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Lewis v. Burghard, et al

DONNA D. LEWIS, Plaintiff, v. JAMES B. BURGHARD, JR.,
MAIN STREAM TAX SERVICE, INC.,
and MAIN STREAM TAX SERVICE, INC.,
t/d/b/a MAIN STREET TAX SERVICE, Defendants
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Civil Action — Law, No. 2002–252, Jury Trial Demanded

Slip and fall negligence case; Hills and Ridges doctrine; Summary judgment denied

1. A landowner's duty to a licensee is to act reasonably to remove a dangerous condition which the owner knows about or should know about, and to warn her if she is unlikely to discover the condition on her own.

2. The Hills and Ridges doctrine can limit an owner's liability when a licensee falls on ice and/or snow, because it is unrealistic to require an owner to keep his walks free of natural accumulations at all times.

3. If the doctrine applies, a plaintiff must prove that snow and/or ice accumulated in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians; the owner had actual or constructive notice of the condition; and the accumulation caused the fall.

4. The doctrine applies only if generally slippery conditions exist in the community from natural accumulations; mere localized patches of ice do not relieve the owner of potential liability because their presence may signal the owner's neglect of a man-made hazard; in that situation, a plaintiff need not show that the hills and ridges remained in place for an unreasonable time.

5. An owner is not entitled to summary judgment based on this doctrine if the plaintiff alleges she fell on an isolated icy patch concealed under a light dusting of snow, and it is unclear whether generally slippery conditions existed in the community at the time; summary judgment is also improper if there is a factual dispute about whether the hazard existed long enough to impute notice to the owner.

Appearances:

Jan G. Sulcove, Esq., *Counsel for Plaintiff*

Amy L. Coryer-Host, Esq., *Counsel for Defendants*

OPINION

Herman, J., April 16, 2003

Introduction

Before the court is a motion for summary judgment filed by the defendants to the plaintiff's amended

complaint for injuries she allegedly suffered when she fell on a patch of ice on the sidewalk in front of the defendants' business. The record consists of the pleadings, the motion for summary judgment and answer, the plaintiff's deposition which includes exhibits, and a record of climatological observations for the entire month within which this incident occurred. The parties filed briefs and waived oral argument.

Background

On January 5, 2001 at approximately 6:50 a.m., the plaintiff was walking on the sidewalk near the intersection of South Main Street and West Queen Street in the borough of Chambersburg. She was heading to a bus stop to take a trolley to her job. She fell in front of the defendants' business near a pedestrian traffic signal pole. According to her deposition, she slid on a patch of ice which was concealed by a light dusting of snow. The plaintiff alleges the defendants were negligent in not keeping the sidewalk clear of ice and their negligence caused her to sustain back injuries resulting in wage loss and pain and suffering.

The plaintiff testified to the following facts. She lived at 26 West Queen Street at the time of the fall, approximately one-half block from the subject intersection. She frequently passed by this location and had done so during the winter months. On January 4, 2001, the day before her fall, the weather was cold but there was no ice or snow on the sidewalks, including the sidewalk in front of the defendants' business. She had no difficulty traversing the sidewalk on that day, though she could not recall at what time of day on January 4th she passed by the defendants' business.

The plaintiff awoke on the morning of January 5, 2001 at 6:00 a.m. to get ready for work. Light flurries were then starting to fall. She heard the radio forecast which called for a chance of snow that day. The plaintiff had not been expecting snowfall that day. When she left her apartment at approximately 6:50 a.m., it was snowing a bit harder than when she first awoke. Her landlord had already salted the area in front of her apartment building. No ice covered the sidewalk there, just a light dusting of snow. That same light dusting was present on the cars parked nearby.

The snow continued to fall as the plaintiff walked the half block from her building to the bus stop. It was still dark at that time. An inch or less of snow had accumulated on the sidewalks and roads. No snow plows had yet come by, and no residents or business owners were then out shoveling or salting their sidewalks, though two businesses had already removed what little snow there was from their sidewalks. The plaintiff encountered no icy patches on those sidewalks and had no trouble walking at her normal pace, though she testified she was carefully looking down at the ground as she walked.

The plaintiff arrived at the intersection at approximately 6:54 a.m. The businesses in the immediate vicinity were not yet open and had not cleared their sidewalks. She noticed no footprints in the snow in that area. As she made her way around the pedestrian traffic signal pole, her feet slid out in front of her. She landed on her buttocks and left hip. After getting back on her feet, she saw that she had fallen on a patch of ice which had been concealed beneath a light dusting of snow. She could see no other ice in the area.

According to a local newspaper article dated January 6–7, 2001 entered as an exhibit at the plaintiff's deposition, the snowfall of January 5th had not been expected by the community.

The plaintiff alleges the defendants were negligent in failing to remove, by the use of salt, ice melting chemicals, or cinders, the clear glaze of ice which had resulted from the freezing and thawing of melted water on the sidewalk.

Discussion

Pennsylvania Rule of Civil Procedure 1035.2 governing summary judgment provides:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if, after completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

There is no issue to be submitted to a jury where the record contains insufficient evidence of facts to make out a *prima facie* case. "The mission of the summary judgment procedure is to pierce the pleadings and assess the proof in order to see whether there is a genuine need for a trial...We have a summary judgment rule in this Commonwealth in order to dispense with a trial of a case...where a party lacks the beginnings of evidence to establish...a material issue." Ertel v. Patriot-News Co., 674 A.2d 1038, 1041 (Pa. 1996) (citations omitted). The nonmoving party, in this case the plaintiff, must come forward with evidence

showing the existence of facts essential to her cause of action for negligence. At the same time, the court in reviewing the motion must view the record in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Pennsylvania State University v. County of Centre, 615 A.2d 303 (Pa. 1992).

Preliminarily we note that the parties agree that the plaintiff was not a business invitee of the defendants at the time she fell, but was instead a licensee. This is because she was not at the subject location to conduct business with the defendant but was walking by for her own purpose — to catch the bus to work. A licensee is defined as one "who is privileged to enter or remain only by virtue of the possessor's consent." Section 330, Restatement (Second) of Torts; Palange v. City of Philadelphia, 640 A.2d 1305 (Pa.Super. 1994).

Section 342 of the Restatement sets out the duty owed by a possessor of land to a licensee: (1) the possessor knows or had reason to know of the condition and should realize that it involved an unreasonable risk of harm to such licensees and should expect that they will not discover or realize the danger; (2) the possessor fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved; and (3) the licensee does not know or have reason to know of the condition and the risk involved. Long v. Manzo, 682 A.2d 370 (Pa.Super. 1996).

The defendants argue the plaintiff has not presented a *prima facie* case of negligence. Specifically they contend that the plaintiff cannot show they had either actual or constructive notice that a clear glaze of ice lay beneath the light dusting of snow which had fallen less than one hour before her fall. This is so because, according to the plaintiff herself, the sidewalk was completely free of snow and ice on the day before she fell, and therefore the defendants could not have known about a dangerous condition in front of their business.

The defendants rely on the "Hills and Ridges" doctrine which limits the liability of a possessor of land for variations in weather conditions. Under this doctrine, a plaintiff must prove: (1) snow and ice had accumulated on the sidewalk in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians; (2) the owner had notice, either actual or constructive, of the existence of such condition; and (3) it was the dangerous accumulation of snow and ice which caused the plaintiff to fall. Rinaldi v. Levine, 176 A.2d 623 (Pa. 1962). A plaintiff has no basis for recovery unless she proves all three factors. Id; Milburn v. Knights of Columbus Home Association, 76 A.2d 466 (Pa. 1950). The idea is that a possessor of land cannot be liable simply because a general slippery condition exists on his sidewalks. A landowner is not required to keep his walkways completely free of natural accumulations of ice and snow at all times because this would impose an unrealistic and impossible burden. Instead it must appear there were dangerous conditions due to ridges or elevations which were allowed to remain for an unreasonable length of time. Wentz v. Pennswood Apartments, 518 A.2d 314 (Pa.Super. 1986).

However, the doctrine applies and can work to a defendant-owner's benefit only when generally slippery conditions exist in the community due to a natural accumulation of ice and/or snow. Localized patches of ice on walkways attributable to a man-made hazard, such as an open fire hydrant or water pipe, do not relieve the defendant of potential liability because those hazards are arguably caused by an owner's neglect of his premises. Harmotta v. Bender, 601 A.2d 837 (Pa.Super. 1992); Mahanoy Area School District v. Budwash, 604 A.2d 1156 (Pa. Cmwlth. 1992). Where a plaintiff alleges there was a localized patch of ice on a sidewalk otherwise free of ice and snow, the doctrine does not apply and a plaintiff need not show that the defendant allowed hills and ridges to remain for an unreasonable time. Tonik v. Apex Garages, Inc., 275 A.2d 296 (Pa. 1971).

The instant defendants assert that the light dusting of snow which fell between 6:00 a.m. and 6:54 a.m. on January 5th, and which was unexpected, created generally slippery conditions in the community. If we accepted this assertion, it would then be the plaintiff's burden to show the three elements of the hills and ridges doctrine. However, there is no clear evidence in the record at this point to compel us to conclude that the snow dusting itself created generally slippery conditions. Nor can we say with certainty that all reasonable minds would agree that icy accumulations existed throughout the entire community. Also, the record indicates that the plaintiff fell, not because of the snow, but because of an isolated icy patch **underneath** the snow.

The issue then becomes whether the ice was in place long enough to impute to the defendants actual or constructive notice of that dangerous condition under section 342 of the Restatement. The plaintiff traversed the defendant's section of the sidewalk sometime on January 4th, the day before her fall, and saw no ice there. The Record of Climatological Observations for that month indicates the precipitation and temperature in the area for each 24-hour period ending at 9:00 p.m. During the 24 hours before 9:00 p.m. on January 5th (i.e., between 9:00 p.m. on January 4th and 9:00 p.m. on January 5th), the precipitation was .26 inches of rain and/or melted snow, and 3.5 inches of snow and/or ice pellets. At 9:00 p.m. on

January 4th, 1 inch of snow, ice pellets, hail, and/or ice on the ground was noted. That amount increased to 4 inches by 9:00 p.m. on January 5th. The air temperature between 9:00 p.m. on January 3rd and 9:00 p.m. on January 5th was below freezing, fluctuating between 20 and 31 degrees. Those temperatures were conducive to precipitation in the form of freezing rain, which could have contributed to the formation of the icy patch in front of the defendants' business. These conditions existed for a minimum of 10 hours (between (9:00 p.m. on January 4th and 6:54 a.m. on January 5th) before the plaintiff's fall. It is for the jury to decide whether that amount of time provided the defendants with notice and a reasonable opportunity to neutralize the ice so as to eliminate that potential hazard on their property. For this reason, the defendants' motion for summary judgment will be denied.

ORDER OF COURT

Now this 16th day of April 2003, the court hereby denies the defendants' motion for summary judgment.

This last item was made part of the record through the stipulation of counsel.

The plaintiff in her brief does not address the defendants' contention that she was a licensee. We conclude from this that she does not dispute the characterization.