, applies to this case.[1] She argues that because Pugh chose to shovel the sidewalk he had to do so in a non-negligent manner. We reject this argument. Although Wisconsin has adopted this restatement in general, *see* ***American Mut. Liability Ins. Co. v. St. Paul Fire & Marine Ins. Co.***, 48 Wis.2d 305, 313, 179 N.W.2d 864, 868 (1970), it is not applicable in the context of keeping a municipal sidewalk free of ice and snow.

McCoats also argues that if she cannot recover, she has suffered an injury without a remedy. We reject this argument. Section 81.15, STATS., specifically prescribes that a city may be held liable for failing to maintain its highways.[2] This includes sidewalks. ***Schattschneider v. Milwaukee &***

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[1] Restatement of Torts, § 324A provides:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if
>
> (a) his failure to exercise reasonable care increases the risk of such harm, or
>
> (b) he has undertaken to perform a duty owed by the other to the third person, or
>
> (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

[2] Section 81.15, STATS., provides in pertinent part:

> If damages happen to any person or his or her property by reason of the insufficiency or want of repairs of any highway which any town, city or village is bound to keep in repair, the person sustaining the damages has a right to recover the damages from the town, city or

Suburban Trans. Corp., 72 Wis.2d 252, 258, 240 N.W.2d 182, 185 (1976). The legislature has determined, however, that the cause of action lies only if the snow has been present for three weeks. The proper party to "remedy McCoats's injuries" is the city, but only if she can prove that the snow/ice was present for three weeks.

McCoats also argues that no public policy factor operates to bar her claim. It is not necessary to even reach a public policy analysis, however, because Wisconsin substantive law will not hold a landowner liable for a duty delegated to a municipality. *See* ***Hagerty***, 82 Wis.2d at 213-14, 262 N.W.2d at 104.

Finally, McCoats argues that if Wisconsin law does not allow her claim against the church, it should be modified or change. This court, however, is an error-correcting court. *See* ***State v. Strege***, 116 Wis.2d 477, 492, 343 N.W.2d 100, 108 (1984). Therefore, we decline to engage in lawmaking. Based on the foregoing, we conclude summary judgment was properly granted.

By the Court. – Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

(..continued)

> village.... No action may be maintained to recover damages for injuries sustained by reason of an accumulation of snow or ice upon any bridge or highway, unless the accumulation existed for 3 weeks.