2016 IL App (4th) 150381-U

NO. 4-15-0381

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 26, 2016
Carla Bender
4th District Appellate
Court, IL

ROBERT P. SHOUP,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Sangamon County
BRAD D. NELSON,	)	No. 13L304
Defendant-Appellee.	)	
	)	Honorable
	)	John P. Schmidt,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: When all the evidence is viewed in the light most favorable to plaintiff, the evidence so overwhelmingly favors defendant that a contrary verdict based on that evidence could never stand.

¶ 2 Plaintiff, Robert P. Shoup, brought this negligence action against defendant, Brad D. Nelson. In the jury trial, at the conclusion of plaintiff's case, the trial court granted defendant's motion for a directed verdict. Plaintiff appeals. We affirm the trial court's judgment because when we look at all the evidence in the light most favorable to plaintiff, resolving all reasonable inferences in his favor, the evidence so overwhelmingly favors defendant that a contrary verdict based on that evidence could never stand.

¶ 3 I. BACKGROUND

¶ 4 The evidence in plaintiff's case was essentially as follows.

¶ 5 On Tuesday, March 26, 2013, at about 4 a.m., plaintiff was driving to work, and he stopped by defendant's laundry facility in Chatham, Illinois, to buy a soda from a vending machine.

¶ 6 Two days earlier, on Sunday, Chatham was hit with a heavy snowstorm. By 4 a.m. on Tuesday, however, defendant had cleared the snow off the parking lot and the sidewalk and had spread salt.

¶ 7 As plaintiff walked toward the vending machine, the parking lot and the sidewalk were wet and reflected light from defendant's laundry facility, which was open 24 hours a day. He did not see any ice. The temperature seemed to be above freezing.

¶ 8 In a photograph plaintiff took later that day (plaintiff's exhibit No. 1), there are shallow puddles of water on the parking lot and the sidewalk. The photograph, which is of the front of the laundry building, shows that the ground is asphalted all the way to the building. About two or three feet away from the front of the building and horizontal to it, a yellow line is painted on the asphalt, and this line runs the entire length of the building, so as to designate a sidewalk. One boundary of the sidewalk is the front of the building, and the other boundary is this line painted on the asphalt. On the other side of this line and perpendicular to it, yellow lines are painted, to divide off parking spaces (except that, in front of the doors of the building, a space is hatched off with diagonal lines).

¶ 9 The vending machine also is shown in the photograph. It is up against the front of the building, at the right corner, under the overhanging metal roof. The vending machine is almost as deep as the sidewalk. It comes out almost to the yellow horizontal line.

¶ 10 Plaintiff testified that he stood in front of the vending machine, about where the parking lot met the sidewalk, and that he began inserting coins into the machine, when his feet

slipped out from under him and he fell, fracturing his shoulder and arm. He believed he slipped on ice because drops of water were falling on him from the roof, which lacked a gutter, and because the area where he fell was as slick as water-covered ice. Indeed, when the ambulance arrived, a paramedic slipped, and almost fell, on that same spot.

¶ 11 Plaintiff presented evidence that, on July 13, 2004, the Village of Chatham adopted the International Property Maintenance Code (Chatham, Ill., Code § 150.01 (eff. July 13,2004)) and that section 304.7 of the International Property Maintenance Code (International Code Council, International Property Maintenance Code § 304.7 (2003)) provided in part: "Roof drains, gutters[,] and downspouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a public nuisance."

¶ 12 Defendant testified he had been aware that, when it rained or when snow melted, water would run off the roof. He never added gutters, though, because he never had been aware of any problems. According to his testimony, the slope of the land near the soda machine carried water away, and there never had been any pooling of water there.

¶ 13 II. ANALYSIS

¶ 14 We are aware of only one Illinois case, *Lapidus v. Hahn*, 115 Ill. App. 3d 795 (1983), in which the lack of gutters made the defendant subject to liability—and even in that case, it was more than the lack of gutters; there also was an indentation in which the dripping water visibly accumulated.

¶ 15 The plaintiff in *Lapidus* was a tenant, and the defendant was the landlord. *Id.* Whenever it rained or snowed, water dripped from the gutterless roof and onto a platform in front of the plaintiff's door. *Id.* A puddle always formed in an indentation in this platform (*id.* at 797), and the platform was corroded by "these constant puddles" (*id.* at 796). One day it

snowed, and later, when it warmed up, water was "pouring down from the roof and onto the door and onto the landing," forming a puddle "at least the width of the door." *Id.* at 798. The day of the accident, plaintiff's husband went outside in the morning to get the mail, and although the streets and sidewalks were wet, the puddle in front of the door had turned into ice about half an inch or an inch thick. *Id.* Water was still dripping from the roof and onto the frozen puddle. *Id.* Afterward, the plaintiff went outside and slipped on this frozen puddle, breaking her arm. *Id.* at 796.

¶ 16 In affirming the judgment in the plaintiff's favor, the appellate court acknowledged that "a landlord ha[d] no common-law duty to remove natural accumulations of ice and snow from common areas [citation] and [was] not liable for injuries resulting from a natural accumulation of ice and snow." *Id.* at 800. But a landlord could incur liability, the appellate court said, if "the landlord in some way caused an unnatural accumulation or aggravated a natural condition." *Id.* The appellate court could not say it was unreasonable of the jury to find that the frozen puddle in the indentation of the platform was an "unnatural accumulation":

> "The jury considering the evidence in this case including the fact that water repeatedly dripped in torrents from the roof onto the platform and was trapped there by the depression and that there was no ice or snow on the street or sidewalk could reasonably have concluded that this ice was caused by the defective nature and construction of the roof and abetted by the depression in the platform and thus was not a natural accumulation." *Id.* at 800-01.

¶ 17 In support of its holding, the appellate court cited, among other authorities, *Betts v. Carpenter*, 239 Mich. 260, 261-62 (1927), in which the Supreme Court of Michigan held that the defendant, who owned a garage, the gutterless eaves of which projected over a sidewalk, had created a nuisance in that, "during thawing weather[,] water dripped and formed a ridge of ice and rendered the [sidewalk] dangerous to pedestrians"—including the plaintiff, who had slipped and fallen on the ice. *Id*. at 261-62. The Supreme Court of Michigan said: "An abutting property owner who creates a condition which artificially turns water across a sidewalk in such a way as to freeze and render the walk unsafe, is guilty of creating and maintaining a nuisance, and is liable for injury to pedestrians thereby caused." (Internal quotation marks omitted.) *Id*. at 265.

¶ 18 It appears from *Betts* (cited with approval in *Lapidus*) that water falling off a roof without gutters and thereafter freezing on a walkway can be a "nuisance," regardless of whether there is an indentation in the walkway that traps the water. *Id.* In both *Lapidus* and *Betts*, however, there was a *visible* accumulation.

¶ 19 We notice the same is true in other unnatural-accumulation cases. In *Ostry v. Chateau Ltd. Partnership*, 241 Ill. App. 3d 436, 438 (1993), for example, the plaintiff fell on a mound of snow, five inches high and one foot wide, that a snowplow had created at the rear of her car.

¶ 20 To cite another example, in *Fitz Simons v. National Tea Co.*, 29 Ill. App. 2d 306, 311-12 (1961), the grocery store had a snowplow push all the snow to the east side of the parking lot instead of to the west side, where the drain was, and consequently, during some days of alternate thawing and freezing, a swath of "rough, rutted ice" formed from the snow pile, all the way across the parking lot, to the drain. The plaintiff slipped on "an incline formed by the accumulated ice." *Id.* at 312. "The defendant's store manager admitted that ice accumulated in

the path of that melting snow, that it was on some of this ice that the plaintiff fell, that it could have been there 2 or 3 days, and it looked slippery and was about 2 inches thick." *Id.* at 313.

¶ 21 In all those cases, there was more than a thin glaze of ice, invisible to the human eye. There was an accumulation that could be seen. "Elements necessary to be shown affirmatively in order to recover in slip and fall cases are that the *accumulation* of ice, snow[,] or water is due to unnatural causes and that the property owner had actual or constructive knowledge of the condition." (Emphasis added.) *Gilberg v. Toys R Us, Inc.*, 126 Ill. App. 3d 554, 557 (1984). Any ice at all is not, *per se*, an accumulation of ice. If the ice is so thin it cannot be seen and one can perceive it only inferentially, by slipping on it, it is not, in any meaningful sense of the word, an "accumulation." We are aware of no evidence that defendant had actual or constructive notice of this invisible patch of ice in front of the vending machine.

¶ 22 In sum, then, when we look at the evidence in the light most favorable to plaintiff, the evidence so overwhelmingly favors defendant that no verdict against him could ever stand. See *Pedrick v. Peoria & Eastern R.R. Co.*, 37 Ill. 2d 494, 510 (1967). Our reasons are as follows. "The plaintiff must present at least some evidence on every element essential to his cause of action [citations], and a directed verdict in favor of the defendant is appropriate where the plaintiff has not established a *prima facie* case." *Saxton v. Toole*, 240 Ill. App. 3d 204, 210 (1992). In our review of the record, we find no evidence of an accumulation, let alone of defendant's actual or constructive knowledge of an accumulation—and those are two elements of plaintiff's *prima facie* case. See *Gilberg*, 126 Ill. App. 3d at 557.

¶ 23 III. CONCLUSION

¶ 24 For the foregoing reasons, we affirm the trial court's judgment.

¶ 25 Affirmed.