

No. 1-12-0966

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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VEARNEST McCLELLAN, JR.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 10 M3 600
	)	
CEDA NORTHWEST SELF HELP, INC.,	)	Honorable
	)	Martin S. Agran,
Defendant-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE McBRIDE delivered the judgment of the court.  
Justices Howse and Palmer concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Summary judgment was properly granted for defendant where plaintiff failed to allege facts establishing that ice and snow on which plaintiff allegedly slipped and fell was an unnatural accumulation attributable to defendant.
- ¶ 2 Plaintiff Vearnest McClellan, Jr. appeals *pro se* from an order of the trial court granting summary judgment to defendant, CEDA Northwest Self Help Center, Inc. (CEDA), in this negligence and premises liability action for injuries sustained in a slip and fall on defendant's property. On appeal, plaintiff claims that the trial court erred in granting summary judgment where defendant negligently maintained its premises. We affirm.

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¶ 3 This case arises from injuries plaintiff allegedly sustained on or about March 31, 2009, when he exited his vehicle and slipped and fell on an accumulation of ice, snow, and water directly in front of defendant's building at 1300 West Northwest Highway in Mount Prospect. Plaintiff filed a complaint in negligence and premises liability seeking damages for those injuries.

¶ 4 Plaintiff specifically alleged in count 1 that at the time of the incident, defendant was in sole control of the sidewalk in front of its building and was responsible for the management, care, and supervision of the sidewalk. According to plaintiff, defendant was negligent in that it failed to: maintain the sidewalk in usable condition, eliminate the danger that was caused by the ice that accumulated on the sidewalk, and warn plaintiff and others lawfully using the sidewalk of the dangerous and hazardous condition that existed there. As a direct and proximate result of defendant's negligence, plaintiff fell and injured his hip, back, shoulders, hands, left foot, and neck, resulting in medical expenses, pain, inconvenience, and mental anguish. Plaintiff requested a judgment against defendant in excess of \$85,790.

¶ 5 In count 2, brought under the theory of premises liability, plaintiff alleged that defendant voluntarily assumed the obligation to take care of the sidewalk in front of its building as evidenced by the fact that when he entered the building, a CEDA supervisor, Mary Nommensen, directed the receptionist on duty to re-salt the sidewalk. Plaintiff specifically stated that defendant failed to: salt the sidewalk on a consistent basis to keep it free from ice, eliminate the danger that was caused by the ice that accumulated on the sidewalk, and warn plaintiff and others lawfully using the sidewalk of the dangerous condition. Plaintiff listed the same injuries he incurred in count 1, and again requested a judgment against defendant in excess of \$85,790.

¶ 6 On September 17, 2010, defendant filed an answer to plaintiff's complaint denying any negligence on its part. Defendant specifically denied that it controlled, managed, or cared for the sidewalk parallel to Northwest Highway, and denied that it owed or breached any duty to

plaintiff. Defendant also raised two affirmative defenses claiming that plaintiff breached his duty to use reasonable care for his own safety in that he failed to: keep a proper and sufficient lookout where he was going, avoid an area where he knew or should have known he would have difficulty walking, avoid an open and obvious condition on the sidewalk, and avoid a natural accumulation of ice and snow. Defendant thus asserted in his first affirmative defense that plaintiff contributed more than 50% of the complaint of injuries and damages and thus judgment must be entered in favor of defendant. In its second affirmative defense, defendant asserted that plaintiff contributed to less than 50% of the complaint of injuries and damages and thus plaintiff's recovery, if any, should be reduced by that percentage of fault attributable to plaintiff.

¶ 7 A deposition was taken from plaintiff who testified that on or about March 31, 2009, his wife drove him to CEDA at 10 a.m. because he needed assistance with his electric and gas bills. At the time of the incident in question, it was raining on top of approximately one foot of snow that had fallen the previous evening. By the time plaintiff arrived at CEDA, the ground was covered in "slush," *i.e.*, a combination of ice and water. Plaintiff's wife pulled into CEDA's parking lot and stopped the car at the curb in front of the building. When plaintiff stepped out of the vehicle and onto the sidewalk, both of his feet came out from under him and he fell near the stairs. Plaintiff specifically indicated that when he planted his first foot on the ground he was steady, but when he attempted to take his second step he fell and landed on his right side. His right foot all the way up to his right side struck the pavement. After the fall, plaintiff used his hand to push himself up and grabbed the bannister. He then went inside the building and came back out with a CEDA representative, Mary Nommensen, who looked at the area where plaintiff fell and told him that she had previously instructed the receptionist to put salt on the ground, but plaintiff indicated that there was no salt present. Following the incident, Nommensen remarked that she would tell the receptionist to put some salt down on the sidewalk. Other than a small

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snow pile about two feet from the stairs of the building, plaintiff did not testify to seeing any evidence of the removal of snow or ice. Moreover, plaintiff did not see any relationship between the small snow pile and the area where he fell.

¶ 8 Plaintiff filled out a complaint form at CEDA and then went to the hospital because he was having chest pain. Plaintiff also felt pain in his back, shoulders, hands, and feet. At the hospital, after several tests were run on plaintiff, he was told to see a specialist for his back, and that he needed therapy to help with the pain. Plaintiff was told at the hospital that he suffered a ruptured disk in his neck and the lower part of his back, and that he was leaking calcium in his back. After he was discharged from the hospital, plaintiff sought follow-up care for his injuries and began physical therapy. He also saw Dr. Muhammad Muzammil about five or six times. Dr. Muzammil would check on his injuries, recommend medications, and instruct him to continue physical therapy. Plaintiff also saw a chiropractor for about a month because the therapy was not reducing the pain. At the time of the deposition, plaintiff continued to have residual pain from the accident, including lower back and shoulder pain.

¶ 9 In addition to this evidence, the record also contains an affidavit from Mary Nommensen. Nommensen attested that she was the energy services supervisor for CEDA, and that on the day of the alleged accident, no employee or agent of CEDA undertook to remove any accumulations of snow or rainfall from the CEDA premises. She also averred that although CEDA does keep salt on the premises, it was not used on the date of the accident prior to her being notified of the alleged incident.

¶ 10 On August 12, 2011, defendant filed a motion for summary judgment asserting that plaintiff's unsupported conclusion that the sidewalk was slippery was insufficient to prove his contentions of negligence and failed to provide proof that any action by CEDA was the proximate cause of his fall. In particular, plaintiff was unable to show that the sidewalk was

covered with any slippery substance other than the snow and water that had naturally accumulated prior to the accident. Defendant further maintained that nothing in the record suggested that CEDA engaged in a voluntary undertaking, *i.e.*, spreading salt on the sidewalk, as asserted by plaintiff. Defendant points out that the alleged conversation regarding the salting of the sidewalk occurred after the accident, and plaintiff could not have relied on information that he did not have before the accident.

¶ 11 In his response, plaintiff maintained that defendant was aware of the weather conditions prior to the days leading up to his visit, that he was CEDA's invitee, and that CEDA, as a business owner, was responsible for maintaining their property in accordance with the "Village of Mount Prospect Property Maintenance Code." According to plaintiff, defendant also violated section 2 of the Snow and Ice Removal Act (745 ILCS 75/2 (West 2010)). Plaintiff also asserted that the actual cause of his slip and fall was due to debris, *i.e.*, gravel and broken glass, that accumulated on the sidewalk. Plaintiff alleges that when he fell onto this debris, it punctured his lower back and caused the disks in his spine to become dislocated. He asserts that defendant repeatedly asked him during the deposition if he slipped on ice in an attempt to "get him to admit" that ice was the cause of his fall in order to dismiss his claim. However, plaintiff did not witness any ice formation, but only saw debris and slush as it was wet from the rain.

¶ 12 Defendant replied that plaintiff misapplied the Snow and Ice Removal Act, and cited to a section that referred to residential property, which CEDA is not. Defendant also noted that, in plaintiff's response, plaintiff attempted to avoid his testimony at the deposition. In particular, defendant attempted to show that he slipped on debris instead of the natural accumulation of ice and snow.

¶ 13 On March 30, 2012, the trial court entered a written order granting defendant's motion for summary judgment with prejudice. In doing so, the court noted that briefs were filed, the parties

were present, and it was fully advised in the premises. Plaintiff now challenges that ruling on appeal.

¶ 14 Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010). The trial court may grant summary judgment after considering "the pleadings, depositions, admissions, exhibits, and affidavits on file in the case" and construing that evidence in favor of the non-moving party. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). We review the circuit court's grant of summary judgment *de novo*. *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995).

¶ 15 As a general rule, a landowner has no duty to remove natural accumulations of snow or ice from its premises. *Krywin v. Chicago Transit Authority*, 238 Ill.2d 215, 227 (2010). However, a landowner may be subject to liability where injuries occur from the artificial or unnatural accumulation of snow or ice or an accumulation aggravated by the owner. *Branson v. R & L Investment, Inc.*, 196 Ill. App. 3d 1088, 1091 (1990). Thus, in order to survive summary judgment, the plaintiff must sufficiently show that the accumulation of snow, ice, or water was somehow caused by the landowner. *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App. 3d 740, 746 (2005).

¶ 16 Here, plaintiff alleges that defendant was negligent for failing to maintain its premises in a safe condition so that its invitees could enter CEDDA's premises without injury. Plaintiff specifically maintains that defendant failed to remove debris, snow, and ice from its sidewalk. Although plaintiff is not required to prove his case at the summary judgment stage, he must present evidentiary facts to support the elements of his cause of action. *Helms v. Chicago Park District*, 258 Ill. App. 3d 675, 679 (1994). Plaintiff failed to do so in this case.

¶ 17 Here, plaintiff failed to provide sufficient evidence that there was an unnatural accumulation of snow and ice. Instead, plaintiff simply alleged in his complaint that defendant failed to maintain its premises. Plaintiff's deposition testimony is similarly insufficient because he merely alleged that he slipped on slush causing him to fall. Further, outside of a small snow pile that plaintiff indicated had no relation to the area where he fell, plaintiff saw no evidence of snow removal, and only indicated that Nommensen was going to put salt on the sidewalk after the accident. Accordingly, plaintiff has not presented any evidence to show that the accumulation of ice or snow was unnatural or aggravated by defendant. Therefore, plaintiff failed to establish that defendant had a duty to remove the snow or ice from its property. We also note that plaintiff's attempt to change his deposition testimony in subsequent pleadings and his brief to show that he actually fell on debris, not ice or snow, is unavailing where the record is devoid of any evidence that debris was at the scene of the accident.

¶ 18 In reaching this conclusion, we find that plaintiff improperly relies on the Snow and Ice Removal Act (745 ILCS 75/1 *et seq.* (West 2010), the municipal code of the Village of Mount Prospect, and *Myers v. Winslow R. Chamberlain Co.*, 443 N.W.2d 211 (1989). The Snow and Ice Removal Act is inapplicable to the case at bar as it applies only to residential properties. See 745 ILCS 75/2 (West 2010). Plaintiff, without actually citing a section of the municipal code of Mount Prospect, appears to contend that it controls the issue in this case. However, as shown above, Illinois State law addresses a landowner's duty with regard to snow and ice removal, and we need not rely on the municipal code of Mount Prospect. Similarly, we find that we are not bound by the Minnesota appellate court decision in *Myers*. See *People ex rel. Watson v. Spinka*, 58 Ill. App. 3d 729, 734 (1978) (stating that only in the absence of Illinois authority on the point of law in question are we to look to other jurisdictions for persuasive authority).

¶ 19 We also find plaintiff's argument that defendant's motion for summary judgment was granted because plaintiff was not represented by an attorney unpersuasive. There are no documents in the record to support his allegation, and plaintiff failed to preserve a record of the transcripts at the motion hearing. Any doubts arising from the incompleteness of the record will be resolved against the appellant (*Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)); and when a reviewing court is faced with an incomplete record on appeal, we must presume the trial court ruled or acted correctly (*Moening v. Union Pacific R.R. Co.*, 2012 IL App (1st) 101866, ¶ 38). Therefore, we must reject defendant's argument that summary judgment was entered against him because he was not represented by an attorney.

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

¶ 21 Affirmed.