2014 IL App (2d) 130867-U
No. 2-13-0867
Order filed April 29, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JENNIFER L. WINBERG, Plaintiff-Appellant, v. LUBEOIL DEVELOPMENT CO., INC., d/b/a LubePro's 10 Minute Oil Change, Defendant (LubePro's International, Inc., d/b/a LubePro's 10 Minute Oil Change, Defendant-Appellant).	)	Appeal from the Circuit Court of Winnebago County. No. 10-L-306 Honorable J. Edward Prochaska, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendant summary judgment on plaintiff's negligence claim, as the evidence established that the "wet and slippery substance" that plaintiff alleged to have caused her fall was a natural accumulation of tracked-in rainwater.

¶ 2 Plaintiff, Jennifer L. Winberg, sued defendants, Lubeoil Development Co., Inc., d/b/a LubePro's 10 Minute Oil Change, and LubePro's International, Inc., d/b/a LubePro's 10 Minute Oil Change, for damages sustained when she "slipped and fell on a wet and slippery substance

on the floor" of defendants' property. The trial court entered summary judgment for LubePro's International, Inc. (defendant), finding that it owed no duty to plaintiff, and plaintiff timely appealed.[1]

¶ 3 I. BACKGROUND

¶ 4 The relevant facts are as follows. On August 7, 2009, at approximately 1:30 p.m., plaintiff went to LubePro's in Rockford for automobile service. When she arrived at LubePro's, it was raining, and she pulled her vehicle, a 2008 Ford Explorer, up to the building's vehicle entrance door. An employee approached her vehicle and asked her if he could pull it into the building for her. She told him no, because she did not want to get wet. He opened the building's vehicle entrance door, and plaintiff drove her vehicle into the vehicle bay. She turned her vehicle off, grabbed her purse, and began to exit her vehicle. According to plaintiff, she put one foot down and, as she went to put her other foot down, both feet went out from under her and she fell. When she fell, she hit her vehicle and the ground. When she got up, she was "noticeably wet." She testified that she saw "two or three feet of wet" on the side of her vehicle. She said that the liquid "looked clear" and did not smell. After she paid for her oil change, she drove herself to a medical clinic.

¶ 5 Defendant's employee Jeffrey Hursh testified that it was raining, and had been raining all day, when plaintiff arrived at LubePro's. He stated that it was "[a]bout the worst rain [he had] seen in a long time, heavy rain." Floor mats had been placed by the customer walk-in entry

[1] The trial court also granted summary judgment for defendant Lubeoil Development Co., Inc., finding that it did not control, manage, or maintain the premises where the incident occurred. Plaintiff did not appeal from that judgment, and defendant Lubeoil Development Co., Inc., is not a party to this appeal.

door, but there were no mats in the vehicle bay. The vehicle entrance door was closed. Hursh watched one of the employees go outside through the pedestrian door and ask plaintiff if he could drive her vehicle inside for her. Hursh watched plaintiff drive her vehicle into the building. The floor in the area where plaintiff fell was made of smooth, white tile. Hursh did not see plaintiff fall, but he saw her get up from her fall, and he saw her wiping water off of her legs. When asked where the water had come from, Hursh responded, "from the water on the floor from her car." When asked how he knew that the water on the floor was from plaintiff's vehicle, Hursh replied, "I could see it dripping onto the floor from her vehicle." Hursh testified that the bay was lit with 10-foot fluorescents that were on when plaintiff fell. It was "[b]right."

¶ 6 Defendant's employee Jacob Whalen testified that, when plaintiff arrived at LubePro's, it was raining and had been raining all day. Whalen saw plaintiff as she was falling. When asked whether the tile where plaintiff fell was wet, Whalen testified: "Okay. And, yes, it was raining. Her car had lots of water on it. We were slow that morning, hadn't done a car in I can't remember how long, but I know that the floor was dry before the car was pulled in, and then her car had water all over it. Obviously water would be coming off the car onto the floor." Whalen testified that the employees squeegee and mop the floor after a vehicle is done being serviced. According to Whalen, the floor where plaintiff fell had been squeegeed and mopped dry prior to her fall. Whalen testified that the floor tiles in the bay were smooth. They were not a nonskid or a nonslip type of tile. They would be slippery when they were wet. He wore slip-resistant shoes.

¶ 7 Defendant's employee Justin R. Wood testified that it was raining "between medium and heavy" when plaintiff arrived at LubePro's. Wood approached plaintiff's vehicle and told her that he would pull the vehicle into the building. She told him that she did not want to get her hair wet and that she would pull the vehicle in herself. Wood went inside the building and told Hursh

that plaintiff wanted to pull her vehicle in. They opened the bay door and plaintiff drove in. Wood testified that he saw plaintiff when she fell. Wood testified that he wore slip-resistant shoes and that the floor tiles in the bay were slippery when wet. If a vehicle pulls in and gets water on the floor, employees squeegee the floor and then use a mop to clean up the remaining wetness. It does not get the floor completely dry; a thin layer of moisture remains on the floor. The floor had a thin layer of moisture on it before plaintiff pulled her vehicle into the bay, but there were "[n]o visible puddles or drips." Wood testified: "As soon as she pulls the vehicle in, there would have been because her tires would have been wet. The undercarriage of the vehicle would have been wet. And they would have instantly, as soon as she pulled in, been on the floor." When the lights are on inside the bay area, it is well lit. According to Wood, if customers choose to pull their vehicle into the bay, they are told to remain in the vehicle, whether it is raining or not.

¶ 8 Plaintiff's complaint alleged that defendant owed her a duty of reasonable care, including a duty to warn her of the "wet and slippery substance on the floor," which defendant knew or should have known created a dangerous and hazardous condition to customers exiting their vehicles. Plaintiff further alleged that defendant was negligent in (1) failing to verbally warn plaintiff of the wet and slippery substance on the floor, (2) failing to post signs around the area warning of the wet and slippery substance on the floor, (3) failing to properly maintain the area; and (4) failing to inspect the area.

¶ 9 Defendant moved for summary judgment, attaching plaintiff's discovery deposition, the discovery depositions of Hursh, Whalen, and Wood, plaintiff's recorded statement, and the climatological data for the date in question. Defendant argued that, because plaintiff failed to set

forth any evidence that she slipped on something other than a natural accumulation of water, defendant owed no duty to remove it or warn of its presence.

¶ 10 Plaintiff filed a response, attaching the same exhibits relied on by defendant and copies of its employee handbook and its operations manual. Plaintiff argued that defendant failed to provide "any evidence as to this injury having been caused by the unnatural [*sic*] accumulation of water caused by rain on the date of this accident." Plaintiff further argued that defendant's duty to provide a reasonably safe means of ingress and egress was not abrogated by the natural-accumulation rule. According to plaintiff, the evidence showed that defendant "has violated not only its own protocol and procedures, but failed to exercise due care to prevent its customers from being injured."

¶ 11 The trial court granted summary judgment for defendant. The court found that "the reasonable inference from the evidence is that the Plaintiff slipped and fell on a natural accumulation of rain water," noting that plaintiff "presented no evidence to suggest that the puddle was anything but rain water." Thus, the court held that defendant owed no duty to plaintiff. The court further noted that, even if the puddle was not a natural accumulation, plaintiff failed to present any evidence that defendant had notice of it.

¶ 12 Plaintiff timely appealed.

¶ 13 II. ANALYSIS

¶ 14 Plaintiff argues that the trial court erred in granting summary judgment for defendant, because, notwithstanding the natural-accumulation rule, defendant owed plaintiff a duty to provide safe ingress and egress on the premises. Further, plaintiff argues that there is a genuine issue of a material fact as to whether the substance on the floor which caused the plaintiff to fall was a natural accumulation.

¶ 15 "[S]ummary judgment is to be encouraged as an aid to the expeditious disposition of a lawsuit." *Bryant v. Glen Oaks Medical Center*, 272 Ill. App. 3d 640, 649 (1995). 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). A triable issue precluding summary judgment exists where material facts are disputed or where the material facts are undisputed but reasonable persons might draw different inferences from the undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). We review *de novo* the entry of summary judgment. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 16 To prevail in a negligence action, the plaintiff must prove that the defendant owed a duty to her, that the defendant breached that duty, and that the plaintiff's injury proximately resulted from that breach. *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 42 (2009). Whether a duty exists 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).

¶ 17 The operator of a business owes his invitees a duty to exercise reasonable care to maintain his premises in a reasonably safe condition for use by its invitees. *Ward v. K mart Corp*., 136 Ill. 2d 132, 141 (1990). A business operator also has a general duty to provide a reasonably safe means of ingress to and egress from its business. *Reed*, 394 Ill. App. 3d at 42. However, it is well established that business operators are not liable for injuries resulting from the natural accumulation of ice, snow, or water on their premises. *Watson v. J.C. Penney Co., Inc*., 237 Ill. App. 3d 976, 978 (1992). This includes injuries resulting from ice, snow, or water that is tracked inside the premises from the outside. *Reed*, 394 Ill. App. 3d at 42.

¶ 18 First, we find that here, contrary to plaintiff's argument, there is no genuine issue of material fact as to whether the substance on the floor, which caused the plaintiff to fall, was a natural accumulation of water. Plaintiff testified that she slipped on "two to three feet of wet." She stated that the substance was next to her vehicle. The substance "looked clear" and did not have an odor. The undisputed evidence established that it was raining when plaintiff arrived at LubePro's. Defendant's employees testified that it had been raining all day; Hursh and Wood each described the rain as "heavy." Whalen testified that plaintiff's vehicle "had lots of water on it." Indeed, plaintiff testified that she refused Wood's offer to drive her vehicle into the vehicle bay, because she did not want to get wet. The only reasonable inference is that the substance next to plaintiff's vehicle was water that dripped off her vehicle when she pulled into the bay. This inference is solidified by Hursh's testimony that he saw water "dripping onto the floor from [plaintiff's] vehicle." Plaintiff has not offered any evidence to support a contrary inference. Accordingly, there is no genuine issue of fact as to whether plaintiff slipped on a natural accumulation of water that was tracked in by her vehicle.

¶ 19 Nevertheless, plaintiff argues that defendant's duty to provide a safe ingress and egress is not abrogated by the presence of a natural accumulation of ice, snow, or water. "When the landowner prescribes a means of ingress and egress, it has a duty to illuminate properly and give adequate warning of a known, dangerous condition, or it must repair the condition." *Richter v. Burton Investment Properties, Inc.*, 240 Ill. App. 3d 998, 1002 (1993). However, case law makes clear that the presence of a natural accumulation of tracked-in water, *without more*, even at the sole point of ingress and egress, does not subject a business owner to liability for slip-and-fall damages. See *Reed*, 394 Ill. App. 3d at 43-44 (absent evidence that laundromat's entranceway was unsafe for reasons other than a natural accumulation of water, the defendant

owed no duty to the plaintiff); *Branson v. R & L Investment, Inc.*, 196 Ill. App. 3d 1088, 1094-95 (1990) (summary judgment proper where there was no evidence that the means of ingress and egress was unsafe for any reason other than the accumulation of water); *Wilson v. Gorski's Food Fair*, 196 Ill. App. 3d 612, 615 (1990) (no liability for injuries sustained when the plaintiff slipped and fell due to a mat saturated with tracked-in rain water at the entrance of a store); *Bernard v. Sears, Roebuck & Co.*, 166 Ill. App. 3d 533, 535 (1988) (no liability for injuries sustained when the plaintiff slipped and fell after stepping off a rug soaked with tracked-in water and onto a wet floor after entering the defendant's store); *Lohan v. Walgreens*, 140 Ill. App. 3d 171, 175 (1986) (no liability for injuries sustained when the plaintiff slipped and fell on tracked-in rain water in the vestibule of the common entranceway to the defendant's store).

¶ 20 Here, plaintiff has failed to establish that the floor was unsafe for any reason other than the presence of the water. While she now argues generally that "the floor of the shop was a dangerous condition," plaintiff, as defendant points out, did not raise that claim below and thus has forfeited it. See *Cochran v. George Sollitt Construction Co.*, 358 Ill. App. 3d 865, 872-73 (2005) (theories not raised during summary judgment proceedings are forfeited and may not be raised for the first time on appeal). Although plaintiff claims in her reply brief that "she did address the condition of the tile floor," she provides no record citation, and our review of the transcript finds no such argument. Indeed, her complaint makes no reference to the dangerous condition of the floor itself and instead specifically alleges that the "known dangerous condition" was a "wet and slippery substance on the floor."

¶ 21 Even if plaintiff did not forfeit that claim, she failed to put forth sufficient evidence to support it. In *Richter*, we found that there was no genuine issue of material fact as to whether the ceramic tile on which the plaintiff fell, which was wet with natural accumulation, was an

unreasonably slippery surface inappropriate for use in a foyer, where the plaintiff failed to present evidence to support his claim. *Richter*, 240 Ill. App. 3d at 1003. We found insufficient the plaintiff's testimony that the tile was the wrong surface for the foyer and that it was slippery even on a normal day. *Id.* We stated that the plaintiff had to present some evidence detailing how the foyer was excessively slippery, such as testimony from a building contractor. *Id.* As in *Richter*, plaintiff failed to put forth any evidence to support her claim that the floor itself was unreasonably slippery such that it was a dangerous condition.

¶ 22 Based on the foregoing, we find that, where plaintiff slipped and fell on a natural accumulation of tracked-in rainwater, absent evidence of a dangerous condition, defendant owed no duty to plaintiff.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm summary judgment for defendant.

¶ 25 Affirmed.