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SECOND DIVISION  
June 25, 2013

No. 1-12-1800  
2012 IL App (1st) 121800-U

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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DIANA TERRY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 10 L 4196
	)	
AMERICAN MULTI-CINEMA, INC.; AMC	)	Honorable
THEATERS; AMC ENTERTAINMENT, INC.;	)	Kathy Flanagan,
and DAVID M. PALGREN,	)	Judge Presiding.
	)	
Defendant-Appellant.	)	

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Harris and Justice Simon concurred in the judgment.

**ORDER**

*Held:* Where plaintiff who was injured by fall on ice testified at her deposition that ice appeared to have formed due to meltwater from snow piles created by snow plow, plaintiff's testimony was sufficient to indicate a nexus between ice and snow piles.

¶ 1 Plaintiff Diana Terry slipped and fell on a patch of ice in the parking lot of a movie theater that is owned, operated, or otherwise controlled by defendants American Multi-Cinema, Inc., AMC Theaters, AMC Entertainment, Inc. (collectively, AMC). Defendant David M. Palgren was hired by AMC to plow and salt the lot during the winter. The circuit court granted

summary judgment on plaintiff's negligence claims in favor of defendants, finding that there was no evidence showing that plaintiff's injury had been caused by an unnatural accumulation of ice and snow. We reverse and remand.

¶ 2 The basic facts of this case are undisputed. After seeing a movie in AMC's theater complex in Crestwood, Illinois during January 2009, plaintiff walked back to her car, which was parked in AMC's parking lot. The temperature was in the mid-30s that day but a light snow had fallen onto the lot, obscuring the surface of the lot. As plaintiff neared her car, she slipped and fell on a large patch of ice that surrounded a sewer drain that was located in the middle of the parking lot. In photographs of the scene taken by plaintiff's parents a few days after the accident, the drain appears to be surrounded by a patch of ice several feet in diameter. During plaintiff's deposition, she stated that it appeared to her that the ice had been formed by meltwater runoff from piles of snow near the drain. Plaintiff conceded that she did not personally observe water from the snow piles running into the drain, but she stated that her impression was based on "observations, photos, the water marks in the pavement, the – just you can see where it's draining down."

¶ 3 As became clear during depositions of various witnesses, the piles of snow along the lot's perimeter were created by defendant David Palgren when he plowed the parking lot on behalf of the other defendants. Under his contract with defendants, Palgren was required to provide "snow removal, clearing of sidewalks, and salting of sidewalks and parking lot" as well as "additional rock salt, if needed" and "relocation of snow." During his deposition, Palgren testified that, after plowing the lot, it was his practice to not leave until he had either removed all ice on the surface or had laid down salt over any ice deposits that remained. Plaintiff, however, testified during her deposition that there was no salt anywhere in the lot when she slipped on the ice patch.

¶ 4 AMC and Palgren both moved for summary judgment, arguing that there was no evidence that plaintiff's injury had been caused by an unnatural accumulation of ice or snow. Defendants contended that although it was undisputed that the snow piles were an unnatural accumulation because they had been created by Palgren, plaintiff had failed to present any evidence that the snow piles had caused the ice patch surrounding the drain.

¶ 5 In her response, plaintiff pointed not only to her own deposition testimony but also included an affidavit from Lloyd Sonenthal, a forensic engineering expert. Sonenthal attested that he reviewed the deposition testimony of the witnesses as well as photographs of the scene, and he opined that that the parking lot was designed to ensure that water flowed from the perimeter of the lot into the drain. Sonenthal noted that the drain was in the center of a small depression in the surface of the parking lot but that the rim of the drain rose slightly above the surface. This caused water to pool around the drain rather than run into it, which in turn caused a large patch of ice to form around the drain during the winter. Although the temperature had been below freezing in the days before the accident, Sonenthal opined that the weather was sufficiently warm enough for solar thermal radiation alone to melt the snow piles and allow water to flow toward the drain and form an ice patch around it. Finally, Sonenthal noted that the condition of the drain indicated that it had been improperly maintained.

¶ 6 In their reply, defendants reiterated their original arguments but also argued that Sonenthal's affidavit should be stricken because he did not attach copies of all documents that he had relied on in forming his opinion, contrary to Illinois Supreme Court Rule 191(a) (eff. July 1, 2002).

¶ 7 The circuit court found that plaintiff had failed to present evidence that the ice had been caused by melting water from the snow piles. The circuit court not only agreed with defendants

that Sonenthal's affidavit was defective but also found that plaintiff's deposition testimony and Sonenthal's affidavit provided "nothing more than a theoretical possibility of a nexus between the piles and the ice." The circuit court then granted defendants' motions for summary judgment, and plaintiff appealed.

¶ 8 "The purpose of a summary-judgment proceeding is not to try an issue of fact but, instead, to determine whether a genuine issue of material fact exists. [Citation.] Although summary judgment aids in the expeditious disposition of a lawsuit, it is a drastic means of disposing of litigation and should be allowed only when the right of the moving party is clear and free from doubt. [Citation.] Thus, [s]ummary judgment is appropriate where the pleadings, depositions, admissions[,] and affidavits on file, viewed in the light most favorable to the nonmoving party, reveal 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." (Internal quotation marks omitted.) (Citations omitted.) *Evans v. Brown*, 399 Ill. App. 3d 238, 243 (2010). Importantly, "where reasonable persons could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact." *Hornacek v. 5th Avenue Property Management*, 2011 IL App (1st) 103502, ¶ 25.

¶ 9 In Illinois, a landowner cannot be held liable for the failure to remove natural accumulations of ice or snow, but can be held liable if an injury results from an unnatural accumulation created by the landowner or a hired contractor. See *id.* ¶ 26. Piles of snow created by snow plows are generally considered to be unnatural accumulations of snow. See *id.*; see also *Russell v. Village of Lake Villa*, 335 Ill. App. 3d 990, 994 (2002) ("A mound of snow created by \*\*\* snow-removal efforts is properly considered an unnatural accumulation.") The dispositive question in cases like this where the injury is caused not by snow piles but by nearby ice is

whether the piles of snow caused the ice to form. See *Russell*, 335 Ill. App. 3d at 995 (noting that “(1) where the snow mound is an unnatural accumulation and (2) water melts from such a snow mound and refreezes, the resulting ice is also an unnatural accumulation.”). It is, however, the plaintiff’s burden to establish a direct link between the snow piles and the ice that caused the injury. See *id.*

¶ 10 The sole issue in this appeal is whether plaintiff carried her burden of establishing such a link. Defendants argue that there is no direct evidence that the snow piles created by Palgren melted and reformed into the ice patch surrounding the drain, and that therefore plaintiff cannot sustain her burden of proving a nexus between the piles and the ice. But plaintiff did testify at her deposition that it appeared to her, based on the proximity of the piles to the drain, that meltwater from the piles flowed toward and pooled around the drain. Indeed, the photographs taken by plaintiff’s parents only days after the accident confirm the proximity of the piles and that the general slope of the parking lot channels meltwater toward the drain. We confronted a strikingly similar situation in *Russell*, in which there was no direct eyewitness to the ice forming due to meltwater from nearby snow piles. (Indeed, defendants’ arguments here are almost identical to those of the defendant in *Russell*). The only evidence of a nexus was the plaintiff’s deposition testimony that there had been no recent precipitation and that the ice appeared to have formed from meltwater from the piles. We found this to be sufficient to avoid summary judgment, noting that at the summary judgment phase of proceedings the plaintiff “is required to show only facts that *indicate* a nexus between the snow and the ice.” (Emphasis added.) *Id.* at 996.

¶ 11 In this case, plaintiff’s testimony, although minimal, is enough to indicate that there is a nexus between the piles of snow and the ice that caused her injury. Plaintiff noted that the

parking lot was freshly plowed with only a light dusting of snow that had not yet melted at the time of her injury. The plaintiff also noticed, both from her first-hand impressions and from photographs of the scene, that the snow piles were in close proximity to the drain and, based on water marks on the pavement, that meltwater from the piles appeared to drain toward and accumulate around the drain. Based on plaintiff's description and photographs of the scene, it not unreasonable to infer that the ice was caused by meltwater from the snow piles. At this stage in the case we must consider all evidence in the light most favorable to the plaintiff, so although this evidence is undoubtedly a thin basis for establishing a nexus, we must conclude that it is nonetheless sufficient to indicate that the ice and the piles are connected. That is all that is required in order to demonstrate a nexus and is therefore enough to preclude summary judgment.

¶ 12 Based on this finding, it is unnecessary to examine plaintiff's alternative contention that the allegedly defective drain caused an unnatural accumulation of ice around it. It is likewise unnecessary to consider defendants' contention that Sonenthal's affidavit was defective and should be stricken.

¶ 13 Reversed and remanded.