2012 IL App (2d) 111190-U
No. 2-11-1190
Order filed June 22, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

KEVIN F. GALLAGHER, Plaintiff-Appellant, v. THE UNION SQUARE CONDOMINIUM HOMEOWNER'S ASSOCIATION, VANGUARD COMMUNITY MANAGEMENT, INC., and LANDSCAPE CONCEPTS MANAGEMENT, INC., Defendants-Appellees.	)	Appeal from the Circuit Court of Lake County. No. 08-L-873 Honorable Christopher C. Starck, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

Held: Where defendants established that there was no genuine issue of material fact and that they were entitled to judgment as a matter of law, the trial court's entry of summary judgment in their favor was affirmed.

¶ 1 Plaintiff, Kevin F. Gallagher, appeals from the trial court's orders entering summary judgment in favor of defendants. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Plaintiff filed a two-count complaint against Union Square Condominium Homeowner's Association (Union), Vanguard Community Management, Inc. (Vanguard), and Landscape Concepts Management, Inc. (Landscape),[1] for injuries he sustained on February 6, 2008, when he fell on ice. Union was the owner of the common areas of a condominium development in Hainesville, Illinois, where plaintiff resided in a unit he owned. Under the declaration of condominium ownership, Union was responsible for the administration and maintenance of the common areas. Union retained Vanguard to serve as its agent in the administration and maintenance of the development, including the common areas. In 2007, Vanguard, as Union's agent, entered into a contract with Landscape under which Landscape was to provide snow removal services for the development, including all driveways, which were part of the common areas. The driveways included both common driveways and individual driveways. Individual driveways, leading directly to residents' garages, were shared by two units. The units were in sections consisting of two rows of units facing each other. Each common driveway ran between each two-row set of units, perpendicular to the individual driveways. The common driveways provided access from the public roadways to the individual driveways.

¶ 4 On February 6, 2008, significant snowfalls occurred. By 4 p.m., when plaintiff arrived home from work, Landscape had plowed a single, narrow path up the middle of the common driveway leading to plaintiff's driveway. Plaintiff's individual driveway had not been plowed. According to plaintiff, he could not access his garage by car because on either side of the plowed path were snow

[1]We note that in *Gallagher v. Union Square Condominium Homeowner's Ass'n*, 397 Ill. App. 3d 1037 (2010), we referred to this defendant as "Landscapes Concept Management Inc. (Landscapes)." The briefs and record on this appeal contain different versions of the names. Here, we use the name listed on the Secretary of State's website.

mounds, or berms, in which he believed he would get stuck if he tried to pull into his individual driveway. Plaintiff backed his car down the common driveway, parked on the public roadway, and walked to his garage to ascertain what would be required to get his car into his garage. On his way back to his car, plaintiff walked through one of the berms, which was ankle- to knee-deep. He had taken three or four steps on the plowed path on the common driveway when he slipped and fell on ice on the path.

¶ 5 On October 22, 2008, plaintiff filed his complaint, the specific allegations of which are elaborated in *Gallagher v. Union Square Condominium Homeowner's Ass'n*, 397 Ill. App. 3d 1037, 1039-40 (2010). Briefly, in count I, plaintiff alleged that Union and Vanguard were negligent in allowing the unnatural accumulation of snow and ice on plaintiff's driveway and failing to spread salt or sand. In count II, plaintiff alleged that Landscape was negligent in its plowing efforts that created an unnatural accumulation of snow mounds impeding plaintiff's access to his garage and an unnatural accumulation of a slippery, ice-packed pedestrian surface.

¶ 6 On January 2, 2009, Landscape filed a motion to dismiss under section 2-619(a)(9) of the Code of Civil Procedure (Code) (735 ILCS 5/2-619(a)(9) (West 2008)), arguing that plaintiff's complaint was barred by the Snow and Ice Removal Act (Act) (745 ILCS 75/1 *et seq.* (West 2008)). The trial court granted the motion and dismissed the entire complaint. Plaintiff appealed. This court reversed, concluding that the Act did not provide immunity for defendants because plaintiff was injured on a driveway, not a sidewalk. *Gallagher*, 397 Ill. App. 3d at 1047.

¶ 7 On remand, the parties proceeded with discovery. On June 17, 2011, Landscape filed a motion for summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2010)), and a statement in support of its motion pursuant to Rule 2.04 (19th Judicial Cir. Ct. R. 2.04

(Dec. 1, 2006)).[2] Landscape argued that there was no evidence that plaintiff fell on an unnatural accumulation of ice. Landscape attached transcripts from the discovery depositions of plaintiff; David Clausen, plaintiff's neighbor; David Heinrich, an account manager for Landscape; Barbara Yurisich, Union's president; Mary Pat Henke, plaintiff's sister and resident of the development; and Rebecca Johnson, a former Vanguard employee who had worked on the Union account.

¶ 8 Plaintiff filed his response to Landscape's summary judgment motion and its Rule 2.04 statement, arguing that there were genuine issues of material fact as to whether Landscape's snow removal efforts were negligent and whether Landscape caused an unnatural accumulation of ice to form. Plaintiff attached a transcript of the discovery deposition of Phillip Moore, one of Landscape's zone supervisors in the winter of 2007-2008 (though not for the Union account). Plaintiff also attached an affidavit from Nick J. Miller, the owner of a landscaping company that provided snow removal services similar to Landscape.

¶ 9 On August 31, 2011, the trial court entered summary judgment in Landscape's favor, finding that Miller's affidavit was not supported by the facts. Thereafter, Union and Vanguard filed a motion for summary judgment,[3] which the court granted on November 1, 2011. On that date, the

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[2]Rule 2.04 requires, among other things, that a summary judgment movant provide a statement of material facts as to which the movant contends there is no genuine issue and that entitle the movant to judgment as a matter of law. 19th Judicial Cir. Ct. R. 2.04 (Dec. 1, 2006).

[3]The motion was styled "Amended Motion for Summary Judgment," and, apparently followed an original summary judgment motion that was served but never filed. The amended motion listed Union and Landscape in the introductory paragraph, but Landscape was stricken by hand and Vanguard was written over it. The body of the motion and the prayer for relief did

court clarified in its written order that it had previously granted Landscape's summary judgment motion because it found that there was no evidence of an unnatural accumulation of ice or snow and that there was no genuine issue of material fact as to whether plaintiff had fallen due to an unnatural condition. The court then found that plaintiff's fall occurred during an ongoing blizzard while snow clearing efforts were underway. The court stated, "The uncontested facts also demonstrate that the application of salt to the common areas prior to the snow clearing operation being completed would not have been appropriate." The court concluded that, since there was no evidence of an unnatural accumulation of ice, "there [wa]s no duty upon Union to commence salting the common areas prior to the plowing being completed." Plaintiff timely appeals.

¶ 10 ANALYSIS

¶ 11 Plaintiff argues that the trial court erred in granting defendants' motions for summary judgment. Summary judgment is appropriate when the pleadings, depositions, and admissions on file, together with any affidavits, construed strictly against the movant and liberally in favor of the nonmovant, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005 (West 2010); *Mills v. McDuffa*, 393 Ill. App. 3d 940, 948 (2009). The trial court's sole function is to determine whether a question of material fact exists, not to resolve the issue. *Mills*, 393 Ill. App. 3d at 948. "Although summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). We review the trial court's judgment *de novo*. *Williams*, 228 Ill. 2d at 417.

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reference Union and Vanguard.

¶ 12 To maintain an action in negligence, a plaintiff must set out sufficient facts to establish that the defendant owed a duty to the plaintiff, the defendant breached that duty, and the breach proximately caused the plaintiff's injuries. *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App. 3d 740, 745-46 (2005). "If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper." *Williams*, 228 Ill. 2d at 417. A landowner has no common-law duty to remove natural accumulations of ice or snow. *Claimsone v. Professional Property Management, LLC*, 2011 IL App (2d) 101115, ¶ 18. However, a landowner may assume the duty, either voluntarily or contractually. *Claimsone*, 2011 IL App (2d) 101115, ¶¶ 21, 34. When a property owner elects to remove snow and ice, it must exercise ordinary care in doing so. *Hornacek v. 5th Avenue Property Management*, 2011 IL App (1st) 103502, ¶ 28. A party who contracts with a landowner to provide snow removal services also has a duty of reasonable care. *Hornacek*, 2011 IL App (1st) 103502, ¶ 28; *Williams v. Sebert Landscape Co.*, 407 Ill. App. 3d 753, 757 (2011) (stating that when the duty exists, it "is only to not negligently remove the snow"). To sufficiently raise the issue of a breach of duty, the plaintiff must present facts that show that the ice upon which he or she fell was "an unnatural accumulation caused by the defendants." *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325, 330 (1992); see also *Hornacek*, 2011 IL App (1st) 103502, ¶ 28 ("Specifically, snow removal contractors have a duty not to 'negligently remove snow by creating or aggravating an unnatural accumulation of snow or ice.' " (quoting *McBride v. Taxman Corp.*, 327 Ill. App. 3d 992, 996 (2002))). To survive a motion for summary judgment, the plaintiff must present some evidence of a causal nexus between the defendant's actions and the creation of an unnatural accumulation of snow or ice. *Tzakis*, 356 Ill. App. 3d at 747.

¶ 13 In the instant case, the trial court found that there was no evidence that plaintiff fell upon an unnatural accumulation of ice. On appeal, plaintiff frames his argument in terms of there being genuine issues of material fact as to whether (1) Landscape was negligent in failing to timely and thoroughly remove the snow and (2) Landscape created or aggravated an unnatural accumulation of ice or snow by creating two snow berms that (a) were an obstacle in and of themselves and (b) allowed for snow in the berms to melt, run-off, be contained in the narrow path, and refreeze.

¶ 14 Plaintiff cites *McCarthy v. Hidden Lake Village Condominium Ass'n*, 186 Ill. App. 3d 752 (1989), in support of his contention that Landscape was negligent in failing to timely and thoroughly remove the snow pursuant to its contract or "as suggested by Miller's opinion testimony." The plaintiff in *McCarthy* fell on the edge of a snow and ice embankment, extending into her driveway, following plowing by the defendant. *McCarthy*, 186 Ill. App. 3d at 753. The trial court granted the defendant's motion for summary judgment, concluding that the defendant did not have a duty to clear the entire driveway of snow and ice. *McCarthy*, 186 Ill. App. 3d at 754. Noting the defendant's owner's deposition testimony that proper plowing required that the concrete be visible on the entire driveway, the appellate court reversed, holding that there was a genuine issue of material fact whether the defendant had negligently plowed when it failed to clear the entire driveway. *McCarthy*, 186 Ill. App. 3d at 757-58.

¶ 15 *McCarthy* is distinguishable from the present case. Because the plaintiff in *McCarthy* fell on the edge of a snow and ice embankment created by the defendant, there was no need for the plaintiff to establish a causal nexus between an original source and subsequent ice. See *Crane*, 228 Ill. App. 3d at 331. In contrast, here, plaintiff testified that he walked through the berm, took three or four steps, and then fell on ice on the plowed path. Although Landscape undisputedly created the

berm, plaintiff actually fell on the ice, the cause of which was in dispute. Thus, plaintiff here needed to present evidence demonstrating a causal nexus between Landscape's plowing and the ice upon which he fell.

¶ 16 We now turn to the first portion of plaintiff's unnatural-accumulation argument—that the snow berms left from Landscape's plow "constituted an obstacle and hazard that had to be negotiated by plaintiff." This argument is defeated by plaintiff's deposition during which he testified that he walked through the snow berm and took three or four steps before he fell on ice on the plowed path. Plaintiff offered no testimony that negotiating the berm had anything to do with his fall.

¶ 17 Plaintiff next contends that Landscape caused an unnatural accumulation of ice by creating the berms from which snow melted, ran down onto the narrow path where it was contained between the berms, and refroze, thereby creating a miniature "ice rink" condition. Plaintiff's assertions are entirely speculative and unsupported by the evidence. The only record citations plaintiff provides with respect to his melt/run-off/refreeze theory of negligence are to portions of deposition testimony from David Heinrich, Landscape's account manager on the Union account. Heinrich testified that Landscape intended that residents would use the plowed path on the common driveway to access their own driveways, garages, and units. This testimony sheds no light on how the ice was formed.

¶ 18 Even taking judicial notice of the facts of the freezing/melting point of water/ice and that water runs downhill, there was no evidence whatsoever that snow from the berms actually melted, ran down the path, or refroze. Plaintiff testified that he fell on ice in the common driveway that was covered by a light coating of snow. He testified that Landscape, "by making that path[,] any melted snow—because each drive is inclined, or declined. They're angled so the water runs down. If the area is clean, it will dissipate throughout, but by not having anywhere else to go besides down this

path that was plowed out, it got under that light coating of snow." Assuming that this rather poorly articulated statement expressed plaintiff's belief that the driveway sloped inward and that "the water" would have been forced down the middle of the plowed path, plaintiff's statement does not provide any facts as to the degree of the slope, the temperature that day, or whether any snow actually melted, flowed down the path, and refroze where he fell. When asked how he knew that the snow had melted, plaintiff replied that he did not believe that there was any ice there earlier. When asked if he had any knowledge of how the ice formed, plaintiff responded, "Not personally, no." Plaintiff said that he was not sure of the temperature when he left for work that morning or when he returned from work. Plaintiff's testimony was insufficient to support an inference of a causal nexus between Landscape's plowing and the ice on which he fell. See *Crane*, 228 Ill. App. 3d at 331 (affirming the trial court's entry of summary judgment in the defendants' favor where the only evidence linking a snow pile and the ice on which the plaintiff fell was the plaintiff's testimony that she was " '99 and 99/100%' " sure that the ice formed from the unnaturally accumulated snow).

¶ 19 We also note that Miller's affidavit does not provide evidence of a causal nexus between Landscape's plowing and the ice upon which plaintiff fell. Miller averred that he owned Spruce It Up Landscaping, Inc., and that he had regularly worked with snow removal equipment and ice-melting agents for five years. Relevant to the melt/run-off/refreeze theory, Miller stated:

> "[Landscape's] movement of snow *** created parallel berms or piles of snow that *** operated as slopes, from which moisture would drain into the narrow path, forming slippery ice when temperatures rose above and then dropped back below freezing temperature, and barriers that themselves contained and channeled moisture onto the very path cleared for pedestrians; and

> Incomplete snow clearing of a single, narrow swath leaving a residue of packed snow that would make the formation of slippery ice more likely when temperatures dropped back below freezing temperatures[.]"

Miller's averments are conclusory and unsupported by the facts. Though Miller averred that he had reviewed transcripts of the discovery depositions, photos attached as exhibits, the Landscape-Union contract, and the weather-reporting documents and billing records produced by Landscape, he did not point to one specific fact contained therein that would support his opinion. See *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App. 3d 288, 291 (1992) (concluding that the expert's affidavit (substantively similar to Miller's) did not create a genuine issue of material fact, because it merely indicated that snow can melt and flow down an incline). Therefore, the affidavit was insufficient to create a genuine issue of material fact. See *Gyllin v. College Craft Enterprises, Ltd.*, 260 Ill. App. 3d 707, 715 (1994) ("An expert's opinion is only as valid as the bases and reasons for the opinion. When there is no factual support for an expert's conclusions, his conclusions alone do not create a question of fact."). Furthermore, we reject plaintiff's argument that the trial court improperly weighed Miller's testimony. The court simply found that the affidavit was not supported by the facts, which was entirely proper. See *Madeo*, 239 Ill. App. 3d at 290-91 (affirming the trial court's striking portions of affidavits as conclusory or not based on facts, in violation of Illinois Supreme Court Rule 191(a) (eff. July 1, 2002)); *cf. Gatlin v. Ruder*, 137 Ill. 2d 284, 294 (1990) (holding that the trial court erred when it weighed deposition testimony offered by the nonmovant against the movant's subsequently offered affidavit from the same witness, because the court effectively admitted that there was a genuine issue of material fact).

¶ 20 *Madeo* is instructive. The plaintiff filed a negligence suit against a landowner and snow removal contractor after she fell on a patch of ice in a grocery store parking lot. The plaintiff alleged that the defendants plowed snow into a pile at the high point of the sloped lot, that the snow melted, that the water flowed down the lot toward a drain and refroze, creating the ice on which she fell. The defendants moved for summary judgment. *Madeo*, 239 Ill. App. 3d at 289-90. The plaintiff responded in opposition with the deposition testimony of a witness to the fall, who testified that the parking lot slightly sloped from east to west, that there was a snow pile on the east end of the lot on the day the plaintiff fell, and that she assumed that melted snow would drip down into the lot. The plaintiff also provided the deposition testimony of her snowplowing expert, who stated his opinion that "the snow should have been piled closer to the sewer so that it would not melt, flow across the lot, and refreeze." *Madeo*, 239 Ill. App. 3d at 292. There was evidence that the defendants had plowed the lot two days before the plaintiff fell. *Madeo*, 239 Ill. App. 3d at 293-94. Meteorological data indicated that temperatures rose above freezing 3 days before the plaintiff's fall and reached a high of 39 degrees 2 days before her fall. *Madeo*, 239 Ill. App. 3d at 292. The trial court granted the defendants' motion for summary judgment. *Madeo*, 239 Ill. App. 3d at 290.

¶ 21 The appellate court affirmed, observing that there was no evidence that the defendants plowed prior to when the temperature fell below freezing. The court also noted that the plaintiff failed to provide expert testimony regarding the steepness of the grade in the lot. *Madeo*, 239 Ill. App. 3d at 294. The court concluded that, while it was possible that the ice had formed when snow melted from the pile, flowed across the parking lot, and refroze, the plaintiff had "not supplied any concrete evidence linking th[e] snow pile to the ice that caused her to slip." *Madeo*, 239 Ill. App. 3d at 292.

¶ 22 Here, there was even less evidence than in *Madeo*. Plaintiff offered no evidence as to whether the common driveway sloped toward the center beyond his own conjecture that "each drive is inclined, or declined" and "angled so the water runs down." There was no evidence as to the steepness of the alleged slope. There was also no evidence as to the actual temperatures in the area before and after Landscape plowed. The highest temperature indicated in the forecasting/reporting documents in the record for that date was 34 degrees. Although that is above freezing, the reports also stated that there was "intermittent mixed rain, sleet and snow." This meteorological data actually provides a strong indication that the ice accumulated naturally. Indeed, plaintiff's sister, Mary Pat Henke, testified that, as far as she knew, the snow and ice on which plaintiff had fallen "came falling from the sky."

¶ 23 Plaintiff urges that there was sufficient evidence such that a jury would not have to speculate to reach a verdict in his favor. He points to the weather reports and to the facts that Landscape plowed one narrow path, that Landscape intended that residents use that path, and that plaintiff was certain that he fell on ice on that path. In his reply brief, plaintiff maintains that genuine issues of material fact requiring a jury's determination existed as to such issues as whether Landscape's failure to completely clear the driveway before plaintiff's fall was negligent and the weight to be given to the meteorological data. Plaintiff's issues are red herrings. A jury might have made all types of factual findings, but the only relevant fact was whether Landscape caused an unnatural accumulation of ice. As discussed at length above, plaintiff failed to present any evidence of such a causal nexus, and therefore, could not show that Landscape breached its duty to him. Accordingly, Landscape was entitled to judgment as a matter of law, and the trial court did not err in entering summary judgment

in Landscape's favor. *Williams,* 228 Ill. 2d at 417 ("If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper.").

¶ 24 Plaintiff next argues that the trial court erred in entering summary judgment in favor of defendants Union and Vanguard. Plaintiff initially contends that the court erred because the motion did not comply with Rule 2.04. Because plaintiff provides no authority in support of the proposition that summary judgment is reversible based on the movant's failure to comply with local rules, he has forfeited this argument. See *Alvarez v. Pappas*, 374 Ill. App. 3d 39, 44 (2007) (a point raised on appeal but not supported by citation to relevant authority is forfeited under Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008)).

¶ 25 Plaintiff also maintains that summary judgment was improper because there was a genuine of material fact as to whether Union and Vanguard were negligent in failing to authorize Landscape to salt the common areas. Union, as the property owner, had no duty to remove natural accumulations of snow or ice. *Claimsone*, 2011 IL App (2d) 101115, ¶ 18. Nor can such a duty be imposed on Vanguard, as the management company, merely because it entered into a contract with a snow removal company. *Judge-Zeit v. General Parking Corp.*, 376 Ill. App. 3d 573, 581 (2007). Furthermore, Vanguard had no duty, in fact, no authority, to authorize salting under the contract. Accordingly, because there was no genuine issue of material fact as to whether Vanguard breached any duty, it was entitled to judgment as a matter of law, and the trial court properly entered summary judgment in Vanguard's favor.

¶ 26 To the extent that Union assumed a duty to remove natural accumulations of snow and ice, the duty imposed was that of ordinary care. *Hornacek*, 2011 IL App (1st) 103502, ¶ 28. In other words, Union was required to refrain from creating unnatural accumulations of snow or ice. *Tzakis*,

356 Ill. App. 3d at 746. Plaintiff offers nothing in the record or any legal citation to support an inference of a causal nexus between the lack of salt and an unnatural accumulation. Accordingly, Union was entitled to judgment as a matter of law, and the trial court properly entered summary judgment in its favor.

¶ 27 We also agree with the trial court's findings that plaintiff fell while snow removal efforts were underway and that "the application of salt to the common areas prior to the snow clearing operation being completed would not have been appropriate." These findings are supported by the record. Phillip Moore, one of Landscape's zone supervisors, though not in charge of the Union zone, testified, based on Landscape's business records, that snow removal efforts began on February 6, the day plaintiff fell, and continued into the night, well after plaintiff's fall at 4 or 4:30 p.m. Plaintiff's neighbor, David Clausen, testified that Landscape did not normally salt "until after they've gotten pretty much all the snow off those driveways." Heinrich testified that, under Landscape's contract, opening access to and from the property was the first priority. Therefore, under extreme or blizzard conditions, Landscape customarily first made one pass through each common driveway to give some access to each area instead of completely plowing one common driveway before moving to the next. Heinrich testified that if only a narrow path had been plowed in the common drive and the individual drives were still unplowed, it meant that Landscape's snow removal efforts had not yet been completed. Heinrich further explained that Landscape would not have applied salt, even if authorized, until plowing was completed. Heinrich explained, "We're in the process of plowing. You put salt on and plow it away, that's kind of ridiculous." Plaintiff offers nothing to challenge the trial court's findings.

¶ 28 In his reply brief, plaintiff cites *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill. App.

3d 640 (1980), for the proposition that, because Union and Vanguard, as property owner and manager, respectively, assumed the duty to remove natural accumulations of snow, they owed him the duty to not allow snow to remain for an unreasonable period of time. Although ostensibly in response to the argument of Union and Vanguard in their brief that they owed plaintiff the duty of preventing only unnatural accumulations of snow and ice, plaintiff has essentially raised a new argument in his reply brief.[4] This he is not permitted to do. *Forest Preserve District Of Du Page County v. First National Bank of Franklin Park*, 401 Ill. App. 3d 966, 976 (2010) (citing Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), and holding that the defendants forfeited an argument for failure to raise it in their opening brief).

¶ 29 Nevertheless, we briefly note that *Schoondyke* stands for the general proposition that a landowner that contractually obligates itself to a tenant to remove snow and ice may be held liable to a third party for its failure to remove a snow accumulation. *Claimsone*, 2011 IL App (2d) 101115, ¶ 38. In *Schoondyke*, the plaintiff fell in a parking lot that had not been plowed at all. *Schoondyke*, 89 Ill. App. 3d at 642. In contrast, here, plaintiff fell on a plowed portion of the common driveway as snow removal operations continued. Indeed, the court in *Schoondyke* recognized that liability will be imposed only when the defendant "improperly permits an accumulation thereof to remain after a reasonable length of time for removal has elapsed." (Internal quotations omitted.) *Schoondyke*, 89 Ill. App. 3d at 643. Plaintiff has not even hinted that any time elapsed during which Landscape, let alone Union, did nothing. Thus, plaintiff's untimely and cursory citation of *Schoondyke* does not

[4]In his opening brief, the only arguments that plaintiff made with respect to Union and Vanguard were their failure to comply with Rule 2.04 and their failure to authorize salting.

compel us to a different conclusion.

¶ 30 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 31 Affirmed.