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2012 IL App (3d) 110914-U

Order filed August 17, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

MARK A. GRANT,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit
Plaintiff-Appellant,)	La Salle County, Illinois
)	
v.)	Appeal No. 3-11-0914
)	Circuit No. 09-L-153
KAPS CAFÉ, an Illinois corporation,)	
d/b/a JOHN'S PLACE, and ILLINOIS)	
VALLEY EXCAVATING,)	Honorable
)	Joseph P. Hettel
Defendants-Appellees.)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court properly granted summary judgment to defendants where plaintiff failed to establish a nexus between piles of snow defendants created and ice upon which plaintiff fell.
- ¶ 2 Plaintiff, Mark A. Grant, filed a complaint against defendants, Kaps Café, d/b/a John's Place (hereinafter John's Place), and Illinois Valley Excavating after he slipped and fell in a parking lot owned by John's Place and plowed by Illinois Valley Excavating. Defendants filed a motion for

summary judgment, arguing that plaintiff failed to establish a link between their actions and plaintiff's fall. The trial court granted the motion. We affirm.

¶ 3 On December 1, 2008, Illinois Valley Excavating plowed snow from the parking lot of John's Place, pursuant to an oral agreement between the entities. The parking lot is located between Fifth Street and the entrance to John's Place. The parking lot is blacktop, square in shape, and holds about 20 to 25 cars. It is level with no significant slope. There is a line of concrete bumpers at the west end of the parking lot. To the west of the bumpers is a City of Peru parking lot. Between the two parking lots is a three to four foot strip of grass. When Illinois Valley Excavating plowed John's Place's parking lot, it pushed the snow and piled it in the three to four foot strip of grass between the John's Place parking lot and the City of Peru parking lot.

¶ 4 On December 8, 2008, plaintiff pulled into the parking lot of John's Place and parked in the last available parking space. The front of his vehicle was facing west toward a concrete bumper and the snow pile in the strip between the John's Place parking lot and the City of Peru parking lot. There was a pile of snow between one and two-and-a-half feet high in the strip between the John's Place and city parking lots. After parking his vehicle, plaintiff opened the driver's side door and got out of the vehicle. He walked one or two steps, then fell.

¶ 5 Thereafter, plaintiff filed a two-count complaint against defendants. Count I alleged that John's Place was negligent for (1) permitting unnatural accumulations of snow and ice to remain on their parking lot, (2) failing to reasonably inspect the parking lot, and (3) failing to warn the public of the presence of unnatural accumulations of snow and ice on the parking lot. Count II alleged that Illinois Valley Excavating had a contract with John's Place to remove snow from John's Place's parking lot. The complaint alleged that Illinois Valley Excavating was negligent in (1) its snow

removal operations, (2) failing to warn individuals that its snow removal left the parking lot in an unnatural and dangerous condition, (3) failing to make a reasonable inspection of the parking lot, and (4) conducting its snow removal operations in a manner that would increase the likelihood of individuals slipping and falling on the unnatural accumulation of ice and snow.

¶ 6 Depositions of several individuals were taken. Plaintiff testified that he is a regular at John's Place and went there every day. Before he fell on December 8, 2008, he did not notice what was on the ground and did not notice if the ground was covered in snow or ice. After he fell, he thought that he had fallen on ice. When asked if he knew how the ice got there, plaintiff responded, "common sense, the snow was pushed up, it warmed up sometime, it must have melted down and refroze again." He admitted that he did not see any water melting or streaming from the piles of snow located in the strip of grass on that day or any other day. Before December 8, 2008, he had no problems with the parking lot being slippery.

¶ 7 Plaintiff's brother, William Grant, testified that he was with plaintiff at John's Place on December 8, 2008. After plaintiff fell, Grant went over to help him. Grant saw plaintiff lying on the ground. He testified that there was a lot of ice on the ground where plaintiff was lying. He believed that the presence of the ice on the parking lot had something to do with the snow and sleet that winter.

¶ 8 Nicole Piano is an owner of John's Place. She was at John's Place when plaintiff fell. When she went outside to see what had happened, she observed plaintiff lying between two parked cars. She testified that the parking lot was clear with no standing snow, but there was a pile of snow in the three to four foot strip between John's Place's parking lot and the City of Peru's parking lot. The snow pile had been there for several days before plaintiff's fall.

¶ 9 Piano's father, Mark Kudela, came to the parking lot at John's Place after plaintiff fell. He saw a pile of plowed snow along the west edge of the parking lot between John's place and the City of Peru's parking lot. He said that snow had been there for several days and is always there. According to him, there was no other accumulated snow in the parking lot.

¶ 10 Mark Michelini testified that he handles the snow removal for Illinois Valley Excavating. Illinois Valley Excavating had an oral agreement with John's Place to plow the parking lot when it snowed two or more inches. He was told to push the snow from the parking lot to the west of John's Place parking lot into the strip of land between John's Place's parking lot and the City of Peru's lot. The last time Illinois Valley Excavating plowed the John's Place's parking lot prior to plaintiff's fall was on December 1, 2008.

¶ 11 Illinois Valley Excavating filed a motion for summary judgment, arguing that plaintiff failed to present evidence showing a connection between the snow it plowed and the ice or other substance on which plaintiff fell. John's Place also filed a motion for summary judgment, arguing that plaintiff failed to establish a causal link between the pile of snow in front of his vehicle and his injury. A hearing was held on defendants' motions for summary judgment. After the parties presented their arguments, the trial court granted defendants' motions, finding that plaintiff failed to establish "direct evidence of melting," which was necessary to find defendants liable.

¶ 12 Summary judgment is a drastic means of disposing of litigation and should be allowed only when the right of the moving party to summary judgment is clear and free from doubt. *Crane v. Triangle Plaza, Inc.*, 228 Ill. App.3d 325, 328 (1992). The purpose of a summary judgment proceeding is to determine whether there are any genuine issues of material fact that should be tried. *Id.* In making this determination, the evidence is to be construed strictly against the moving party

and liberally in favor of the opponent. *Id.* If the pleadings, depositions and affidavits reveal no genuine issue of material fact, then the moving party is entitled to summary judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008). We review a trial court's grant of summary judgment *de novo*. *Hornacek v. 5th Avenue Property Management*, 2011 IL App (1st) 103502, ¶ 25.

¶ 13 A property owner generally owes no duty to its customers to remove snow or ice that accumulates naturally on its premises. *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App. 3d 288, 290 (1992). However, where a property owner undertakes to remove ice or snow, it must exercise ordinary care in doing so. *Id.* 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. *Id.*

¶ 14 To establish that a property owner and snow removal contractor breached their duties, the plaintiff must show that the ice he slipped on was an unnatural accumulation caused by the defendants. *Crane*, 228 Ill. App. 3d at 330. When a plaintiff alleges that he slipped on ice that came from a pile of plowed snow, the plaintiff has the burden of affirmatively showing a direct link between the piles of plowed snow and the ice that caused him to slip. *Madeo*, 239 Ill. App. 3d at 294; *Bakeman v. Sears, Roebuck & Co.*, 16 Ill. App. 3d 165, 170 (1974). "A finding of an unnatural or aggravated natural condition must be based upon an identifiable cause of the ice formation." *Gilbert v. Toys "R" Us, Inc.*, 126 Ill. App. 3d 554, 557 (1984).

¶ 15 A plaintiff's belief as to how the ice formed does not constitute a sufficient factual basis for an assertion that the ice was created by an unnatural accumulation of snow. See *Madeo*, 239 Ill. App. 3d at 293; *Crane*, 228 Ill. App. 3d at 330-31. It is not enough for the plaintiff to suggest that he likely slipped on ice formed when the snow piles melted and refroze. See *Madeo*, 239 Ill. App. 3d at 294; *Crane*, 228 Ill. App. 3d at 331. Such an assertion constitutes mere speculation. See *id.*

¶ 16 Summary judgment in favor of defendants is appropriate when the plaintiff fails to show any nexus, other than speculation, between the defendants' piles of snow and the ice where the plaintiff slipped. *Crane*, 228 Ill. App. 3d at 330-31. The plaintiff must supply concrete evidence linking the snow pile to the ice that caused him to slip. *Madeo*, 239 Ill. App. 3d at 292. Where a plaintiff presents no evidence that could lead a reasonable trier of fact to conclude that the ice resulted from unnatural, rather than natural conditions, summary judgment should be granted to defendants. See *id.*

¶ 17 Here, plaintiff was required to provide some factual basis that the patch of ice upon which he fell was an artificial or unnatural accumulation caused by defendants. No one, including plaintiff, testified that they saw water melting from the snow piles next to the parking lot. Rather, plaintiff testified that it was "common sense" that the ice he slipped on came from the snow piles melting. Such testimony was speculative and did not constitute a sufficient factual basis for his assertion that the ice upon which he slipped was created by the snow piles. See *Madeo*, 239 Ill. App. 3d at 294; *Crane*, 228 Ill. App. 3d at 331. Plaintiff failed to show any nexus, other than speculation, between the snow piles and the ice where he slipped. Because plaintiff presented no factual link between the water source and the ice upon which he fell, the trial court properly granted summary judgment to defendants. See *Crane*, 228 Ill. App. 3d at 332.

¶ 18 The order of the circuit court of La Salle County is affirmed.

¶ 19 Affirmed.