

NOTICE
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2014 IL App (5th) 120514-U

NO. 5-12-0514

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

| | | |
|-------------------------------|---|-------------------|
| FRANK R. SCHEMONIA, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellant, |) | Marion County. |
| |) | |
| v. |) | No. 11-L-3 |
| |) | |
| SANDOVAL SCHOOL DISTRICT 501, |) | Honorable |
| |) | Mark W. Stedelin, |
| Defendant-Appellee. |) | Judge, presiding. |

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justice Chapman concurred in the judgment.
Presiding Justice Welch dissented.

ORDER

¶ 1 *Held:* The trial court erred in granting summary judgment in favor of defendant based upon the doctrine of natural accumulation.

¶ 2 Plaintiff, Frank R. Schemonia, appeals from an order of the circuit court of Marion County granting summary judgment in favor of defendant, Sandoval School District 501.

The issue on appeal is whether the trial court erred in granting summary judgment in favor of defendant based upon the doctrine of natural accumulation. We reverse and remand.

¶ 3

FACTS

¶ 4 On January 10, 2011, plaintiff filed a complaint against defendant seeking damages in excess of \$50,000 for injuries he sustained to his back and left arm when he fell while exiting the bleachers at defendant's gym while attending his daughter's high school basketball game. The game took place during a tournament with other games and teams playing on that same date. When plaintiff arrived at the gym at 5:30 p.m., it was snowing outside and had been snowing throughout the day. Earlier in the day and throughout the evening custodians shoveled snow and put ice removal pellets on sidewalks and in parking areas. Custodians also mopped wet floors to keep them dry. Defendant contends that custodians also placed "wet floor" signs on the floors of the gym in order to warn spectators. Plaintiff said he did not see any "wet floor" signs posted in the gym.

¶ 5 Plaintiff was wearing nonslip boots due to his job as an electrician. After the game concluded, at approximately 7:30 p.m., plaintiff saw a player slip and fall while going to the locker room. The player was going down a different set of steps than plaintiff. Plaintiff went to exit the bleachers to see if he could help the player, but also fell as he was exiting the bleachers. He said he got up to walk down the bleachers, grabbed the handrail, hit the top step, and landed three steps from the bottom of the bleachers. He fell backwards and hit his back and elbow on the stairs. Plaintiff said there was water on the stairs and he had someone take pictures of the stairs right after he fell. Plaintiff claims he smelled vinegar at the site of his fall.

¶ 6 The principal and the superintendent filed affidavits which were attached to defendant's motion for summary judgment. Both stated that to their knowledge there were no complaints about the condition of the stairs on which plaintiff fell. They also stated that to their knowledge no one else had fallen on those stairs.

¶ 7 In his complaint, plaintiff claimed defendant, by its agents and employees, was guilty of one or more of the following willful and wanton acts:

"a. Failed to keep the floor of the premises properly maintained and in a safe condition.

b. Failed to warn [p]laintiff that the floor was not properly maintained and that a dangerous condition existed.

c. Failed to warn [p]laintiff of the dangerous condition then and there on the premises, when [d]efendant knew or in the exercise of ordinary care, should have known that said warning was necessary to prevent injury to [p]laintiff.

d. Failed to provide adequate safeguards to prevent [p]laintiff from injury while lawfully on said premises.

e. Failed to notify or warn [p]laintiff and others of the dangerous and unsafe condition of the bleacher stairs, even though it knew or should have known such stairs were dangerous."

Defendant answered the complaint and denied any negligence. Discovery ensued.

¶ 8 On July 17, 2012, defendant filed a motion for summary judgment, along with a memorandum in support thereof. Defendant raised two arguments: (1) it was entitled to judgment as a matter of law pursuant to section 3-106 of the Local Governmental and

Governmental Employees Tort Immunity Act (Act) (745 ILCS 10/3-106 (West 2008)); and (2) defendant had no duty to prevent any injuries to plaintiff resulting from a natural accumulation of water that was tracked in a building from outside. On October 18, 2012, the trial court entered an order granting summary judgment in favor of defendant, finding "[p]laintiff's fall was the result of water on the stairs, and the water on the stairs was tracked in on people's shoes from the snow outside. Defendant owed no duty to [p]laintiff to keep him safe from injuries resulting from the water accumulated on the stairs." Because of its decision on the natural accumulation argument, the trial court found it unnecessary to reach the issue regarding the application of the Act. Plaintiff now appeals.

¶ 9

ANALYSIS

¶ 10 The only issue on appeal is whether the trial court erred in granting summary judgment in favor of defendant based upon the doctrine of natural accumulation. Plaintiff admits that the natural accumulation doctrine is the law in Illinois, but denies that it is applicable in all situations, especially the situation presented here. Plaintiff argues there is no basis for granting summary judgment based only upon the statements of plaintiff and a genuine issue of material fact exists which precludes entry of summary judgment. Defendant replies that the trial court did not err in granting summary judgment on the issue of natural accumulation, and there are no facts in this case which could make the natural accumulation rule inapplicable. After careful consideration, we agree with plaintiff.

¶ 11 Summary judgment is a drastic means of disposing of litigation and is proper only where the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the nonmoving party, reveal that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257, 811 N.E.2d 670, 674 (2004). In cases involving summary judgment, we conduct a *de novo* review of the evidence in the record. *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113, 649 N.E.2d 1323, 1326 (1995). The central inquiry is whether the plaintiff presented sufficient evidentiary facts to create a genuine issue of material fact as to an element of the cause of action, thus surviving a motion for summary judgment. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 885, 901 N.E.2d 973, 976 (2009).

¶ 12 To prevail in a negligence action, the plaintiff must set forth facts establishing the existence of: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, and (3) an injury proximately caused by that breach. *Ford v. Round Barn True Value, Inc.*, 377 Ill. App. 3d 1109, 1113-14, 883 N.E.2d 20, 24 (2007). If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper. *Espinoza*, 165 Ill. 2d at 114, 649 N.E.2d at 1326. The issue of existence of a duty is a question of law, while the issues of breach and proximate cause are factual matters for the trier of fact to decide. *Espinoza*, 165 Ill. 2d at 114, 649 N.E.2d at 1326. When attempting to prove causation, a plaintiff must show circumstances justifying an inference of probability as opposed to a mere possibility. *Richardson*, 387 Ill. App. 3d at 886, 901 N.E.2d at 977.

¶ 13 In a case such as this, plaintiff must allege sufficient facts so that the trier of fact could find defendant was responsible for an unnatural or artificial accumulation of water, ice, or snow, or a natural condition aggravated by the owner which caused the plaintiff's injuries. *Bernard v. Sears, Roebuck & Co.*, 166 Ill. App. 3d 533, 535, 519 N.E.2d 1160, 1161-62 (1988). While it is well settled that business operators are not liable for injuries resulting from natural accumulations of water, ice, or snow that are tracked inside the premises from the outside (*Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 42, 914 N.E.2d 632, 636 (2009)), we agree with plaintiff that the natural accumulation doctrine is not all-inclusive. Just because it was snowing outside on the day plaintiff fell does not necessarily mean that the water on which plaintiff fell was a natural accumulation of water.

¶ 14 In *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 901 N.E.2d 973 (2009), the plaintiff brought a negligence action for injuries sustained in a slip and fall in a drugstore on a day when there was a light snowfall outside. 387 Ill. App. 3d at 883, 901 N.E.2d at 975. The plaintiff did not know why he had fallen or what caused him to fall; he merely assumed the floor was wet. Other than the plaintiff's mere assumption, there was no evidence to establish the presence of liquid on the floor prior to the defendant's fall. *Richardson*, 387 Ill. App. 3d at 886, 901 N.E.2d at 977. Similarly, the defendant "assumed, on the other hand, that plaintiff's shoes were wet when he fell because it was snowing." *Richardson*, 387 Ill. App. 3d at 886, 901 N.E.2d at 977. Given the conflicting assumptions, the court found there was nothing more than the "mere

possibility" that the plaintiff's fall was caused by the defendant's negligence. *Richardson*, 387 Ill. App. 3d at 886, 901 N.E.2d at 977.

¶ 15 In the instant case, plaintiff has presented much more than an assumption that he must have fallen due to a wet floor. Plaintiff testified via deposition that he was wearing nonskid boots and that he had sat through an entire basketball game before he fell. Plaintiff testified that he fell on stairs far away from the front entrance where snow might have accumulated. Plaintiff said he actually saw water on the stairs and that the water which caused him to fall smelled like "vinegar." Plaintiff claims to have photographic evidence of the wet stairs. Plaintiff also claims others fell in the area where he fell. Defendant asserts that because there was no evidence that any person fell in the exact location where plaintiff fell, plaintiff was unable to show an inherent problem or defect in the property and the only inference that can be drawn from multiple falls is that it was snowing outside and the tracked-in snow led to unrelated falls.

¶ 16 Contrary to defendant's assertion that only one inference can be drawn, we believe another inference can be drawn. Based upon the facts presented here, a trier of fact could infer that defendant caused an unnatural accumulation. Several persons, including defendant's witnesses, testified that janitors mopped the floor throughout the day. This indicates that defendant knew of the dangerous condition and attempted to rectify the situation. Where a property owner voluntarily institutes safety measures to prevent people from slipping on natural accumulations of snow, ice, or rain, it may be held liable for misfeasance. *Roberson v. J.C. Penney Co.*, 251 Ill. App. 3d 523, 526-27, 623 N.E.2d 364, 366 (1993); *Chisolm v. Stephens*, 47 Ill. App. 3d 999, 1006, 365 N.E.2d 80, 85

(1977). Finally, while defendant asserted through deposition testimony that "wet floor" signs were placed throughout the gymnasium, plaintiff said he did not see any such signs. This discrepancy alone presents a genuine issue of material fact which precludes entry of summary judgment.

¶ 17 Here, unlike *Richardson*, plaintiff has presented evidentiary facts to support his claim that defendant proximately caused his injuries due to an unnatural accumulation of water or a natural condition aggravated by defendant. The location of the fall, which was nowhere near the entrance of the gym, the fact that janitors mopped the floor throughout the day, the fact that others fell in the gym, plaintiff's testimony about the smell of vinegar in the area of the fall, and the discrepancy about whether "wet floor" signs were in the gym justify an inference of probability necessary to survive a motion for summary judgment. Because the record contains some evidence supporting more than a mere possibility of causation and that the fall was due to an unnatural accumulation of water or a natural condition aggravated by defendant, we find the trial court erred in granting summary judgment in favor of defendant.

¶ 18 For the foregoing reasons, we hereby reverse the order of the circuit court of Marion County granting summary judgment in favor of defendant and remand for further proceedings.

¶ 19 Reversed and remanded.

¶ 20 PRESIDING JUSTICE WELCH, dissenting:

¶ 21 I respectfully dissent. In my opinion, the record reveals that the trial court did not err in granting summary judgment in favor of the defendant on the basis that the defendant owed no duty to the plaintiff to keep him safe from injuries resulting from the water accumulated on the stairs of the school gymnasium.

¶ 22 "To establish a duty, the plaintiff must make an affirmative showing of an unnatural accumulation or an aggravation of a natural condition before recovery will be allowed." *Choi v. Commonwealth Edison Co.*, 217 Ill. App. 3d 952, 957 (1991). In order to survive a motion for summary judgment, the plaintiff is required to come forward with some evidentiary facts to show that the water upon which he slipped was of unnatural origin. *Shoemaker v. Rush-Presbyterian-St. Luke's Medical Center*, 187 Ill. App. 3d 1040, 1043 (1989).

¶ 23 As explained by the majority, it is well established that business operators are not liable for injuries resulting from the natural accumulation of ice, snow, or water that is tracked inside the premises from the outside. *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 42 (2009). Under this natural-accumulation rule, business operators do not have a duty to remove the tracks or residue left inside the building by customers who have walked through natural accumulation outside the building. *Id.* However, in situations where a duty would not otherwise arise, a duty to act reasonably may be imposed when a defendant negligently performs a voluntary undertaking. *Frederick v. Professional Truck Driver Training School, Inc.*, 328 Ill. App. 3d 472, 479 (2002). The voluntary-undertaking doctrine mandates that if a property owner voluntarily assumes a

duty to remove a natural accumulation of snow, ice, or water, he is held to a standard of ordinary care and will be liable if he negligently performs the undertaken duty. *Reed*, 394 Ill. App. 3d at 47. However, this duty of ordinary care is limited to the extent of the voluntary undertaking. *Id.* "Where the accumulation of water is a natural one, there is no duty to continue a voluntary undertaking to remove it." *Id.*

¶ 24 In the present case, the majority concluded that the record contained some evidence supporting more than a mere possibility that the fall was due to an unnatural accumulation of water or a natural condition aggravated by the defendant. In support of its position, the majority points to the following evidence which justified the inference of probability necessary to survive a motion for summary judgment: the location of the fall, the fact that janitors mopped the floor throughout the day, the fact that others fell in the gymnasium, the plaintiff's deposition testimony concerning the smell of vinegar in the area of the fall, and the discrepancy about whether "wet floor" signs were in the gymnasium.

¶ 25 I, however, disagree with the majority that the plaintiff has presented some evidentiary facts to support his claim that his fall was due to an unnatural accumulation of water or a natural condition aggravated by the defendant. It is my opinion that the trial court was correct when it determined that there was no genuine issue regarding the following material facts: that the plaintiff was injured when he slipped down the stairs that accessed the bleachers as he was leaving a girls basketball game held in the defendant's gymnasium; that the stairs were wet at the time that the plaintiff slipped; and that it was snowing outside when the plaintiff entered the gymnasium and water on the

stairs was tracked in on people's shoes from the snow and ice outside. It was uncontroverted that it was snowing outside on the day of the plaintiff's injury and that snow and ice had been tracked inside the gymnasium by spectators coming to watch the basketball tournament. The plaintiff alleged in his complaint that he fell on an accumulation of water on the stairs. He testified via deposition that there was nothing else on the stairs other than water. Although the record indicates that others fell in the gymnasium that night, there is no indication that anyone other than the plaintiff fell on the stairs at issue. While the plaintiff argues that the natural-accumulation rule should not apply to this case because he fell on stairs far away from the front entrance where snow might have accumulated, the fact that his injury occurred far away from the front entrance does not mean that the natural-accumulation rule is inapplicable here. See *Reed*, 394 Ill. App. 3d at 44 ("The natural accumulation rule applies to slip-and-fall cases involving property owners and business operators regardless of where the injury occurs.").

¶ 26 Additionally, it is well-settled that the defendant had no duty to remove the tracks or residue left inside the gymnasium by spectators who have walked through the natural accumulation of ice, snow, or water outside the building. The defendant also had no duty to continue taking precautionary measures to mop up the water on the floor, to place floor mats at the building's entrance, or to place "wet floor" signs on the floor simply because it had already done so. For these reasons, I would conclude that the trial court did not err in granting summary judgment in favor of the defendant based upon the doctrine of natural accumulation.

¶ 27 Accordingly, I respectfully dissent from the majority's disposition in this case.