SECOND DIVISION
September 3, 2013

Nos. 1-12-1596 and 1-12-1599
(consolidated)

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARIAN BRANSTRATOR, as Special Administrator of the Estate of DONN P. BRANSTRATOR, deceased,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	
v.	)	No. 08 L 11789
HANNA HRYNIEWICKI, and ADAM HRYNIEWICKI, Individually and d/b/a THE GROVE BANQUETS & CATERING and SCHWABEN CENTER, INC.,	)	Honorable John Kirby, Judge Presiding.
Defendants-Appellants.	)	

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Connors and Simon concurred in the judgment.

O R D E R

¶ 1 *HELD*: Summary judgment for defendants affirmed where they owed the decedent no duty to protect him from motorists traveling on a public roadway. Circuit court did not abuse its discretion in denying defendants' motion for sanctions; order affirmed.

¶ 2 Plaintiff Marion Branstrator, as special administrator of the Estate of Donn Branstrator

(the decedent), brought this wrongful death and survival action against defendants Hanna and Adam Hryniewicki, individually and doing business as The Grove Banquets and Catering, and Schwaben Center, Inc. The decedent, her husband, was struck and killed by a car while attending a dinner at a banquet facility operated/administered by defendants. The circuit court granted summary judgment in favor of defendants. Defendants then filed a motion for sanctions, which was denied. Plaintiff now appeals from the order for summary judgment, and defendants cross-appeal from the order denying their motion for sanctions. We have consolidated their appeals and affirm both.

¶ 3 I. BACKGROUND

¶ 4 The essential facts of this case are straightforward and largely undisputed. On October 29, 2006, Donn and Marion Branstrator drove to a banquet facility called the Schwaben Center, at 301 North Weiland Road, in Buffalo Grove. They were attending a dinner there put on by the Schleswig-Holsteiner Sängerbund and Schwaben Verein[1] to which they had been invited by their friends Walter and Trish Schlotfeldt. When they arrived, the Branstrators found the Schwaben Center parking lot, on the east side of Weiland Road, to be full. They asked an older man in a suit if there was another place to park, and the man replied that there was parking across the street. Taking his advice, they drove across the street to the west side of the road and parked in a different lot located next to some soccer fields, at 20418 Weiland Road, in Prairie View.

¶ 5 After parking their car, the Branstrators walked across the street and attended the dinner.

[1] Walter Schlotfeldt described the Schleswig-Holsteiner Sängerbund organization as "a group of German men and women that meet for the purpose of continuing on the German heritage of singing and dancing." Schwaben Verein is an athletic club as well as a singing group.

At one point during the evening, the decedent mentioned to people at their table that they had been unable to find parking and had to park on the west side of Weiland Road. Plaintiff testified that Walter Schlotfeldt told him "it was okay because there would be somebody to help you cross." Walter Schlotfeldt testified, however, that he was not aware that any entity ever provided assistance in crossing the street to those who parked in the lot across Weiland Road, and that he never told the Branstrators there would be a crossing guard for them. Later in the evening, the decedent went to move his car over to the banquet facility parking lot. As he was crossing to the west side of Weiland Road, he was struck by a vehicle traveling southbound. He died as a result of his injuries.

¶ 6 The Schwaben Center and the parking lots on the east and west side of Weiland Road are owned by a trust whose beneficial owners are Schwaben Athletic Club and Schwaben Verein. Schwaben Center, Inc. is the legal entity for the banquet facility. Schwaben Center, Inc., has no employees and merely leases the property to third-parties. On the date of the accident, Golden Duck, Inc., doing business as The Grove Banquets (the Grove), was leasing the Schwaben Center and the parking lot on the east side of Weiland Road. Hanna Hryniewicki[2] was the president of Golden Duck, Inc., and her husband Adam was the secretary.

¶ 7 The Schwaben Center parking lot, on the east side of Weiland Road, is asphalt and has a wrought iron fence. The parking lot on the west side of Weiland Road is gravel, has a chain link fence with a sign reading "Private Property," and is occasionally used for overflow parking from the banquet facility. For some soccer events and the Schwaben Verein's annual Octoberfest

[2] Hanna's legal name is Bozenna Hryniewicki.

celebration, the Buffalo Grove police department has been hired to help people cross Weiland Road from one parking lot to the other. However, there were no crossing guards out on the night of the accident. Hanna Hryniewicki further testified that the Grove did not employ anybody to oversee parking, and never asked its patrons to park in the lot on the west side of Weiland Road.

¶ 8 On October 23, 2008, plaintiff filed a wrongful death and survival action against defendants and Schleswig-Holsteiner Saengerbund. Defendants moved to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2008)), and the circuit court granted the motion and struck plaintiff's complaint.

¶ 9 On August 11, 2009, plaintiff filed an amended complaint alleging wrongful death and survival against defendants and Schleswig-Holsteiner Saengerbund. She asserted, *inter alia*, that the decedent was directed by defendants' employees to park his car in the lot on the west side of Weiland Road and advised by them that defendants "typically provided a crossing guard for such functions to assist patrons across the busy thoroughfare to both park and obtain their cars." She claimed that defendants were negligent in that they failed to employ personnel to assist people exiting the premises when such assistance had been promised; failed to hire employees to assist patrons crossing Weiland Road when such assistance had been promised; instructed the decedent to park his vehicle in a lot west of Weiland Road; failed to provide adequate lighting for patrons exiting the facility; failed to provide a safe means of exiting the premises; failed to warn patrons of the dangerous condition outside the facility; and were otherwise negligent in the management, control, operation, and maintenance of the establishment.

¶ 10 On September 9, 2009, Schleswig-Holsteiner Saengerbund filed a motion to dismiss

plaintiff's amended complaint pursuant to section 2-615 of the Code. Soon thereafter, defendants also filed a motion to dismiss plaintiff's amended complaint. Upon agreement of plaintiff, the case against Schleswig-Holsteiner Saengerbund was dismissed with prejudice. Defendants' motion to dismiss, however, was denied, and the case proceeded to discovery.

¶ 11 At the conclusion of discovery, defendants moved for summary judgment. They argued that they owed no duty to the decedent because there was no voluntary undertaking; they were merely adjacent property owners and there was no evidence that they appropriated the use of Weiland Road; and crossing the street in front of a car is an open and obvious danger. They also argued that they were not the proximate cause of the accident, and that there was no evidence of conscious pain and suffering for any survival action.

¶ 12 Plaintiff responded that defendants "voluntarily undertook to protect guests by stationing an employee in the Schwaben center parking lot to direct guests across the street," and that "[b]y hosting a large event where the parking on the east side of the street was insufficient, Defendants voluntarily undertook a duty to provide crossing assistance to guests who were forced to park on the west side of the street." Plaintiff also responded that defendants owed the decedent "a duty beyond the boundaries of their premises," that there was a genuine issue of material fact as to whether crossing Weiland Road was an open and obvious danger, and that there was "an overwhelming amount of evidence from which a reasonable jury could find that Defendants were the proximate cause of [the decedent's] death."

¶ 13 On December 19, 2011, the circuit court granted summary judgment for defendants. At the hearing on that motion, the court specifically found that "[t]he presence of the unidentified

gentleman with the suit who indicated there was parking across the street, does not in and of itself constitute a voluntary undertaking on behalf of the defendants to assist business invitees in crossing the street." The court also found that whether police officers had previously been hired to direct traffic at other events was irrelevant because there were no police officers directing traffic on the date in question. Finally, the court found that Walter Schlotfeldt's alleged statement to the Branstrators about street crossing assistance was inadmissible hearsay, and that the cases cited by plaintiff were factually distinguishable.

¶ 14 On January 13, 2012, defendants filed a motion for sanctions and fees, claiming that the amended complaint was not well grounded in fact after reasonable inquiry as required by Illinois Supreme Court Rule 137 (eff. Feb. 1, 1994). Defendants asserted that plaintiff made numerous untrue allegations, including: (1) that defendants' employee directed the decedent to park on the west side of the road; (2) that defendants advised the decedent that they would provide assistance for him to cross the street; and (3) that the decedent relied on the promise of help to return to his car. They argued that if these untrue allegations had not been made, their motion to dismiss would have been granted, and they would not have had to incur the costs of discovery.

¶ 15 On April 30, 2012, the circuit court denied defendants' motion for sanctions and fees. That same day, the court also denied plaintiff's motion to reconsider its order granting summary judgment to defendants. Plaintiff now appeals from the court's order granting summary judgment to defendants. Defendants cross-appeal from the order denying their motion for sanctions.

¶ 16 II. ANALYSIS

¶ 17 A. Plaintiff's Appeal

¶ 18 In this appeal, plaintiff no longer claims that defendants voluntarily undertook a duty to help the decedent safely cross Weiland Road. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). She now solely contends that defendants, as landowners adjacent to the road, owed a duty of care to the decedent that extended beyond the premises of the Schwaben Center to the area of Weiland Road between the parking lots on the east and west side of the street. Defendants respond that no such duty was owed where the decedent was able to safely egress from their property and was injured only while crossing a public road.

¶ 19 "Summary judgment is appropriate when 'the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' " *Tunca v. Painter*, 2012 IL App (1st) 110930, ¶ 13 (quoting 735 ILCS 5/2-1005(c) (West 2010)). We review *de novo* the circuit court's ruling on a motion for summary judgment. *Tunca*, 2012 IL App (1st) 110930, ¶ 13.

¶ 20 In an action for negligence, plaintiff must establish that defendants had a duty to conform to a certain standard of conduct, that they failed to meet that standard, and that their failure was the proximate or legal cause of plaintiff's damage. *Ferentchak v. Village of Frankfort*, 105 Ill. 2d 474, 480 (1985). "The issue of whether a duty exists presents a question of law for this court to decide by determining whether there is a relationship between the parties requiring the imposition of a legal obligation upon one party for the benefit of the other." *McDonald v. Northeast Illinois Regional Commuter R.R. Corp.*, 2013 IL App (1st) 102766-B, ¶ 21 (citing

Washington v. City of Chicago, 188 Ill. 2d 235, 239 (1999).

¶ 21 "A landowner has a duty to provide a safe means of ingress and egress to his premises for his invitees." *Hanks v. Mount Prospect Park District*, 244 Ill. App. 3d 212, 217 (1993). This duty may extend beyond the boundaries of the landowner's property. *Hanks*, 244 Ill. App. 3d at 217. However, a landowner who has exercised no control over the adjacent property will not be held liable for injuries which occur on adjacent property. *Hanks*, 244 Ill. App. 3d at 218. Also, "liability will not be imposed where the injury is not caused by a physical defect in the adjacent property, but rather is the result of an independent factor." *Hanks*, 244 Ill. App. 3d at 218.

¶ 22 Here, the decedent was injured on a public road, and there is no evidence that defendants exercised control over the road, nor that there was a physical defect in the road. Moreover, the decedent was killed when he was hit by a car, an independent factor. Under the circumstances, we find no evidence to support plaintiff's claim that defendants owed a duty of care to the decedent.

¶ 23 We note that the case at bar is nearly identical to *Swett v. Village of Algonquin*, 169 Ill. App. 3d 78 (1988). In that case, plaintiff, her husband, and her mother were struck by an automobile while crossing the street from an Iron Skillet restaurant to its parking lot across the street. *Swett*, 169 Ill. App. 3d at 81. Plaintiff was injured, and her husband and mother were killed. *Swett*, 169 Ill. App. 3d at 81. She brought suit against the restaurant, alleging negligence as to her, and wrongful death and survival as to the decedents. *Swett*, 169 Ill. App. 3d at 81. The circuit court dismissed plaintiff's complaint on the grounds that the restaurant owed no duty to plaintiff and the decedents. *Swett*, 169 Ill. App. 3d at 81. On appeal, this court affirmed, noting:

> "It is clear in the case at bar that there was no static, hidden defect of the roadway which was known to the Iron Skillet but not plaintiffs and which caused their injuries. Although the Iron Skillet clearly was aware that its invitees were crossing the roadway, its duty to plaintiffs was to disclose or warn against only latent or concealed perils of which it had knowledge and its invitees did not. Plaintiffs have not alleged they were unaware that the area they were crossing was a roadway for vehicular traffic. Accordingly, they cannot be said to have been unaware of the ordinary danger of crossing such a roadway." *Swett*, 169 Ill. App. 3d at 88.

This court thus concluded that "the Iron Skillet owed plaintiffs no duty to protect them from the motorists traveling on the public roadway located between its restaurant and its parking lot." *Swett*, 169 Ill. App. 3d at 90. We concur with the result reached in *Swett* and likewise find that defendants owed the decedent no duty to protect him from motorists traveling on the public roadway located between the Schwaben Center and the parking lot across the street.

¶ 24 Contrary to plaintiff's claim, *Kahn v. James Burton Co.*, 5 Ill. 2d 614 (1955), *Stedwell v. City of Chicago*, 297 Ill. 486 (1921) (*per curiam*), and *True & True Co. v. Woda*, 201 Ill. 315 (1903) have no applicability here. Those cases involved children being injured by dangerous conditions created by the adverse parties. *Kahn*, 5 Ill. 2d at 616 (child injured when a pile of lumber delivered by the defendant lumber company toppled over on him); *Stedwell*, 297 Ill. at

487-88 (child injured when he climbed up a post and came into contact with an electrical wire owned by the city); *Woda*, 201 Ill. at 316-17 (child killed when heavy timbers from a pile of lumber created by defendant fell onto him). The decedent in this case was neither a child nor injured by a dangerous condition created by defendants.

¶ 25 *Kokoszynski v. Chicago South Shore and South Bend R.R.*, 243 Ill. App. 3d 343 (1993) and *Shortall v. Hawkeye's Bar & Grill*, 283 Ill. App. 3d 439 (1996) also do not support plaintiff's claim. In *Kokoszynski*, 243 Ill. App. 3d at 344, the decedent pulled out of a parking lot owned by defendant onto 135th Street, then was attempting to turn north off 135th Street onto Brainard Avenue when she was struck by a car and died. Part of 135th street had been closed to through traffic, but a small strip was left open to allow access to defendant's parking lot. *Kokoszynski*, 243 Ill. App. 3d at 344. Plaintiffs alleged that the decedent could not see the car that hit her because there were cars parked along the portion of 135th Street used as an entrance to defendant's parking lot. *Kokoszynski*, 243 Ill. App. 3d at 344-45. They also introduced into evidence photographs showing cars lining both sides of 135th Street into the parking lot and a sign viewable upon entrance to the street that read, " 'South Shore [defendant] Patrons Only.' " *Kokoszynski*, 243 Ill. App. 3d at 346. The circuit court granted summary judgment to defendant on the grounds that defendant neither owned nor controlled the property where the automobile crash occurred. *Kokoszynski*, 243 Ill. App. 3d at 344. This court reversed, however, noting that there was "a factual question as to whether defendant effectively expanded its parking lot by expropriating this strip of 135th Street for its own business purposes." *Kokoszynski*, 243 Ill. App. 3d at 347.

¶ 26 In *Shortall*, 283 Ill. App. 3d at 440-41, plaintiff brought a negligence action against a bar and its owner after he was injured in a fight outside the tavern. The circuit court granted summary judgment to defendants on the grounds that they owed no duty to plaintiff because the incident occurred outside the tavern and the bar's employees were unaware of the initial altercation that occurred in the bar. *Shortall*, 283 Ill. App. 3d at 442. On appeal, this court reversed, holding that "tavern owners may not avoid application of the duty to act to protect invitees from criminal attack by third parties simply because the disturbance giving rise to the duty occurs just out the front door." *Shortall*, 283 Ill. App. 3d at 444. This court found that because the "dispute began in the bar, a challenge was extended to 'take it outside,' and a brawl developed just outside the front door and continued for 15 minutes while [the bar owner] or his employees watched out the window, [the bar owner] was under the same duty as if the fight had occurred inside the bar." *Shortall*, 283 Ill. App. 3d at 444-45.

¶ 27 Here, unlike *Kokoszynski*, there is absolutely no evidence that defendants appropriated the area of Weiland Road where the decedent was killed for its own business purposes. Also, unlike *Shortall*, there is no evidence of a criminal attack by a third-party which would give rise to a duty on the part of defendants. We therefore conclude that the circuit court properly granted summary judgment to defendants.

¶ 28 B. Defendants' Cross-Appeal

¶ 29 Turning to defendants' cross-appeal, defendants contend that the circuit court abused its discretion in denying their motion for sanctions because plaintiff's amended complaint contains false and untrue allegations in violation of Rule 137. Specifically, they claim that there was no

evidence of the following: (1) that any employee of defendants directed the decedent to park on the west side of Weiland Road; (2) that any of defendants' employees promised a crossing guard or assistance to help the decedent return to his car; or (3) that defendants ever provided crossing guards.

¶ 30 Illinois Supreme Court Rule 137 provides:

> "The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. *** If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee."

"Because the rule is penal in nature it must be strictly construed." *Rubino v. Circuit City Stores,*

Inc., 324 Ill. App. 3d 931, 946 (2001) (citing *In re Estate of Wernick*, 127 Ill. 2d 61, 77 (1989)). "The standard for evaluating a party's conduct under this rule is one of reasonableness under the circumstances existing at the time of the filing." *Rubino*, 324 Ill. App. 3d at 946. "The purpose of Rule 137 is not to penalize litigants merely because they were not successful in the litigation [citation], and sanctions are not warranted simply because the facts ultimately determined are adverse to those set forth in the pleadings [citation]." *Rubino*, 324 Ill. App. 3d at 946. "The decision whether to impose sanctions under Rule 137 is committed to the sound discretion of the circuit judge, and that decision will not be overturned unless it represents an abuse of discretion." *Dowd & Dowd, Ltd. v. Gleason*, 181 Ill. 2d 460, 487 (1998).

¶ 31 Here, we find that the circuit court did not abuse its discretion in denying defendants' motion for sanctions. During her deposition, plaintiff testified that an individual standing in the Schwaben Center parking lot directed her and the decedent to park across the street from the Schwaben Center. She also testified that Walter Schlotfeldt later told the decedent that someone would be available to help him cross Weiland Road. Further, there was evidence that the Buffalo Grove police department is occasionally hired to help people cross Weiland Road from the Schwaben Center parking lot to the lot on the west side of Weiland Road. Although it was not borne out during discovery that defendants directed the Branstrators to the lot on the west side of Weiland Road, promised helped crossing the street, or provided crossing assistance on the night in question, we cannot say that the complained of allegations were unreasonable given the facts

known to plaintiff and the unavailability of the decedent. *Rubino*, 324 Ill. App. 3d at 946. We therefore affirm the order of the circuit court denying defendants' motion for sanctions.

¶ 32 Appeal No. 1-12-1596, affirmed.

¶ 33 Appeal No. 1-12-1599, affirmed.