2019 IL App (2d) 180389-U
No. 2-18-0389
Order filed January 24, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

MARY S. MARTIN and JEFFREY L. MARTIN,	)	Appeal from the Circuit Court of Stephenson County.
Plaintiffs-Appellants,	)	No. 15-L-13
v.	)	
KENT BANK, n/k/a FORRESTON STATE BANK and HIESTER CONSTRUCTION, INC.,	)	Honorable Glenn R. Schorsch,
Defendants-Appellees.	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The trial court's order granting summary judgment for both defendants was affirmed on appeal when the plaintiffs failed to provide sufficient evidence of a nexus between the snow piles on the Bank's property and an ice patch on the parking lot in which one of the plaintiffs fell.

¶ 2 Appellants Mary and Jeffrey Martin appeal from the order of the trial court granting appellees Kent Bank and Hiester Construction Company's motion for summary judgment in this slip and fall case. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The record reflects that Mary had been employed as an FDIC bank examiner for several years. A part of her job consisted of traveling to banks and performing examinations of each bank's business and financial records. On March 14, 2014, Mary was scheduled to inspect Kent Bank, now known as Forreston State Bank (the Bank), located at 996 West Fairview Road in Freeport, Illinois. Mary had been to Kent Bank as a bank examiner many times. She even had a specific parking spot that she would usually park in when visiting the Bank. At around 7:25 a.m. on March 14, 2014, Mary drove into the employee parking lot at the Bank. There was some snow in the parking lot that had been previously plowed by Hiester Construction (Hiester). After parking, Mary exited her vehicle and immediately slipped and fell on some ice that had accumulated on Kent Bank's parking lot. After the fall she was unconscious in the parking lot for some time. As a result of her fall Mary sustained substantial injuries.

¶ 5 At her evidence deposition Mary testified that on the day before her fall, she parked in her regular parking spot at the Bank and worked there until at least 3:00 p.m. She recalled that on that day it felt "like the first day of spring." However, she did not remember seeing any water draining in the parking lot. On the day that she fell, she exited the driver's side door of her vehicle by taking her left foot out of the vehicle first. She did not recall her right foot coming out of the vehicle; she just remembered feeling her left foot sliding once it was on the ground. Mary did not recall any precipitation that morning. She did not see any ice in the parking lot on the day she fell or any of the days she was at Kent Bank during that week. She never told anyone at the bank that there were potentially unsafe conditions in the parking lot on the day of the incident or the day before.

¶ 6 An invoice from Hiester to the Bank indicated that Hiester last plowed the bank's parking lot and walkways on March 5, 2014, and it applied Ice Melt/salt on March 12, 2014. On March 13, 2014, the day prior to Mary's fall, there was no precipitation or snow. Mary arrived at the bank between 7:00 and 7:30 a.m. and parked where she normally did in the second parking spot. She stayed at the bank until sometime after 3:00 p.m. that day. She had no trouble getting in and out of her vehicle or when she went out to lunch with coworkers that day.

¶ 7 Jolene Bohnsack, the Bank's senior vice president, testified that part of her responsibility as the senior vice president was managing the operation of the building and its grounds, including arranging for snow and ice removal. Bohnsack contracted with Hiester to perform snow and ice removal services for the premises, including the parking lot. Pursuant to the terms of the contract, she could request that Hiester haul away snow rather than piling it up around the parking lot. If there was an issue or a complaint regarding the condition of the parking lot Bohnsack could contact Hiester to come to the property. She did not contact Hiester regarding any issues either the day before or the day after the accident and she was not aware of anyone who did. In fact, at no point in the 2013-2014 snow plowing season did Hiester receive any complaints from the Bank about its work.

¶ 8 Bohnsack testified that she was involved with the parking lot construction project and had direct contact with the builders, landscapers and the architect throughout the entire project. Bohnsack monitored the construction of the lot and was familiar with all aspects of the project. She said the lot drains from west and north to the drain on the southeast side of the parking lot. On the morning of Mary's accident the lot looked damp and snow was piled around the edge of the parking lot on the north and west sides. There was an icy area around two feet in diameter in the area where Mary fell.

¶ 9 Jeffrey Martin, Mary's husband, testified that on the date of Mary's accident, he went to the Bank after speaking to Mary. He walked up to Mary's car and saw an area of ice and Ice Melt by the driver's door. He also observed snow piled immediately in front of Mary's car. The snow extended over the curb and into the pavement of the parking lot, only a few feet from the area of ice and Ice Melt adjacent to the driver's door of Mary's car.

¶ 10 On May 19, 2015, Mary and Jeffrey filed a complaint. That complaint contained two counts and only listed the Bank as the defendant. In the first count Mary and Jeffrey alleged that the Bank was guilty of the following acts or omissions: (1) failure to exercise ordinary care to remove snow and ice from its parking lot; (2) failure to prevent the unnatural accumulation of ice in the parking lot; (3) failure to properly supervise the removal of snow and ice; (4) removed snow and ice from its parking lot in such a manner that an unnatural accumulation of snow or ice was created; (5) allowed or permitted a landscaping or construction design deficiency to exist which created or aggravated an unnatural accumulation of ice in the parking lot. In the second count the Martins alleged that as a proximate result of the negligent acts or omissions of the Bank and the resulting injuries to Mary, Jeffrey had been deprived of Mary's love and affection, companionship, and other benefits of their marital relationship. On August 20, 2015, they filed an amended complaint alleging premises liability and loss of consortium, respectively, against the Bank and Hiester.

¶ 11 On December 5, 2017, and January 8, 2018, respectively, the Bank and Hiester filed motions for summary judgment. On April 25, 2018, the trial court held a hearing on those motions. After the parties had made their arguments, the trial court referred to a comment made by one of the Bank's attorneys during her argument. The Bank's attorney theorized that the ice patch could have been created by snow caught in the wheel well of a vehicle and that snow had

fallen on the pavement and froze the night before Mary fell. The court noted that it was quite possible that, because Mary said she had parked in the same parking spot the day before she fell, perhaps it was her own vehicle that dripped snow onto the ground from her vehicle's wheel well the day before she fell. The court then granted defendants' motions for summary judgment. Specifically, the court held:

> "There's no causal nexus that's been created in this case or presented or at this point even shown, no concrete evidence that establishes the connection. And I believe that the two Second District cases as cited by the defendants, the *Crane* case and the *Madeo* case, are controlling and very analogous. And for those reasons, the motions in favor of summary judgment will be granted for the defendants in this case."

¶ 12 The Martins filed a timely notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 On appeal, the Martins argue that the record, when construed strictly against defendants and liberally in favor of them, clearly shows that the entry of summary judgment in favor of the Bank and Hiester was improper because reasonable persons could draw different inferences from the evidence; therefore, an issue of fact existed. Specifically, they argue: (1) the evidence showed that an unnatural accumulation of ice, created by defendants, caused Mary's injuries; (2) a reasonable jury could conclude that the unnatural accumulation of ice was caused by Hiester's negligence and that the Bank had notice of an alleged defect in the parking lot; and (3) the trial court erred in relying on *Madeo* and *Crane* as controlling authority when those cases are factually distinguishable from this case.

¶ 15 Summary judgment is proper only where the pleadings, depositions, admissions, and affidavits on file 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). "Although summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). In order to determine whether a genuine issue of material fact exists, the court "must construe the pleadings, depositions, and affidavits strictly against the movant and liberally in favor of the opponent." *Id*. The purpose of summary judgment is not to try an issue of fact but to determine whether a triable issue of fact exists. *Nunez v. Diaz*, 2017 IL App (1st) 170607, ¶ 29. An appeal following a grant of summary judgment is subject to *de novo* review. *Cohen v. Chicago Park District*, 2017 IL 121800, ¶17.

¶ 16 A. Unnatural Accumulation of Ice/ Second District Cases

¶ 17 Plaintiffs first claim that there is sufficient evidence in the record for a jury to draw a reasonable inference that the ice upon which Mary fell was the result of an unnatural accumulation of ice created by melting snow piled up next to where she parked her vehicle.

¶ 18 As support for this claim plaintiffs refer to certain evidence that was presented below. Specifically, that on the morning of Mary's fall it was sunny and it "felt like spring." Weather records for March 2014 showed that the temperatures were above freezing during the day and below freezing at night. There had been no recent precipitation, but there was snow that was plowed and placed on a grassy berm on the north and west side of the Bank's parking lot. It was also acknowledged that the parking ramp drains from the west and north to a drain on the southeast side of the parking lot. On the day of the incident Mary parked her vehicle on the west side of the parking lot near the snow that had been piled up on the berm in roughly the second or third parking spot. According to Jeffrey's affidavit, the snow was piled up immediately in front

of Mary's vehicle. The snow pile extended over the curb and onto the pavement in the parking lot, only a few feet from an extra area of ice and Ice Melt adjacent to the driver's side of Mary's vehicle.

¶ 19 After Mary fell, she was laying on a "pond" of ice about two feet in diameter. Her back and coat had become wet from the fall. After the fall Mary saw ice all around her. A Bank employee testified that on the morning of Mary's fall the parking lot looked damp and snow was piled along the edge of the west and north end of the parking lot. Based upon this evidence plaintiffs conclude "[a]s a result, where a plaintiff presents evidence of snow piles, a nearby patch of ice described as clear, smooth and transparent, climate evidence showing that days were warm and nights were below freezing, wet pavement and no evidence of recent precipitation, a plaintiff has presented facts sufficient to avoid summary judgment." Finally, plaintiffs cited to *Hornacek v. 5th Avenue Property Management*, 2011 IL App (1st) 103502, where the appellate court reversed a grant of summary judgment in favor of the defendants stemming from a fall on ice. Plaintiffs claim that the facts in that case are strikingly similar to the instant case.

¶ 20 In response, the Bank argues that the trial court properly granted summary judgment in its favor because the Martins did not present any evidence that the ice patch at issue was an unnatural accumulation of ice that the Bank either caused or aggravated. Specifically, plaintiffs were unable to prove that the ice patch came from the snow piles that were along the perimeter of the parking lot. Without that critical causal link, plaintiffs did not meet their burden of proof. *Hornacek* is not analogous to the instant case, and the *Madeo* and *Crane* cases control here.

¶ 21 In its response, Hiester argues that the trial court correctly found that plaintiffs failed to provide any evidence that Mary slipped on an unnatural accumulation of ice that Hiester aggravated or created. It cites *Madeo* for the proposition that a plaintiff bears the burden to

present facts showing a direct link between the snow pile and the alleged condition that caused the fall. *Madeo*, 239 Ill. App. 3d at 294. Mary did not slip on any snow pile itself, or any ice physically connected to any snow pile. Instead, she slipped on an isolated patch located several feet away from the snow pile Hiester made. If Mary's theory that the snow piles were melting and water was running through the parking lot next to her vehicle was true because, in the days prior to her fall, the temperatures were above freezing during the day and below freezing at night, there would have been more ice present in the parking lot caused by the multiple snow piles instead of a small isolated patch upon which Mary fell. Also, Jeffrey's affidavit does not provide evidence of a causal connection between Hiester's plowing and the ice patch upon which Mary fell, nor does it create a question of material fact. In his affidavit Jeffrey merely stated that there were snow piles in front of Mary's car a few feet away from the ice patch upon which she slipped, a fact that is not in dispute. Also, the photo that Jeffrey took a few days after Mary's fall only shows small snow patches with no ice visible in the photograph. Like in *Madeo*, plaintiffs' claims are pure speculation and insufficient to support an inference of a casual nexus between Hiester's plowing and the ice upon which Mary fell.

¶ 22 In reply, plaintiffs argue that the Bank and Hiester have only focused on the fact that plaintiffs failed to introduce a causal link between the snow piles and the ice upon which Mary fell. However, they argue, defendants have ignored the "bigger picture: the totality of the evidence produced thus far, which must be construed strictly against Defendants and liberally in favor of Plaintiffs. Furthermore, there has been no evidence introduced by the Defendants to contradict Plaintiffs' evidence." They claim that the trial court failed to give any weight to the circumstantial evidence presented here, which is more than sufficient to establish the "causal link." Instead, the trial court required the causal link to be established by direct evidence, and

that was not plaintiffs' burden when resisting a summary judgment motion. In their argument on notice, plaintiffs reiterated that the Bank created the unnatural accumulation of ice by its design of the parking lot, and that the Bank had notice of the alleged design defect due to its knowledge that Hiester would routinely plow snow around the edge of the parking lot.

¶ 23 In Illinois, a landowner is not responsible for injuries resulting from a natural accumulation of snow or ice that has been left undisturbed. *Krywin v. Chicago Transit Authority*, 238 Ill.2d 215, 227 (2010). A defendant cannot be held liable for injuries sustained unless a plaintiff shows that the defendant aggravated a natural condition or that the origin of the accumulation of ice, snow, or water was unnatural. *Branson v. R & L Investment, Inc.*, 196 Ill. App. 3d 1088, 1091 (1990). If the landowner or a hired contractor creates an unnatural accumulation, then liability may attach as a result of failing to use ordinary care. *Id*.

¶ 24 A party under contract with a landowner to remove snow or ice also bears a duty of reasonable care for the customers on the property. *Madeo v. Tri–Land Properties, Inc.*, 239 Ill. App. 3d 288, 290 (1992). Specifically, snow removal contractors have a duty not to "negligently remove snow by creating or aggravating an unnatural accumulation of snow or ice." *McBride v. Taxman Corp.*, 327 Ill. App. 3d 992, 996 (2002).

¶ 25 Since the *Madeo* and *Crane* cases from this district specifically involve the issue of whether a particular accumulation of ice is unnatural, we will review plaintiffs' first and third arguments together. After a careful review of the record we find that summary judgment in favor of the Bank and Hiester was appropriate here. Even though we construe the pleadings, depositions and affidavits strictly against the Bank and Hiester and liberally in favor of the Martins (*Williams*, 228 Ill. 2d at 417), the Martins still cannot prevail here since they have not provided any evidence that the ice patch at issue was an unnatural accumulation of ice that was

caused or aggravated by defendants. Even taking all of the Martin's circumstantial evidence into account, that evidence was insufficient to show the required nexus between the ice on which Mary fell and the snow piles that Hiester placed on the edge of the parking lot on the north and west sides.

¶ 26 First, we disagree with the Martins that the instant case is analogous to *Hornacek*. In *Hornacek v. 5th Avenue Property Management*, 2011 Ill App (1st) 103502, the trial court granted summary judgment in favor of both the landowner and the snow plow contractor after finding that the plaintiff had failed to prove there was an unnatural accumulation of ice that was caused by the defendants and that there was no notice to the landowner defendant. *Hornacek*, 2011 Ill App (1st) 103502, ¶ 25. The appellate court reversed the trial court's order, however, after finding that the plaintiff had presented sufficient evidence from which a trier of fact could reasonably find that the snow plow contractor had negligently created an unnatural accumulation of ice and that the landowner had actual or constructive notice of the condition. *Id*. ¶ 32. Specifically, the appellate court relied on a witness' testimony that recalled a "big ice flow" in the parking lot. That witness was able to describe the snow melting from piles around the edges of the parking lot, which formed the "ice flow." *Id*. There was also deposition testimony of another witness and the plaintiff that established that the sun would melt the piles of snow and then water would flow into the parking lot, which would then freeze at night. *Id*. at ¶ 33. It is clear that in *Hornacek*, a very clear nexus in the form of an "ice flow" was provided through the testimony of several witnesses. Unfortunately, however, no nexus between the snow piles and the ice on which Mary fell was presented below. As the trial court speculated, snow from a vehicle's wheel well (perhaps even from Mary's vehicle itself, since she testified that she had

been parked in the spot the day before her accident) could have fallen onto the ground, melted and then froze overnight, causing Mary's fall the next morning.

¶ 27 Second, the remaining cases that the Martins cite to support their allegation that the trial court erred in granting summary judgment for the Bank and Hiester are inapplicable to the issues in this appeal. The Martins cite *Ziencina v. County of Cook*, 188 Ill. 2d 1 (1999), for the proposition that "a mound of snow created by snow-removal efforts is properly considered an unnatural accumulation." Neither the Bank or Hiester disputes that there had been piles of snow placed along the perimeter of the Bank's parking lot and, of course, those piles were accumulated unnaturally. The issue in this case, however, is whether the unnatural accumulation of snow created the ice patch upon which Mary fell. As we have found, the Martins failed to produce any evidence of a nexus between the snow piles and the ice patch. Next, the Martins cite *Russell v. Village of Lake Villa*, 335 Ill. App. 3d 990 (2002), for the proposition that "[i]t has consistently been held that a plaintiff can raise a genuine issue of material fact from photographs depicting snow piles and the logical inference that can be drawn from snow melting off these snow piles, which later refreeze, forming an ice patch that could cause a plaintiff to slip." In *Russell*, this court found that the plaintiff had presented facts that would indicate a direct link between the ice that he slipped on at a Metra station and a snow pile where there was evidence that the ice *surrounded the base of the snow pile* and was contiguous with it. The pictures that are part of this record, however, only show the snow piles, and not even the ice patch. Again, the Martins have presented no connection between the snow piles and the ice upon which Mary fell.

¶ 28 Third, we disagree with the Martins that the trial court erred in relying on *Madeo* and *Crane* as controlling authority. In *Madeo v. Tri-land Properties, Inc.*, 293 Ill. App. 3d 288 (1992), this court affirmed the trial court's grant of summary judgment in favor of a store owner

and a snow plow company after finding that the plaintiff had failed to present evidence that piles of snow placed at the edge of a parking lot could have caused ice to form where the plaintiff fell in the parking lot. The plaintiff's daughter testified that she saw a pile of snow on the east side on the parking lot on the date of her mother's injury, and that she assumed the ice came from the melt of the snow pile. *Id*. at 292. We recognized that although it was *possible* that the ice on which the plaintiff fell was formed from the snow pile on the east side of the parking lot when it melted and refroze, that mere possibility was not enough to withstand summary judgment. *Id*. Similarly, in this case it is *possible* that the ice was formed from melted snow that came from the snow piles that Hiester plowed, but that possibility is not sufficient to find an actual nexus between the two, even after taking all of the circumstantial evidence presented below into account.

¶ 29 In *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325 (1992), the plaintiff slipped and fell as she was waiting to exit her vehicle in defendant's parking lot. Plaintiff claimed that the ice was created by snow piles along the periphery of the parking lot. *Id*. at 327. We held that the trial court had properly granted summary judgment in favor of all the defendants because the plaintiff failed to present evidence that the snow piles created the ice on which she had slipped. *Id*. at 330. We focused on the plaintiff's testimony that she was "99 99/100% sure that the ice was formed" by the melting of the snow piles. *Id*. at 331. We found that that assertion was based on complete speculation, and was therefore not enough to raise a genuine issue of fact as to whether the ice was created by unnatural accumulation of snow. *Id*. Again, here, all we have is speculation about where the ice came from, and speculation is not good enough.

¶ 30 B. Notice

¶ 31 The Martins' last issue on appeal is that a reasonable jury could conclude that the unnatural accumulation of ice was caused by Hiester's negligence and that the Bank had notice of an alleged defect in the parking lot. We need not address this issue, however, since we have found that the Martins did not present sufficient evidence of a nexus between the snow piles and the ice patch in order to survive summary judgment.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the trial court's grant of summary judgment in the Bank and Hiester's favor.

¶ 34 Affirmed.