2016 IL App (2d) 151123-U
No. 2-15-1123
Order filed June 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

FARREL L. TEDDER, Plaintiff-Appellant, v. ROCKFORD AREA CONVENTION & VISITORS BUREAU, NORSTAR HEATING & COOLING, INC., and THE CITY of ROCKFORD, Defendants-Appellees.	)	Appeal from the Circuit Court of Winnebago County. No. 12-L-24 Honorable Eugene G. Doherty, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court properly granted the defendants' motion for summary judgment on the plaintiff's complaint for personal injuries.

¶ 2 The plaintiff, Farrell Tedder, appeals from the June 23, 2015 and October 22, 2015, orders of the circuit court of Winnebago County granting the motions of the defendants, Rockford Area Convention and Visitors Bureau (the Visitors Bureau) and the City of Rockford

(the City), for summary judgment on his complaint for personal injuries.[1] On appeal, the plaintiff argues that the trial court erred when it found that he had presented insufficient evidence to raise a genuine issue of material fact as to why he had been injured. We affirm.

¶ 3 On January 26, 2012, the plaintiff filed a negligence action against the defendants. The complaint alleged that, on February 3, 2011, the plaintiff was walking on a parking ramp that was owned and managed by the defendants. He slipped and fell on ice and snow in the parking ramp, which caused him to lose consciousness and suffer central cord stenosis. The plaintiff alleged that the accumulation of snow and ice that he slipped on was unnatural because it resulted from the defendants' negligent maintenance of the heating and cooling (HVAC) unit located in the parking ramp. The plaintiff sought damages in excess of $50,000.

¶ 4 Both defendants filed answers to the plaintiff's complaint, denying all material allegations. Both defendants also subsequently filed motions for summary judgment. The defendants argued that they were not liable for the plaintiff's injuries because he could not establish that he had slipped on an unnatural accumulation of snow and ice. The plaintiff filed a response, arguing that summary judgment was inappropriate because he had presented sufficient evidence that the ice he had slipped on was indeed an unnatural accumulation of snow and ice. In support of their arguments, the parties submitted the deposition transcripts of the plaintiff, his business partner Richard Urquhart, photographs that Urquhart took, and the affidavit of Russell Fote, the plaintiff's expert witness.

¶ 5 The plaintiff testified that on February 3, 2011, he parked his vehicle at the Talcott building parking ramp at 321 West State Street in Rockford. The parking ramp is owned by the

[1] On January 6, 2015, the trial court granted Norstar Heating and Cooling, Inc.'s motion for summary judgment. The plaintiff does not appeal from that order.

City and rented and managed by the Visitors Bureau. The parking ramp is not completely enclosed with walls. There is a short half-wall around each level and the upper portion is exposed to the elements. On the day in question, the weather was very snowy and icy. However, he did not observe any ice or snow on the ramp. As he was walking to his office, he slipped on ice alongside a caged area that held a HVAC unit. He hit his head and became unconscious. He was transported to Rockford Memorial Hospital where he was hospitalized for seven days. He sustained a concussion and a disc herniation, for which surgery was performed.

¶ 6 The plaintiff testified that he did not know where the ice he had slipped on came from. He assumed that it came from the HVAC unit because of markings of water and ice from the HVAC unit. He believed that the downward facing louvers of the HVAC unit caused melting and pools of water which then froze, causing the icy conditions upon which he fell. He did not see anything in the area that would demonstrate to him that he fell on snow that had fallen off a vehicle.

¶ 7 Urquhart testified that he received a call from the plaintiff following the plaintiff's fall. Later that day, he took photographs of the area where the plaintiff had fallen. He believed that the area of the HVAC unit was very icy.

¶ 8 Fote averred that he was a mechanical engineer who specialized in safety engineering. At the request of the plaintiff, he reviewed photographs of the scene of the accident and met with the plaintiff. He also inspected the scene of the accident and took measurements of the HVAC unit area. He testified that the parking ramp has a downward slope which results in water and debris flowing downward towards the fence that surrounds the HVAC unit. He stated that on February 2, 2011, a combination of snow and road salt melted and fell off parked vehicles, which then would have caused salt water to collect on the walk surfaces of the parking structure. The

salt probably then would have traveled down toward the front side of the fence surrounding the HVAC unit. Since freezing conditions existed in the parking structure over the previous night and early morning hours of February 3, 2011, the salt water froze in front of the HVAC unit, which resulted in the plaintiff's fall and injury. Fote believed that the plaintiff's fall was caused by a lack of maintenance of the HVAC fence, which allowed debris to collect at the bottom of the fence, thereby allowing water to collect on the concrete walk surface in front of the HVAC unit.

¶ 9 On June 23, 2015, the trial court granted the City's motion for summary judgment. The trial court explained that the plaintiff had advanced two competing theories as to the genesis of the ice on which he had slipped. One theory, which was not reflected in his pleadings, was that he had slipped on ice that resulted from melting snow that had been tracked in by vehicles. This theory was consistent with Fote's testimony as to how the ice got inside the parking ramp. It was also consistent with the photographs that showed water accumulated at various spots inside the parking ramp.

¶ 10 The trial court found that the plaintiff's other theory—the one actually reflected in his pleadings—was that the heat emanating from the HVAC unit melted snow inside the ramp, which then ran under the bottom of the snow fence and out to where it froze and the plaintiff slipped on it. The trial court found that there was no evidence to support that theory. The trial court further stated that this theory was strikingly different from the first theory, explaining:

> "Fote says that the water ran *toward* the HVAC and stopped at the fence because it was impermeable to water; [the plaintiff's] theory is that the water came *from* the area of the HVAC and ran under the fence to reach the area where Plaintiff fell. These significantly different and largely contradictory theories raise a real concern that Plaintiff is engaging

in rampant speculation about the nature of the accumulation and would ask the jury to do the same."

¶ 11 The trial court concluded that the plaintiff's first theory was plausible and supported by the evidence. However, it was not actionable because the City did not have a duty to protect the plaintiff against the natural accumulation of ice and snow. Conversely, the plaintiff's other theory, which would be actionable, was not supported by anything other than speculation.

¶ 12 On October 22, 2015, the trial court granted the Visitors Bureau summary judgment on the plaintiff's complaint for the same reasons that it granted the City's motion for summary judgment.

¶ 13 ANALYSIS

¶ 14 On appeal, the plaintiff argues that a material question of fact remains as to the source of the ice that he slipped on. Thus, the plaintiff insists that the trial court's entry of summary judgment in the defendants' favor was improper.

¶ 15 The purpose of a motion for summary judgment is to determine whether a genuine issue of triable fact exists (*Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)), and such a motion should be granted only when "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 2014)). An order granting summary judgment should be reversed if the evidence shows that a genuine issue of material fact exists or if the judgment was incorrect as a matter of law. *Clausen v. Carroll*, 291 Ill. App. 3d 530, 536 (1997). The existence of a duty is a question of law properly decided on a motion for summary judgment because, absent a legal duty, there can be no recovery in negligence. *Hodges v. St. Clair County*, 263 Ill. App. 3d 490, 492 (1994).

¶ 16 In Illinois, in the absence of a contractual obligation, there is generally no duty with respect to the removal of natural accumulations of snow, water and ice. *Ziencina v. County of Cook*, 188 Ill. 2d 1, 10–11 (1999); *Handy v. Sears, Roebuck & Co.*, 182 Ill. App. 3d 969, 971, (1989). A landowner may be liable, however, for injuries that are the consequence of an unnatural or artificial accumulation, or a natural condition that is aggravated by the owner. *Strahs v. Tovar's Snowplowing, Inc.*, 349 Ill. App. 3d 634, 638 (2004).

¶ 17 We hold that the plaintiff has not supplied any concrete evidence that the ice he fell on was caused by an unnatural accumulation of snow, water, and ice. The plaintiff acknowledged as much in his deposition testimony when he testified that he did not know for sure where the ice he slipped on came from and that he assumed it came from the HVAC unit. The plaintiff's speculation as to the source of the ice he slipped on is insufficient to defeat a motion for summary judgment. See *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App. 3d 288, 294 (1992) (plaintiff's speculation as to the cause of the ice that he slipped on was insufficient to withstand defendant's motion for summary judgment).

¶ 18 Furthermore, the other evidence in the case also pointed away from a finding that the ice the plaintiff had slipped on had formed from an unnatural accumulation of snow. The plaintiff's business partner took pictures shortly after the incident which showed snow and ice throughout the parking ramp, but conspicuously not near the HVAC unit. Those pictures also did not show any debris near the HVAC unit that could have caused ice to form. The plaintiff's expert indicated that the ice the plaintiff slipped on was the result of snow tracked in by cars, which does not constitute an unnatural accumulation of snow. See *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 46 (2009) (water tracked in from the outside constitutes a natural accumulation). Moreover, the plaintiff's counsel acknowledged to the trial court that there was no evidence that

the HVAC unit was malfunctioning on the day in question. Based on all of this evidence, we conclude that the trial court properly granted summary judgment in favor of the defendants.

¶ 19 In so ruling, we find the plaintiff's reliance on *Durkin v. Lewitz*, 3 Ill. App. 2d 481 (1954), and *Lapidus v. Hahn*, 115 Ill. App. 3d 795 (1983), to be misplaced. In both those cases, the plaintiff presented testimony that, if true, clearly established that dripping water from a negligently maintained fixture created an accumulation of ice that led to her fall. Here, however, no such testimony or evidence was presented. Thus, neither *Lapidus* nor *Durkin* supports the plaintiff's contention that, under the facts of this case, a material issue of fact exists regarding an unnatural accumulation of ice or water.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 22 Affirmed.