2014 IL App (2d) 130664-U
No. 2-13-0664
Order filed April 1, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JAN W. SCHUETT,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-L-399
	)	
MURRAY PROPERTIES, INC.,	)	
WESTGATE MANAGEMENT GROUP,	)	
L.P., and ATHOLL HERITAGE, INC.,	)	Honorable
	)	F. Keith Brown,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Burke and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted summary judgment in favor of defendants on plaintiff's negligence claim, as plaintiff's injury was caused by a natural accumulation of snow.

¶ 2 Plaintiff, Jan W. Schuett, appeals from the trial court's grant of summary judgment for defendants, Murray Properties, Inc., Westgate Management Group, L.P., and Atholl Heritage, Inc. The issue on appeal is whether the natural accumulation rule precludes plaintiff's negligence claim. We find that it does and thus we affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff, a trash collector employed by Waste Management of Illinois, Inc., sued defendants for damages sustained when he slipped and fell (on an asphalt surface covered with about one inch of snow) while pushing a trash container at Westgate Plaza (the property), which was owned by defendant Westgate Management Group, L.P. (Westgate). Plaintiff's amended complaint alleged, in pertinent part, that defendants knew that plaintiff would be present on the property, knew that plaintiff would "deliberately encounter *** weather conditions *** [that] would support ice formation on the asphalt surfaces," and knew that plaintiff would be unable to see the ground while pushing the trash container. According to the complaint, defendants were negligent in allowing the work area to "become and remain in a dangerous condition"; in failing to maintain the work area in "a safe condition"; in failing to timely inspect "the conditions of the work area"; and in failing to warn plaintiff of the "unsafe condition" of the work area. According to the complaint, as a result of defendants' negligent acts, plaintiff slipped and fell.

¶ 5 Plaintiff testified that, on the day of the incident, when he arrived at the property, there was "[l]ess than an inch" of snow on the ground. He exited his truck and walked to the doors at the rear of the building to retrieve a wheeled trash container from a storage area. He retrieved the trash container and pushed it to his truck. After the container was emptied, he began to push the trash container back to the storage area. The container weighed approximately 200 pounds when empty, and plaintiff was unable to see the ground while pushing the container. He fell as he was returning the container to the storage area. He stated: "[M]y feet just slipped out from under me, I slipped."

¶ 6 Defendants moved for summary judgment, arguing that there was no genuine issue of fact as to whether plaintiff slipped on an unnatural accumulation of snow or ice and, alternatively, if plaintiff did slip on an unnatural accumulation of snow or ice, there was no

genuine issue of fact as to whether defendants caused the unnatural accumulation. In response, plaintiff argued that the natural accumulation rule did not apply and that the deliberate encounter doctrine was the source of defendants' duty.

¶ 7 The trial court granted summary judgment in favor of defendants, agreeing with defendants that, because plaintiff presented no evidence of any condition on the property other than a natural accumulation of snow, the natural accumulation rule barred plaintiff's claim.

¶ 8 Plaintiff timely appealed.

¶ 9 II. ANALYSIS

¶ 10 Summary judgment is appropriate 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 a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010). To prevail in a negligence action, the plaintiff must prove that the defendant owed a duty to him, that the defendant breached that duty, and that the plaintiff's injury proximately resulted from that breach. *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App. 3d 740, 745-46 (2005). The existence of a duty is a question of law and, therefore, may be resolved on a motion for summary judgment. *Ralls v. Village of Glendale Heights*, 233 Ill. App. 3d 147, 154 (1992). The entry of summary judgment is subject to *de novo* review. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 11 In determining whether a duty existed, we must determine "whether the plaintiff and defendant stood in such a relationship to one another that the law imposes on the defendant an obligation of reasonable conduct for the benefit of the plaintiff." *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 226 (2010). Factors involved in a duty analysis are: "(1) the reasonable foreseeability of the injury; (2) the likelihood of the injury; (3) the magnitude of the

burden of guarding against the injury; and (4) the consequences of placing the burden on the defendant." *Id*.

¶ 12 It is well established that, under the natural accumulation rule, a property owner has no duty to remove natural accumulations of snow or ice from his property. *Id*. at 227. However, a landowner may be subject to liability where injuries occur from an artificial or unnatural accumulation of snow or ice or an accumulation aggravated by the owner. *Branson v. R&L Investment, Inc.*, 196 Ill. App. 3d 1088, 1091 (1990). Thus, to survive summary judgment, the plaintiff must sufficiently show that the accumulation of snow or ice was somehow caused by the landowner. *Tzakis*, 356 Ill. App. 3d at 746.

¶ 13 Here, the condition responsible for plaintiff's fall was a natural accumulation of snow. Plaintiff testified that there was "[l]ess than an inch" of snow on the ground and that he "slipped" while pushing the trash container back to its original location. Plaintiff presented no evidence or argument that the snow was anything other than a natural accumulation. Nevertheless, plaintiff argues that, under *Krywin*, even if the natural accumulation rule applies, "the natural accumulation rule may be trumped where circumstances give rise to a particular duty to the plaintiff and the burden insofar as eliminating the danger created by a snow or ice condition is not great." At issue in *Krywin* was whether the Chicago Transit Authority (CTA) had a duty to remove natural accumulations snow and ice from its train platforms. The court found that it did not, stating:

> "In so holding, we recognize the dangers posed by natural accumulations of snow and ice. The absence of a duty to remove them 'does not rest upon the notion that the conditions presented by such accumulations are safe. To the contrary, the hazards presented have always been acknowledged, but the imposition of an obligation to remedy

> those conditions would be so unreasonable and impractical as to negate the imposition of a legal duty to do so. [Citation.]" *Id*. at 232-33.

We do not read *Krywin* as suggesting that the natural accumulation rule "may be trumped" when the magnitude of the burden of guarding against the injury and the consequences of placing that burden on the defendant are low. Rather, as *Krywin* indicates, the natural accumulation rule exists because the burden on any defendant is high. To expect a defendant to remove all the snow from the ground is impractical. There is no way that a defendant could ensure that the snow is removed from the ground as it falls.

¶ 14 Nevertheless, plaintiff seeks to avoid application of the natural accumulation rule by arguing that this is a duty-to-provide-a-safe-workplace case and, further, by arguing that the deliberate encounter exception is the source of defendants' duty. Plaintiff's arguments are without merit.

¶ 15 First, plaintiff argues that defendants owed him a duty to provide a safe workplace. According to plaintiff, defendants were the owners of the "work site" and, as such, had "the ability to control the extent of the worker's exposure to workplace danger." However, as defendants point out, the cases relied on by plaintiff are distinguishable as they involved general contractors or employers. More important, none of the cases involved natural accumulations and thus do not support a departure from the natural accumulation rule. See *Ziraldo v. W.J. Lynch Co.*, 365 Ill. 197, 201 (1936) ("One engaged in the construction of a building owes to another not in his employ, engaged in the same work and exercising due care for his own safety, the duty of using reasonable care to avoid injuring him."); *Preze v. Borden Chemical, Inc.*, 336 Ill. App. 3d 52, 58 (2002) (the plaintiff, an employee of a maintenance contractor hired by the defendant plant owner, was injured when he slipped and fell off a ladder coated with resin from the

worksite); *LaSalle National Bank v. Wieboldt Stores, Inc.*, 60 Ill. App. 2d 188, 207 (1965) (the plaintiffs, employees of the defendant store and employees of a contractor hired by the store to install ovens, were injured by an explosion on the property); *Leatherman v. Schueler Bros., Inc.*, 40 Ill. App. 2d 56, 61 (1963) (a general contractor owes a duty to see that adequate protection is furnished to persons lawfully upon the premises against injuries that might be anticipated as probable consequences of the work of the subcontractors). Indeed, as defendants point out, if we were to find that defendants were acting as a general contractor, all property owners would owe a duty to provide a safe work place to garbage collectors on their property.

¶ 16 In any event, even if we were to find that the duty to provide a safe workplace was relevant here, plaintiff's claim is still precluded by the natural accumulation rule. In *Choi v. Commonwealth Edison*, 217 Ill. App. 3d 952, 953 (1991), the plaintiff was an employee of an independent contractor engaged by the defendant landowner. The plaintiff was carrying ice-covered pipes, which had been stored outside, into the defendant's building. *Id.* He was injured when he slipped on a puddle of water that had accumulated after the ice and snow on the pipes melted. *Id.* The court rejected the plaintiff's argument that the defendant's act, of storing the pipes outdoors and then requiring that they be brought directly indoors without deicing them, precluded the application of the general rule that a landowner is not liable for injuries resulting from "tracked-in" water. In ruling, the court found that the puddles that resulted from transporting the ice-covered pipes were a "continuation of a natural accumulation" and that the plaintiff would have had to "make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition" to establish a duty. *Id.* at 957. The court found that, although "[defendant] owed plaintiff the duty to maintain a reasonably safe workplace, [that duty] did not extend to taking precautions against water tracked inside from a natural accumulation outside."

Id. So too here. Even if defendants owed plaintiff such a duty, it did not extend to taking precautions against natural accumulations.

¶ 17 Plaintiff also argues that the deliberate encounter exception is the source of defendants' duty, because he was required by his employer and by defendants to encounter a dangerous condition as a result of his employment. Under the deliberate encounter exception, a landowner is liable for injuries to a business invitee resulting from an open and obvious danger if the landowner has reason to expect that a person would choose to encounter the apparent danger. *LaFever v. Kemlite Co*., 185 Ill. 2d 380, 391 (1998). The exception is often applied in cases involving economic compulsion, such as where workers are compelled to encounter dangerous conditions as part of their employment. *Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill. App. 3d 711, 725-26 (2010).

¶ 18 We agree with defendants that the deliberate encounter exception is not applicable when the sole condition responsible for plaintiff's injury was a natural accumulation of snow. In the cases relied on by plaintiff, conditions other than natural accumulations were present. See *LaFever*, 185 Ill. 2d at 390-91 (fiberglass edge trim); *Ralls*, 233 Ill. App. 3d at 156 (earthen incline). Although *Ralls* also involved a natural accumulation of snow, the "condition" that contributed to the plaintiff's fall was a man-made earthen incline used by workers on a construction site. *Ralls*, 233 Ill. App. 3d at 156. It was the open and obvious nature of the incline that the plaintiff was required to deliberately encounter. *Id*. The court stated: "[A]lthough defendants owed no duty to [the plaintiff] to remove the natural accumulation of snow and ice, and although the slope of the incline was open and obvious, the incline was nevertheless a condition such that defendants should have reasonably anticipated harm to [the plaintiff] despite such knowledge or obviousness." *Id*.

¶ 19 Plaintiff attempts to argue that, here, other conditions were present. According to plaintiff, the "condition" on the property that created an unreasonable risk of harm to plaintiff when combined with snow was "the design and location of the garbage closet" and "the work requirement that the worker push a 200-pound trash bin in front of him/her in such a way as to make impossible observation of the ground ahead, in snow and ice conditions." Plaintiff's argument that the "design and location of the garbage closet" created an unreasonable risk of harm is unconvincing. Plaintiff was required to remove the garbage bin from the closet, push it to the truck to be emptied, and then return it to the closet. He fell while in the process of returning the bin to the closet. We fail to see how the "design and location of the garbage closet" played a role in plaintiff's fall. Second, the "work requirement" of pushing the bin cannot be said to have been a condition on the property. The only "condition" that caused the fall was the presence of a natural accumulation of snow.

¶ 20 Plaintiff also relies on *Manuel v. Red Hill Community Unit School District No. 10 Board of Education*, 324 Ill. App. 3d 279 (2001). In *Manuel*, a high school student with cerebral palsy was working at a basketball game concession stand when a teacher asked her to do a task that required her to walk on stairs that were wet with snow. *Id*. at 281-82. On appeal, the court found that the natural accumulation rule did not bar the plaintiff's cause of action, because "the alleged duty violated by defendant was not the mere maintenance of the premises." *Id*. at 291. In that case, the "plaintiff allege[d] a duty on the part of defendant that derive[d] from defendant's order and control over her." *Id*. at 287. *Manuel* is distinguishable because, here, unlike in *Manuel*, plaintiff alleged a duty that was derived from defendants' maintenance of the premises.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 23 Affirmed.