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FIFTH DIVISION
August 5, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SHIRELLE R. ALEXANDER,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 07 L 12664
)	
WASHINGTON HEIGHTS CARE CENTER, L.L.C., an)	Honorable
Illinois corporation and LRH PROPERTY)	Jeffrey Lawrence,
MAINTENANCE, INC., an Illinois corporation,)	Judge Presiding.
)	
Defendants-Appellees.)	
)	

JUDGE EPSTEIN delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

Held: In a slip-and-fall negligence action, summary judgment in favor of defendants was proper where plaintiff failed to produce sufficient facts showing that snow piled in the parking lot where she fell created an unnatural accumulation of ice that caused her accident.

¶ 1 In this slip and fall personal injury action, plaintiff Shirelle Alexander appeals from a grant of summary judgment in favor of defendants Washington Heights Care Center, L.L.C. (Care Center) and LRH Property Maintenance, Inc. (LRH). Plaintiff contends that the circuit court erred in entering

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summary judgment because: (1) the defendants owed her a duty of care; (2) a genuine issue of material fact exists as to whether the defendants breached their duty of care; and (3) the court lacked jurisdiction to decide the matter where the Care Center did not file an independent motion for summary judgment. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Plaintiff stated in her deposition that at approximately 12 p.m. on January 22, 2006, she arrived with her step father at the Care Center, a nursing home, to retrieve the property of her recently deceased aunt. It was a cold day. The sun was out and the sky was clear. As plaintiff left her vehicle and walked toward the front entrance of the Care Center, she noticed that the snow in the parking lot was plowed, but a thin layer of snow remained on the ground. There was a pile of plowed snow in front of her parking space. She did not see any salt on the ground. A few hours later, when plaintiff left the Care Center, the sun was no longer shining and she felt that the temperature had dropped. When plaintiff was approximately eight steps from her vehicle, she slipped and fell on a patch of ice she described as being at least six feet across.

¶ 4 On January 21, 2006, the day before plaintiff's accident, the parking lot was plowed and salted by LRH, the contractor the Care Center hired to remove snow from its premises. Jason Dober, the LRH employee who performed that task, stated in his deposition that it was his practice to push the snow to the northern and eastern boundaries of the lot and then spread between four and seven 50-pound bags of salt. Dober's job ticket for January 21, 2006, indicated, however, that he used just two bags of salt on the Care Center's lot that day. He testified that the job would have taken more, and the only reason he would have taken only two bags would be because there was additional salt

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already in his truck.

¶ 5 On November 8, 2007, plaintiff filed the instant lawsuit, bringing negligence claims against the Care Center and LRH. In count I of her complaint, plaintiff claimed that the Care Center:

“(a) Negligently and careless[ly] owned, operated, possessed and controlled the *** parking lot;

(b) Negligently, carelessly and improperly failed to direct or supervise those individuals responsible for maintaining, plowing and de-icing the *** parking lot;

(c) Negligently, carelessly and improperly failed to inspect the subject premises;

(d) Negligently and carelessly failed to assure that LRH followed its contractual obligations regarding the subject premises;

(e) Negligently and carelessly failed to warn its invitees, including Plaintiff, of the presence of ice on the said parking lot, though [the Care Center] knew, or in the exercise of ordinary care should have known, of its presence.”

In count II, plaintiff claimed that LRH:

“(a) Negligently and carelessly conducted its snow plowing, snow removal and de-icing of the *** parking lot;

(b) Negligently and carelessly, and contrary to its contract with [the Care Center], failed to salt or sand the *** parking lot;

(c) Negligently, carelessly and improperly failed to inspect the subject premises;

(d) Negligently and carelessly failed to warn Plaintiff and others lawfully upon the *** parking lot of the presence of unsalted ice though LRH knew, or in the exercise

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of ordinary care should have known, of its presence.”

¶ 6 On August 10, 2010, LRH filed a motion for summary judgment, arguing that it owed plaintiff no duty of care, and even if it did, it did not breach that duty because there was no evidence of its alleged negligence. On January 28, 2010, the trial court granted an oral motion by the Care Center to join LRH’s motion and granted summary judgment to both defendants on the entire complaint. The circuit court did not include the basis of its decision in the written order and no transcript of the hearing is included in the record. Plaintiff now appeals pursuant to Supreme Court Rules 301 (Ill. S.Ct. R. 301 (eff. Feb. 1, 1994)) and 303 (Ill. S.Ct. R. 303 (eff. May 1, 2007)). LRH has filed a brief responding to plaintiff’s appeal, while the Care Center, despite five requested extensions to do so, has not. We will therefore first address plaintiff’s appeal against LRH.

¶ 7 ANALYSIS

¶ 8 “The purpose of a summary judgment motion is to determine whether a genuine issue of material fact exists which should be tried.” *Flight v. American Community Management*, 384 Ill. App. 3d 540, 543 (2008). Summary judgment is appropriate where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2008). “The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt.” *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). “The grant of summary judgment is reviewed *de novo*.” *Flight*, 384 Ill. App. 3d at 543.

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¶ 9 “To state a cause of action for negligence, the plaintiff must allege facts sufficient to show the existence of a duty, a breach of that duty, and injury to the plaintiff which is proximately caused by that breach. *Flight*, 384 Ill. App. 3d at 544. Plaintiff contends that the trial court erred in granting summary judgment in favor of LRH because LRH owed her a duty of care, and because a genuine issue of material fact exists as to whether LRH created an unnatural accumulation of snow and ice that proximately caused her injuries. LRH responds, in relevant part, that summary judgment was proper because plaintiff failed to show a causal connection between its actions and the creation of an unnatural accumulation of ice. We agree.

¶ 10 It is well established that “[a] party who contracts with a property owner to remove snow or ice also owes the customers of that property owner a duty of reasonable care.” *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App. 3d 288, 290 (1992). “The scope of a snow removal contractor’s duty of care is delineated by the terms of its contract with the property owner. [Citation.] And where the contractor has such a duty, the duty is only to not negligently remove the snow.” *Williams v. Sebert Landscaping Co.*, 407 Ill. App. 3d 753, 757 (2011). A contractor negligently removes snow “by creating or aggravating an unnatural accumulation of ice and snow.” *Flight*, 384 Ill. App. 3d at 544.

¶ 11 In this case, the snow removal contract states that LRH will plow the Care Center’s “roadway entrances, exits, drives and parking spaces where accessible” and salt the premises “if requested.” Plaintiff does not allege, nor does the record reflect, that the Care Center requested LRH salt the parking lot. It is clear, however, that LRH had a duty to be free of negligence in removing snow from the Care Center’s parking lot.

¶ 12 Having established that LRH owed plaintiff a duty of ordinary care in removing snow from

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the Care Center's parking lot, we must examine whether plaintiff sufficiently demonstrated a breach of that duty. While plaintiff need not prove her case at the summary judgment stage, she must present some facts to support the elements of her cause of action. *Flight*, 384 Ill. App. 3d 543-44. Specifically, to survive a motion for summary judgment in a slip-and-fall case such as this, a plaintiff "must present some facts to show that the ice was unnatural or caused by defendant." *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325, 332 (1992). "The mere removal of snow which may leave a natural ice formation remaining on the premises does not itself constitute negligence." *Wells v. Great Atlantic & Pacific Tea Co.*, 171 Ill. App. 3d 1012, 1017 (1988). However, a mound of snow created by a snow plow is considered an unnatural accumulation (*Russell v. Village of Lake Villa*, 335 Ill. App. 3d 990, 994 (2002)), and where a plaintiff claims an ice formation was caused by a pile of plowed snow, he or she "must either show a direct link between defendants' snow piles and the ice that caused [him or] her to slip, or [he or] she must provide circumstantial evidence through an expert." *Madeo*, 239 Ill. App. 3d at 294.

¶ 13 Here, plaintiff claims that she slipped because LRH plowed the snow in the parking lot into a mound and failed to salt the ground adequately, allowing some snow to melt from the pile and reform as ice near her parking space. In support of that theory, plaintiff provides her own allegations that there was a pile of snow near her parking space, the ground was wet, the temperature dropped while she was inside the Care Center, and she slipped on a six-foot patch of ice near her vehicle. Plaintiff also relies on Dober's testimony and job ticket, which indicates that he took out two 50-pound bags of salt to cover the parking lot, when two or three times as much salt was needed to adequately cover that space. From this, plaintiff argues that it "is more than reasonable to infer" that

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LRH's actions caused an unnatural accumulation of ice to form. While plaintiff's theory is possible, in cases such as this, a plaintiff's mere speculation as to the cause of the ice is not sufficient to avoid summary judgment. *Madeo*, 239 Ill. App. 3d at 294; *Crane*, 228 Ill. App. 3d at 330-31; *Byrne v. Catholic Bishop of Chicago*, 131 Ill. App. 2d 356, 359 (1971). Rather, the plaintiff must provide some "nexus, other than complete speculation[,] between defendants' piles of snow and the ice where plaintiff slipped." (Internal quotation marks omitted.) *Madeo*, 239 Ill. App. 3d at 293.

¶ 14 For instance, in *Crane*, as in this case, the plaintiff slipped and fell on a patch of ice in a parking lot and brought a negligence action against the lot owner and the snow removal contractor. 228 Ill. App. 3d at 326. Several days before her accident, the contractor had plowed snow into a pile near the parking space where the plaintiff fell. *Id.* at 327. Unlike here, evidence was introduced that the temperature in the area had since fluctuated above and below the freezing mark, and that the parking lot had some bumps and depressions. *Id.* The plaintiff claimed that she was nearly certain that she slipped on ice that formed when the pile of snow near her parking space melted and refroze. *Id.* In affirming the trial court's entry of summary judgment for the defendants, this court found that the plaintiff's claim was "based on complete speculation" and, therefore, she failed to present a sufficient factual basis to support her assertion that the ice was created by an unnatural accumulation of snow. *Id.* at 330-31. In other words, she failed to show a sufficient nexus between the pile of snow and the ice upon which she slipped.

¶ 15 Similarly, in *Madeo*, the plaintiff slipped and fell on a patch of ice in a parking lot and brought a negligence action against the lot owner and the snow removal contractor. 239 Ill. App. 3d at 289-90. The plaintiff claimed that defendants negligently caused an unnatural accumulation of

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snow and ice by placing a pile of snow at the high point of the lot. *Id.* She asserted that the snow melted during a thaw, flowed down the lot, and later refroze, creating the ice upon which she slipped. *Id.* The plaintiff introduced meteorological data indicating that the temperature in the area had fluctuated above and below freezing in the days immediately prior to her accident. *Id.* at 292. She presented testimony that the parking lot sloped from east to west, and alleged that there was a pile of snow on the east end of the lot on the day of her accident. *Id.* She also produced a purported expert in the field of snowplowing, who testified that the snow should have been piled on the west side of the lot so that it would not melt, flow across the lot, and refreeze. *Id.* The expert, however, only viewed the lot several months after the fact, so he could not say whether plaintiff's fall was the result of the manner in which the snow was piled at the time of the accident. *Id.* In affirming the trial court's entry of summary judgment in favor of the defendants, this court found that the plaintiff failed to show "a direct link between defendants' snow piles and the ice that caused her to slip," and also that the circumstantial evidence introduced through her expert was insufficient to identify the cause of the ice formation. *Id.* at 294.

¶ 16 Plaintiff has introduced no evidence that she fell on an unnatural accumulation of ice, as opposed to a natural ice formation that remained on the lot after it was plowed. Her assertion that the ice formed when snow from the nearby pile melted, flowed along the parking lot, and then refroze near her vehicle is precisely the type of unsupported speculation rejected by this court in *Crane* and *Madeo*. There was, therefore, no genuine, triable issue of material fact presented to the circuit court, and summary judgment in favor of LRH was properly entered.

¶ 17 Plaintiff next contends that the trial court erred in granting summary judgment to the Care

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Center. According to plaintiff, “[t]he trial court lacked jurisdiction to grant summary judgment to [the] Care Center when it had not sought it in any pleading.” It is axiomatic that a motion for summary judgment is not a pleading. The cases referenced by plaintiff in support of her argument are inapposite as they relate to the rule that the issues in controversy and the theories upon which recovery is sought are fixed in the complaint, and circuit courts lack jurisdiction to adjudicate issues not presented through proper pleadings. *E.g.*, *IMC Global v. Continental Ins. Co.*, 378 Ill. App. 3d 797, 804-05 (2007). In other words, circuit courts cannot adjudicate an issue *sua sponte*. *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994). The motion for summary judgment at issue here was limited to defendants’ liability for their alleged negligence and did not raise issues outside the bounds of the pleadings. Therefore, the trial court did not lack jurisdiction to consider defendants’ motion for summary judgment.

¶ 18 Plaintiff further contends that the trial court erred in granting summary judgment to the Care Center because a genuine issue of material fact exists as to whether the Care Center allowed an unnatural accumulation of snow and ice to remain on its premises. The standards applied to owner-occupiers in slip-and-fall cases such as this are well established.

“A property owner has no duty to remove a natural accumulation of snow and ice from his property; however, a property owner who voluntarily undertakes the removal of snow and ice can be subjected to liability where the removal results in an unnatural accumulation of snow or ice that causes injury to a plaintiff. [Citations.] Therefore, in order to avoid summary judgment *** a plaintiff must allege sufficient facts for a trier of fact to find that defendants were responsible for an unnatural

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accumulation of water, ice or snow which caused plaintiff's injuries. [Citations.] While there is generally no duty to remove natural accumulations of ice and snow, a voluntary undertaking may subject defendant to liability if it is performed negligently. [Citations.] The mere removal of snow leaving a natural ice formation underneath does not constitute negligence. [Citations.] Liability will be imposed, however, where a plaintiff shows that an injury occurred as the result of snow or ice produced or accumulated by artificial causes or in an unnatural way, or by the defendant's use of the premises. [Citations.]" (Internal quotation marks omitted.) *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App. 3d 740, 746 (2005).

Plaintiff's claim against the Care Center fails for the same reason her claim against LRH failed; she supplied nothing more than her own speculation as to the link between the snow pile near her vehicle and the ice on which she fell. As such, there was no genuine issue of material fact presented to the circuit court and we affirm its entry of summary judgment in favor of the Care Center.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.