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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

LANA GROSS,)	Appeal from the Circuit Court
)	of Du Page County.
Plaintiff-Appellant,)	
)	
v.)	No. 11-L-679
)	
PRESTIGE NURSERY GARDEN)	
CENTER, INC.,)	Honorable
)	Ronald D. Sutter,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* Summary judgment in favor of defendant was proper where plaintiff failed to demonstrate either the existence of a contractual duty to remove ice or facts directly linking the ice on which plaintiff allegedly slipped and fell to an unnatural accumulation of snow.

¶ 2 On December 2, 2006, plaintiff, Lana Gross, fell in the parking lot of her place of employment. She attributed the fall to a mound of ice and snow, and she initiated this case against the snow-removal contractor, defendant, Prestige Nursery Garden Center, Inc. This matter was resolved when the trial court entered summary judgment against plaintiff and in favor of defendant holding that there was neither negligence nor a breach of contractual duty by

defendant in removing the snow from the parking lot on the date in question. Plaintiff appeals, arguing that there are factual issues that should have precluded summary judgment. We affirm.

¶ 3

I. BACKGROUND

¶ 4 We begin by summarizing the undisputed facts of record. On a snowy and sloppy December 2, 2006, plaintiff was 57 years old and an employee of System Sensors, Inc. At about 12:15 a.m., after completing her shift, she exited the building and walked through the parking lot to her car. As she was walking through the parking lot, plaintiff slipped and fell, attributing the fall to a mound of ice that she described as being about two feet around and in the shape of a four-inch tall dome. Her employer's parent company, Honeywell International, Inc., investigated the incident and paid plaintiff's workers compensation claim.

¶ 5 Plaintiff's supervisor, Jim Wolthusen, witnessed plaintiff's fall. He testified that he noticed the patch of ice before plaintiff fell. Wolthusen's testimony comprises the only evidence in the record concerning the dimensions of the ice patch, and this evidence was undisputed. Wolthusen testified that the ice was two feet in diameter and four inches high.

¶ 6 As of December 2, 2006, defendant was under contract with plaintiff's employer to clear snow from the employer's parking lot. The contract stated, relevantly, that defendant would "begin plowing when snow accumulates to a depth of two (2") inches," and "salting will be done at the discretion of the Client's Property Manager unless otherwise agreed upon in writing and attached to this contract." The contract also contains an integration clause which states, "[t]he writing constitutes the full and complete agreement of the parties." No other documents were attached to the contract.

¶ 7 Doug Howie, the facilities manager at System Sensor, testified that defendant repeatedly used the phrase "zero tolerance" in reference to ice accumulation at System Sensor.

Additionally, System Sensor's Client Property Manager, Brian Modaff, testified that System Sensor was a high priority facility for defendant and defendant typically acted to ensure that System Sensor was cleared of ice. However, the phrase "zero tolerance" and the typical actions regarding clearing ice were neither memorialized in writing nor attached to the contract.

¶ 8 On October 27, 2011, defendant's motion for summary judgment was granted. Plaintiff filed a timely motion to reconsider, and, on December 21, 2011, the trial court changed its mind and reversed the October 27 order granting summary judgment. For reasons not immediately apparent, the case was transferred to a different judge, who also took up the issue of defendant's motion for summary judgment. On May 23, 2013, the new trial court granted defendant's renewed motion for summary judgment.

¶ 9 The second trial court first reasoned that there was no contractual duty to remove ice from the parking lot, only snow. The second trial court noted that "[a] snow removal company is not liable [under a contract] to a third party for failure to perform snow removal but [it] may be liable for performing an affirmative act that creates or aggravates an unnatural accumulation of snow or ice." Nevertheless, the court held that defendant did not act negligently, emphasizing that "[t]here is not evidence or even suggestion that the plaintiff fell on anything other than a natural accumulation of ice." Plaintiff timely appeals.

¶ 10

II. ANALYSIS

¶ 11 On appeal, plaintiff contends that the trial court erred in granting summary judgment in favor of defendant because genuine issues of material fact existed as to whether defendant had a contractual duty to clear the ice and, if no duty existed, whether defendant acted negligently and aggravated the condition of the ice. We address plaintiff's contentions in turn.

¶ 12 We begin with a review of the familiar principles surrounding summary judgment. Summary judgment is appropriate “if 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 2012). To determine whether there is a genuine issue of material fact, the record and arguments are construed against the moving party and in favor of the opponent. *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49. A genuine issue of material fact exists where parties dispute a material fact or, if the facts are undisputed, reasonable persons could draw different inferences from the undisputed facts. *Id.* Summary judgment should only be granted where the moving party’s entitlement to summary judgment “is clear and free from doubt.” *Id.* A grant of summary judgment is reviewed *de novo*. *Home Star Bank & Financial Services v. Emergency Health & Care Organization, Ltd.*, 2014 IL 115526, ¶ 22.

¶ 13 Plaintiff first argues that, pursuant to her motion to reconsider, the order from the first trial court reversing its original order granting summary judgment should preclude the second trial court from granting summary judgment pursuant to defendant’s renewed motion for summary judgment. We disagree. To be clear, plaintiff does not argue that the court has no authority to reconsider and reverse an interlocutory judgment that it has previously made. Rather, plaintiff argues that the three different rulings by the same trial court demonstrate that there is a genuine issue of material fact. An order denying summary judgment is an interlocutory order. *Stevens v. Village of Oak Brook*, 2013 IL App (2d) 120456, ¶ 37. “A court has the inherent authority to reconsider and correct its rulings, and this power extends to interlocutory rulings as well as to final judgments.” *Id.* If two judges reach different conclusions on a motion for summary judgment, that does not indicate that there are factual issues remaining. *Id.*

¶ 14 More specifically, plaintiff argues that summary judgment should have been precluded because the disparate rulings demonstrate that the two judges drew different inferences from the same set of facts. In *Stevens*, the plaintiff’s motion for summary judgment was denied because the court found that there were genuine issues of material fact. *Id.*, ¶ 36. The case was reassigned to a different judge and the plaintiff brought “essentially the same motion for summary judgment.” *Id.* On review, we held that:

“a second trial judge has the authority to vacate the first trial judge’s order. [*People v. Mink*, 141 Ill. 2d 163, 171 (1990).] Thus, there was nothing improper about [the second judge] reaching a different conclusion that [the first judge] as to the plaintiff’s motion for summary judgment. The fact that he did does not indicate that there were factual issues remaining.” *Id.*, ¶ 37.

Here, plaintiff’s argument that a genuine issue of material fact existed is based only on the fact that two judges reached contrary rulings on a motion for summary judgment. We disagree. The differing results may have been due to the judges reaching different conclusions as to the proper legal principles to apply or the application of the legal principles identified. Accordingly, that fact that two judges reached different conclusions does not suggest, let alone demonstrate, the existence of a genuine issue of material fact. As a result, the trial court was not precluded from granting summary judgment simply because another judge (or the same judge) reached a contrary conclusion.

¶ 15 Plaintiff maintains that the second court’s consideration of defendant’s renewed motion for summary judgment was improper based on the principle that, once a court has exercised its discretion, its ruling should not be disturbed by a later, coordinate court unless there is a change of circumstances or additional facts to warrant the change, citing, *e.g.*, *Eads v. Consolidated Rail*

Corp., 365, Ill. App. 3d 19, 22-23 (2006). While plaintiff's statement of the law is correct, its application here is not. *Eads* and the other cases cited deal with a court's exercise of discretion; here, the two courts were ruling on a motion for summary judgment, a ruling that is not discretionary but requires a mandatory resolution of a question of law. *E.g.*, 735 ILCS 5/2-1005(c) (West 2012) ("[t]he judgment sought *shall be rendered*" if the appropriate conditions are fulfilled (emphasis added)). *Eads* and the other cases cited in support of this argument, therefore, are inapposite. Accordingly, plaintiff's argument is misplaced.

¶ 16 Additionally, plaintiff argues that the trial court's decision to reverse itself and grant defendant's renewed motion for summary judgment was improper because it was based on factual inaccuracies. Specifically, plaintiff disputes the court's statement that "there is no evidence [defendant] had been to the parking lot to clear snow and ice since the snow storm started earlier that day." However, this statement was not the basis for the decision. Instead, the decision was based on that fact that "[t]here is no evidence or even suggestion that the plaintiff fell on anything other than a natural accumulation of ice." Thus, even if plaintiff is correct that defendant had plowed, that fact does not actually go to the basis for the trial court's ruling, which was that no evidence in the record showed that defendant acted negligently. Therefore, plaintiff's argument fails.

¶ 17 Plaintiff next argues that defendant had a contractual duty to remove ice from the parking lot. Because the existence of a duty is a question of law, the issue may be resolved on a motion for summary judgment. *St. Martin v. First Hospitality Group, Inc.*, 2014 IL App (2d) 130505, ¶10. Based on the language of the contract, we hold that no such duty exists.

¶ 18 If the language of a contract is clear and facially unambiguous, the court applies the "four corners rule" and interprets the language of the contract using the plain and ordinary meaning of

the words without the use of extrinsic evidence. *West Bend Mutual Insurance Co. v. Talton*, 2013 IL App (2d) 120814, ¶ 19. Here, the language of the contract requires defendant to plow the property as required and to salt the ice at the discretion of the client property manager. The contract specifically defines “plowing” as “pushing or pulling the snow *** off areas defined including the *** parking lot.” The contract also requires defendant to remove “ruts and drifts left by the snowplow.” The definition of “plowing” in the contract is specifically limited to only mean the removal of snow and not ice. Further, defendant is only required to remove “ruts and drifts” caused by the snowplow, and this requirement does not include ice removal. Where the parties wished to impose a duty on defendant to remove an obstruction from the parking lot, the contract unambiguously states that such a duty exists. No such statement exists regarding ice. Therefore, we find that the contract is unambiguous and that defendant has only the duty to apply salt to the ice, but it has no duty under the contract to remove the ice as it would snow.

¶ 19 Plaintiff’s argument is less about whether a duty existed and instead focuses on whether defendant breached the (assumed) existing duty. In so doing, she places the cart before the horse and appears to either assume a duty must exist despite the precise language of the contract, or to conflate the concepts of existence of a duty with the breach of an existing contractual duty. In any event, we have carefully analyzed whether the contract established a duty to remove the ice (apart from the act of placing salt on the snow and ice in the parking lot), and the bulk of plaintiff’s arguments are misplaced and deal with whether the question of a breach of a contractual duty is properly a factual question to be resolved by the trier of fact and not in summary judgment. As a result, we need not address plaintiff’s argument because we have determined that the contract between plaintiff’s employer and defendant did not actually create the duty that plaintiff asserts was breached.

¶ 20 Plaintiff last argues that there is a genuine issue of material fact as to whether defendant acted negligently and created an unnatural accumulation of ice. Although defendant had no contractual duty to clear ice from the lot, defendant does have a duty to act not negligently and refrain from creating an unnatural accumulation of ice. *Williams v. Sebert Landscape Co.*, 407 Ill. App. 3d 753, 757 (2011). “A finding of an unnatural [condition] or aggravated natural condition must be based upon an *identifiable* cause of the ice formation.” (Emphasis in original.) *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325, 330-31 (1992) (quoting *Gilberg v. Toys “R” Us, Inc.*, 126 Ill. App. 3d 554, 557 (1984)). If a plaintiff argues that an ice patch resulted from the melting of an unnatural accumulation of snow, the plaintiff bears the burden of presenting facts to establish the direct link between the snow mound and the ice patch. *Russell v. Village of Lake Villa*, 335 Ill App. 3d 990, 996 (2005).

¶ 21 In support of her unnatural-accumulation-of-ice argument, plaintiff cites to Wolthusen’s testimony. Wolthusen testified that, when defendant plowed, “snow goes off to the back of the cars on one side and the front end of the cars on the other side * * * causing a mound.” Additionally, plaintiff cites to Modaff’s testimony, in which he stated that mounds of ice would not form if salt had been applied. Plaintiff argues that these statements, when taken together, suggest that plaintiff fell on an unnatural accumulation of ice. We disagree.

¶ 22 Although the cited testimony supports the conclusion that a snow mound behind the parked cars may be considered an unnatural accumulation, there is no evidence directly linking such a snow mound to the specific patch of ice on which plaintiff alleged that she slipped and fell. Because plaintiff has not provided evidence demonstrating an identifiable cause of the ice formation and linking that formation to an unnatural accumulation of snow, the ice cannot be considered an unnatural accumulation. *Crane*, 228 Ill. App. 3d at 330-31.

¶ 23 Plaintiff argues that defendant failed to address *Eichler v. Plitt Theatres, Inc.*, 167 Ill. App. 3d 685 (1988), in which this court relied on supreme court cases holding that contractual obligations could give rise to tort liability for injuries that occurred as a result of the defendants failing to perform their contractual duties. *Id.* at 690-91. In *Eichler*, the defendant undertook a contractual duty to remove “all snow *and ice.*” (Emphasis added.) *Id.* at 691. Here, by contrast, there was not contractual undertaking to remove ice, and while liability could be properly imposed in *Eichler*, without the duty here, there can be no liability. Plaintiff’s reliance on *Eichler*, then, is unavailing due to the factual differences between the contractual undertakings in that case and this case.

¶ 24 Similarly, plaintiff cites to *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill. App. 3d 640 (1980), which imposed a duty to remove ice and snow upon the defendant arising from the declaration of condominium and condominium bylaws to which the defendant assented. Here, the duties undertaken by defendant were spelled out in the contract, and ice removal was not such a duty contractually undertaken. Accordingly, *Schoondyke* is also inapposite, and plaintiff’s reliance is likewise unavailing.

¶ 25 III. CONCLUSION

¶ 26 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 27 Affirmed.