2012 IL App (1st) 111461-U

SECOND DIVISION
June 5, 2012

No. 1-11-1461

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARIA CORTES,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 L 10858
	)	
OLDE SALEM HOMEOWNERS	)	
ASSOCIATION, AMERICAN PROPERTY	)	
MANAGEMENT OF ILLINOIS, INC., and	)	
BUILDING MAINTENANCE SYSTEMS, INC.,	)	Honorable
	)	Lynn M. Egan,
Defendants-Appellees.	)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Justice Harris concurred in the judgment.

O R D E R

¶ 1 *HELD:* Defendants who moved snow from grass next to plaintiff's residence two days after initially clearing snow from plaintiff's walkway were entitled to immunity from negligence claim under the Illinois Snow and Ice Removal Act.

¶ 2 This appeal arises from orders of the circuit court of Cook County granting summary judgment in favor of defendants, Olde Salem Homeowners Association, American Property

Management of Illinois, Inc., and Building Maintenance Systems, Inc. On appeal, plaintiff, Maria Cortes, argues that the trial court erred in granting summary judgment because: (1) the Illinois Snow and Ice Removal Act (745 ILCS 75/1 *et seq.* (West 2008)) does not bar her negligence claim; and (2) defendants' duties to plaintiff were not negated by the open and obvious doctrine. For the reasons set forth below, we affirm.

¶ 3 BACKGROUND

¶ 4 In February 2008, plaintiff was living with her family in a townhouse in Hanover Park, Illinois. The townhouse was part of the Olde Salem Homeowners Association (the Association). The Association retained American Property Management of Illinois, Inc. (American) to manage the Association and the property and contracted with Building Maintenance Systems, Inc. (Building Maintenance) to perform snow removal services for the premises for two years. Pursuant to the contract, Building Maintenance was to remove snow from the streets, sidewalks, driveways, and parking lots within the property's common area.

¶ 5 On February 5, 2008, a significant snowstorm occurred, resulting in approximately 12 inches of snow. Building Maintenance began removing the snow from the Association' common elements that day and finished clearing those areas the following day. The snow that had accumulated on the walkway in front of plaintiff's townhouse was piled onto grass that was adjacent to her unit. On Thursday, the Association's property manager, Linda Domoleczny, inspected the property and, after determining that the snow was piled too high, directed Building Maintenance to move the snow to another location. Building Maintenance returned on Friday, February 8th and, using a Bobcat tractor, loaded the snow onto a truck and moved it to another

part of the Association's property. During the relocation, some snow fell onto the walkway in front of plaintiff's unit and was packed down by the tractor's tire tracks.

¶ 6 On the morning of Saturday, February 9, 2008, plaintiff left her home to go shopping. Plaintiff's car was parked in front of her townhouse, and she went outside to warm it up and then went back inside. Plaintiff said that she did not notice the snow on the walkway and trusted that the area was clean. A few minutes later, plaintiff went back outside to her car. Plaintiff was looking at the car's windshield to see if it was clean and looking toward the street to check for traffic. At the point where her unit's walkway intersects with the sidewalk, plaintiff slipped and fell. Plaintiff sustained multiple fractures of her ankle, necessitating surgery and a cast.

¶ 7 On September 15, 2008, plaintiff filed a complaint for negligence against the Association and American in the circuit court of Cook County. Plaintiff alleged that defendants did not exercise ordinary care when they failed to prevent ice and snow from unnaturally accumulating on the walkway in front of her townhouse. On January 26, 2010, plaintiff filed a first amended complaint adding a third count, naming Building Maintenance as a defendant. Defendants filed answers denying plaintiff's allegations and raising affirmative defenses based on plaintiff's contributory negligence. Defendants also filed counterclaims against each other for contribution. The parties exchanged discovery and depositions were taken from plaintiff and her son, as well as from Linda Domoleczny, the Association's property manager and Thomas Bang, the Association's board president.

¶ 8 On January 28, 2011, the Association and American filed a motion for summary judgment pursuant to section 2-1005 of the Illinois Code of Civil Procedure (Code) (735 ILCS

5/2-1005 (West 2010)). The Association and American argued that the Snow and Ice Removal Act (Act) (745 ILCS 75/1 (West 2008)) immunizes them from liability for negligence arising out of snow and ice removal from the property's sidewalks and that even if the Act does not apply, summary judgment is still proper because they exercised reasonable care in removing the snow from the grassy area in front of plaintiff's townhouse. On January 31, 2011, defendant Building Maintenance filed its motion for summary judgment, also arguing that it did not owe plaintiff a duty under the Act and further asserting that the snow and ice that caused plaintiff's fall constituted an open and obvious condition for which defendant had no duty to plaintiff.

¶ 9 On May 2, 2011, the trial court entered an order granting summary judgment in favor of Building Maintenance, which was followed by an order on May 16, 2011, granting summary judgment in favor of the Association and American Property Management. This timely appeal followed.

¶ 10 ANALYSIS

¶ 11 Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show 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." 735 ILCS 5/2-1005© (West 2008). The standard of review for a ruling on a motion for summary judgment is *de novo*. *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995).

¶ 12 In this case, the parties agree that there are no material factual disputes. The only issues are whether the Snow and Ice Removal Act applies to immunize defendants from liability for its negligence in removing snow from the premises or alternatively, whether the snow constituted an

open and obvious condition, which precludes any duty by defendants toward plaintiff.

¶ 13 We first address plaintiff's argument that the Act does not bar her claims. Section 2 of the Act provides:

> "Any owner, lessor, occupant or other person in charge of any residential property, or any agent of or other person engaged by any such party, who removes or attempts to remove snow or ice from sidewalks abutting the property shall not be liable for any personal injuries allegedly caused by the snowy or icy condition of the sidewalk resulting from his or her act or omissions unless he alleged misconduct was willful or wanton." 745 ILCS 75/2 (West 2008).

¶ 14 This immunity from liability is intended to further the public policy and purpose of the Act as stated in section 1:

> "It is declared to be the public policy of this State that owners and others residing in residential units be encouraged to clean the sidewalks abutting their residences of snow and ice. The General Assembly, therefore, determines that it is undesirable for any person to be found liable for damages due to his or her efforts in the removal of snow or ice from such sidewalks, except for acts which amount to clear wrongdoing, as describe in Section 2 of this Act." 745 ILCS 75/1 (West 2008).

¶ 15 Plaintiff contends that the Act does not bar her negligence claim because her injuries were not the result of defendants' efforts to remove snow from her walkway in front of her unit on the day of the snowstorm and the next day. Rather, plaintiff asserts, she fell because defendants dropped snow onto the walkway when, two days after the storm, they moved the

snow from the grassy area next to her townhouse to another location. Plaintiff contends that this subsequent movement of the snow was a "different task" from the removal of snow that naturally accumulated on the walkway and is not covered by the Act. Defendants contend that the removal of the snow on Friday was part of the same snow removal process that they began when the snow initially fell on Tuesday and therefore, is covered by the Act. Further, defendants assert that the failure to remove snow that dropped on the sidewalk while the snow was being relocated was an "omission" under the Act and precludes them from being held liable.

¶ 16 In construing a statute, our primary function is to give effect to the legislature's intent. *Abruzzo v City of Park Ridge*, 231 Ill. 2d 324, 332 (2008). The best indicator of the legislature's intent is the plain and ordinary meaning of the statute's language. *Id.* When a statute is clear and unambiguous, a court must give effect to the plain and ordinary meaning of the language without resort to other tools of statutory construction. *Id*. We may not depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. *In re Consolidated Objections to Tax Levies of School District No. 205*, 193 Ill. 2d 490, 496 (2000). Courts ought to read a statute so as to avoid inconvenience or absurdity and further the overall purposes of the law. *Yu v. Kobayashi*, 281 Ill. App. 3d 489, 493 (1996) citing *People v. Tucker*, 167 Ill. 2d 431, 435 (1995) and *Baker v. Miller*, 159 Ill. 2d 249, 262 (1994).

¶ 17 Plaintiff asserts that the plain language of the Act grants immunity only to the removal of snow "from sidewalks"and not, as occurred here, movement of the snow from the grass next to her unit to another location. Once the snow was moved from the sidewalk to the grass, plaintiff

asserts, the Act's purpose was accomplished and it has no further application. Plaintiff contends that applying the Act in this case would improperly expand its reach contrary to the rules of statutory construction. We find this argument unpersuasive.

¶ 18 In this case, Building Maintenance removed snow from the sidewalk onto the grass next to plaintiff's townhouse after the initial snow fall. Two days later, the Association's manager determined that the pile of snow was a hazard because it was blocking sight lines toward the street and asked Building Maintenance to move the snow to another location to ensure that the premises were in a safe condition for residents and their invitees. The snow that was moved on Friday was the same snow that had been on the sidewalk on Tuesday and Wednesday. If Building Maintenance had moved the snow to another location on Wednesday rather than on Friday, there would presumably be no argument that these actions would be deemed part of defendant's snow removal process covered by the Act. The Act includes no time limitation when all of the snow that was on the sidewalk must be removed. Therefore, defendants initial removal of snow from the sidewalk and their subsequent transfer of that same snow to another location were part of defendants' overall effort to remove snow from the sidewalks as contemplated by the Act.

¶ 19 In moving the snow from one location to another, some snow fell onto the walkway in front of plaintiff's unit. Building Maintenance should have removed that snow. However, their failure to do so was an "omission"under the Act, which precludes liability "due to the snowy or icy condition of the sidewalk resulting from [a defendant's] acts or omissions unless the alleged misconduct was willful or wanton. 745 ILCS 5/2 (West 2008).

¶ 20 This court recently addressed a similar situation in *Pikovsky v. 8440-8460 North Skokie Boulevard Condominium Ass'n*, 2011 IL App (1st) 103742 (Dec. 27, 2011). In *Pikovsky*, plaintiff slipped and fell on icy snow mounds next to the rear entrance of her condominium building, which were created when the contractor plowed snow from the driveway onto the sidewalk. Plaintiff sued the condominium association and the property manager for negligence arguing, in part, that the Act did not provide defendants immunity from liability because they never attempted to remove the snow and ice mounds from the rear entrance sidewalk. The trial court granted summary judgment in defendants' favor and this court affirmed finding that defendants' "failure to remove the snow and ice mounds from the rear entrance sidewalk is an omission in their overall snow removal efforts." *Pikovsky*, 2011 IL App (1st) 103742, slip op. at 6.

¶ 21 Similarly, in this case, as plaintiff acknowledges, defendants' failure to remove snow that fell onto the sidewalk while it was being removed from the grass was not willful or wanton. Instead, it was an omission in defendants' overall snow removal efforts. Therefore, we find that the Act applies and immunizes defendants from liability in this case.

¶ 22 Plaintiff argues that summary judgment was not warranted because the snow that fell on the sidewalk as it was being moved was not a "natural accumulation" and that defendants breached their duty to keep the premises in a reasonably safe condition. For support, plaintiff cites *Ordman v. Dacon Management Corp.*, 261 Ill. App. 3d 275 (1994), which addresses liability imposed on property owners under common law when they create unnatural accumulations of snow and ice that result in injuries. Plaintiff also cites several cases addressing a property owner's duty under the common law to remedy self-created unreasonably dangerous or

hazardous conditions on their premises. However, the Act is an exception to the common law which applies to residential units. "Where, under the common law, an owner or snow-removal contractor may have been liable for such injuries where the injuries were the result of an unnatural accumulation of snow and ice created or aggravated by the owner or snow-removal contractor, they are now immune unless their conduct was willful or wanton." *Gallagher v. Union Square Condominium Homeowner's Ass'n*, 397 Ill. App. 3d 1037, 1043 (2010). Therefore, it is irrelevant whether the snow that fell onto the sidewalk was an unnatural accumulation.

¶ 23 Plaintiff also contends that the open and obvious doctrine does not support the trial court's grant of summary judgment. However, because we find that the Act immunizes defendants from liability for plaintiff's injuries, we need not address this issue.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we affirm the circuit court.

¶ 26 Affirmed.