2015 IL App (1st) 141692-U

FIFTH DIVISION
June 5, 2015

No. 1-14-1692

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RINNIE WESTON,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 12 L 2056
	)	
FIRST CHOICE AUTO SALES, INC. and	)	
MAZHAR BHATTI	)	Honorable
	)	John Ehrlich,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's grant of summary judgment affirmed where plaintiff failed to present facts sufficient to create a genuine issue of fact as to whether the ice on which he fell was an unnatural accumulation.

¶ 2 Plaintiff, Rinnie Weston, brought this action to recover damages for injuries he sustained when he slipped and fell on ice in a parking lot owned by defendants, First Choice Auto Sales, Inc., and Mazhar Bhatti. The circuit court of Cook County granted summary judgment to

defendants, and plaintiff appeals, contending that the court erred in doing so because there was a genuine issue of material fact regarding whether the ice was an unnatural accumulation caused by defendants' snow removal activities. We affirm.

¶ 3 As part of their motion for summary judgment, defendants submitted the deposition transcripts of plaintiff, plaintiff's girlfriend Ramunda Smith, defendant Mazhar Bhatti, and Julius Boyd, as well as photographs of the area where plaintiff fell. Plaintiff testified during his discovery deposition as follows:

¶ 4 On the morning of February 24, 2010, plaintiff went out shopping for a car. As he drove by the First Choice Auto Sales lot in Markham around 8:40 or 8:50 a.m., a Silver Volvo caught his attention, and he decided to stop and look at it. Plaintiff pulled his vehicle into a parking spot at a gas station adjoining the car lot, and crossed a series of posts which separated the gas station from the lot. He did not see or talk to anyone at that time. Plaintiff approached the Volvo, which was parked next to those posts, and began to walk around it. When he reached the area near the front passenger headlight, plaintiff slipped and fell backwards onto his left leg. A man came from inside the gas station and helped him up and back to his vehicle, and plaintiff called 911. Plaintiff was transported by ambulance to a local hospital, where he was diagnosed with a fractured left ankle.

¶ 5 Plaintiff testified that it had snowed a couple days prior to the incident, but he did not know the amount of accumulation. There was snow piled up in the area between the car lot and the gas station, but he did not see anyone shoveling or piling snow in that location. He initially indicated that he could not tell how much snow there was, but later stated that the pile was "maybe [an] inch and a half, [or] two inches" high. Plaintiff did not notice ice on the ground before his fall, but saw it after. He did not see any potholes, cracks or other defects in the area,

and the ground was flat. Plaintiff could not recall whether there was any indication that the ice on which he fell had "been salted that day," but he believed that it was "dry" ice. When further questioned about his observations of the area where he fell, plaintiff responded that he "knew it was slippery. That's all I can recall because I was in some pain. That's about all."

¶ 6 Later that evening, plaintiff and his girlfriend, Ramunda Smith, returned to the scene and took photographs of the area around the Volvo. Plaintiff identified two of those photographs during his deposition, and circled the general area where he fell.

¶ 7 Smith also testified that she returned to First Choice with plaintiff to take photographs. They were there for about five minutes, and Smith took the photographs from inside her vehicle. She did not exit her vehicle to inspect the area, and could not tell whether the area had been salted or shoveled. Smith could observe that there was some ice on the ground and that the cars in the sales lot had been cleared of snow.

¶ 8 Mazhar Bhatti testified during his discovery deposition that he operates the First Choice car lot and the gas station next door. He hired Julius Boyd to perform maintenance at the lot, including snow removal. Boyd would arrive at the lot between 7:30 and 8 a.m., and his snow removal responsibilities varied depending on the amount of snow. If there was a large amount of snow, "[f]or example, *** 8 or 10 inches," Boyd would use a snow plow to clear the lot. Boyd pushed the snow towards a "grassy area" by Pulaski Street, or across the street to a forest preserve. However, if there was "only 1 inch" of snow, Boyd would sprinkle salt on the lot. He was not required to plow the area in those circumstances because the blade on the snow plow could be damaged. Bhatti also testified that if there was "more than an inch or so" of snow, Boyd would clear between the cars with a shovel. Although Boyd was primarily responsible for snow

removal, all of the employees at First Choice would help if necessary. Generally, the other employees would brush snow off the cars when they arrived at the lot around 10 a.m.

¶ 9 On the day of the incident, First Choice opened at 9 a.m. Bhatti arrived at the lot before 8:30 a.m., and saw Boyd, who had already begun putting salt on the lot. Bhatti remembered that it was "lightly snowing" and there was "a little fresh snow" that morning. He estimated that there was "close to an inch" of snow when he arrived, and that it was an amount for which salting the lot was appropriate. Bhatti then went to his office, which was inside the gas station. Around 8:50 a.m., he came back outside and observed plaintiff sitting on the ground on the gas station side of the posts. Bhatti walked over and asked plaintiff if he was okay, then helped him back to his vehicle where plaintiff waited until an ambulance arrived.

¶ 10 Julius Boyd, at his discovery deposition, testified consistently with Bhatti regarding his snow removal responsibilities and procedures. He further testified that on the day of the incident, he observed plaintiff pull into the gas station as he was starting to sprinkle salt on the lot. Plaintiff asked Boyd if he could go on the lot to look at a couple cars, and Boyd told him no, that the dealership was not open yet, and that if he went "out there, [he was] going [at his] own risk." Boyd then went inside the gas station to retrieve a bag of salt, and when he returned, he observed plaintiff sitting between two posts which separated the car lot from the gas station. Boyd later observed an ambulance arrive and transport plaintiff from the lot. He continued his snow removal duties and finished sometime around 9:30 a.m. After the other employees arrived around 10 a.m., they brushed the snow off the cars in the lot.

¶ 11 Boyd believed that it had snowed about an inch the night before plaintiff's fall. He could not remember the last time he had removed snow from the lot, because there had not been any snow in a while. Boyd further testified that he never piled snow in the area between the posts.

When he or the other employees brushed off the cars, they would sometimes brush the snow towards the front of the cars by the posts, but they would shovel it away, and would not leave it in that location.

¶ 12 Defendants filed a motion for summary judgment contending that plaintiff was a trespasser and that there was no evidence showing that they had willfully or wantonly injured him. They alternatively argued that even if plaintiff was not a trespasser, he had failed to provide any facts to show that the patch of ice on which he fell was an unnatural accumulation. Plaintiff submitted a weather report, and the four deposition transcripts, with his motion for summary judgment. The weather report indicated that the temperature in the area fluctuated between 21 and 33 degrees Fahrenheit from February 22, to February 24, 2010, and that 0.34 inches of snow fell on February 24, 2010. A trace amount of snow fell on the previous day, and 0.14 inches fell on February 22. The trial court granted summary judgment in defendants' favor, and denied plaintiff's motion to reconsider.

¶ 13 In this appeal, plaintiff argues that the trial court erred in granting summary judgment because there is a genuine issue of material fact as to whether the accumulation of ice on which he slipped was an unnatural accumulation caused by defendants' snow removal activities. He specifically contends that a "reasonable inference" from the record is that defendants caused the accumulation by brushing snow off the cars, pushing snow to the location where he fell, and spreading salt in the lot which allowed the snow to melt and refreeze.

¶ 14 Summary judgment is a drastic means of disposing of a case (*Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007)), and is appropriate only where the pleadings, depositions, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law (735 ILCS 5/2–1005(c) (West 2010)). In

reviewing a summary judgment disposition, we strictly construe the record against the moving party and liberally in favor of the nonmoving party. *Forsythe,* 224 Ill. 2d at 280. We review a trial court's grant of summary judgment *de novo*. *Id.*

¶ 15 Under what is commonly known as "the natural accumulation rule," a landowner has no duty to remove natural accumulations of ice, snow, or water from its property. *Krywin v. Chicago Transit Authority,* 238 Ill. 2d 215, 227 (2010). However, he may be subject to liability if a "voluntary undertaking to remove snow and ice is performed in a negligent manner" *(Judge–Zeit v. General Parking Corp.,* 376 Ill. App. 3d 573, 581 (2007)), or if the snow or ice "accumulated because the owner either aggravated a natural condition or engaged in conduct which created a new, unnatural or artificial condition" *(Whittaker v. Honegger,* 284 Ill. App. 3d 739, 743 (1996)). A plaintiff bears the burden to affirmatively show that the ice and snow upon which he fell was an unnatural accumulation caused by the defendant. *Wells v. Great Atlantic & Pacific Tea Co.,* 171 Ill. App. 3d 1012, 1015 (1988).

¶ 16 In this case, plaintiff maintains that he has "affirmatively shown that the snow and ice that caused his fall was an unnatural accumulation" where "[i]n removing snow and ice from the sales lot, Mr. Boyd created unnatural accumulations of snow and ice (the ice as a result of melting and refreezing of the snow) around the posts that separated the Defendants' sales lot from its gas station." He asserts that the record creates a reasonable inference that the ice near the front passenger headlight of the Volvo on which he fell "was [a] result of the melting and refreezing of the snow piles" near the posts.

¶ 17 Although the mere removal of snow, or sprinkling of salt, does not create an unnatural accumulation (see *Endsley v. Harrisburg Medical Center,* 209 Ill. App. 3d 908, 910 (1991)); *Harkins v. System Parking, Inc.,* 186 Ill. App. 3d 869, 873 (1989)), a snow pile resulting from a

defendant's snow removal activity may be considered an unnatural accumulation for which a plaintiff may recover (*Hornacek v. 5th Avenue Property Management*, 2011 IL App (1st) 103502, ¶ 26; *Russell v. Village of Lake Villa*, 335 Ill. App. 3d 990, 994-95 (2002)). However, where, as here, a plaintiff alleges that his injury was caused, not by the snow pile itself, but by his fall on nearby ice, the plaintiff bears the burden to present evidence showing a "direct link" between the snow pile and the ice, or circumstantial evidence through an expert. *Russell*, 335 Ill. App. 3d at 994-95; *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App. 3d 288, 294 (1992). However, a plaintiff's belief that ice was formed when a snow pile melted and refroze is mere speculation, and where a plaintiff does not present evidence linking the snow pile and the ice, other than his mere speculation, summary judgment in favor of the defendant is appropriate. *Madeo*, 239 Ill. App. 3d at 293-94; *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325, 330–31 (1992).

¶ 18 We find no evidence in the record to link the two-inch snow pile to the ice on which plaintiff slipped. No one, including plaintiff, testified that they observed water melting from the pile, or that there were any potholes, cracks, or incline in the pavement which could supply a connection between the snow pile and the ice on which he fell. To the contrary, plaintiff testified that there were no such defects, that the ground was flat, and that the ice on which he slipped appeared to be "dry." Additionally, plaintiff offered no expert testimony from which a link could have been established. In these circumstances, plaintiff's assertion that the snow pile was the source of the ice on which he fell is mere speculation, and is insufficient to preclude the trial court's grant of summary judgment to defendants. See *Madeo*, 239 Ill. App. 3d at 294 (summary judgment affirmed because the plaintiff's assumption that plowed snow melted, ran into the parking lot, and refroze was insufficient to link the snow pile to the ice on which she fell);

Crane, 228 Ill. App. 3d 325 (summary judgment affirmed where the only evidence of a connection between a snow pile on the periphery of a parking lot and the ice on which plaintiff fell was her testimony that she was “99 and 99/100%” sure that the ice was formed by the melting of unnaturally accumulated snow).

¶ 19 In this respect, we find *Hornacek* and *Russell*, upon which plaintiff relies, distinguishable from the case at bar. In *Hornacek,* the deposition testimony showed that the defendant had plowed snow into a large pile against the side of the building. *Hornacek*, 2011 IL App (1st) 103502, ¶ 9. One witness testified that the snow was piled "above his head" and that the pile was "enormous," and "excessive." *Id*. Although the witness did not actually observe the pile melting, he observed that it would decrease in size, and that the pavement surrounding the pile would be wet. *Id*. Another witness described a "big ice flow" which would run off the snow pile and freeze, and testified that he found the plaintiff sitting on that "ice flow" after her fall. *Id*. ¶ 11. On appeal, this court reversed the trial court's grant of summary judgment, holding that the plaintiff had raised sufficient evidence from which a trier of fact could find that the ice was an unnatural accumulation. *Id*. ¶ 31.

¶ 20 Similarly, in *Russell*, the second district appellate court reversed the trial court's grant of summary judgment where the plaintiff presented evidence that he slipped on ice at the base of a mound of snow that had been plowed and piled in the defendant's parking lot. *Russell*, 335 Ill. App. 3d at 992, 996. Although the plaintiff did not actually observe the snow melting from the mound, he testified that the days leading up to his fall were "warm" and the nights were "below freezing," and that the ice on which he slipped was contiguous to the snow pile. *Id*. at 996. The plaintiff presented a photograph of the snow pile and the ice on which he fell, and noted that it seemed “clear” that the “ice got there as a result of the snow melting in liquid form and then

being frozen as the temperature lowered." *Id*. at 992. An employee for the defendant also examined the photograph and agreed that it appeared as though the ice had formed from snow melting off the snow pile. *Id*. Given these facts, the appellate court concluded that the plaintiff had sufficiently established a direct link between the snow pile and the ice, where the "ice surrounded the base of the snow pile and was contiguous with it and appeared to have come from water that melted off the snow." *Id*. at 996.

¶ 21 In this case by contrast, plaintiff has not presented any evidence showing a direct link between the patch of ice on which he fell and the snow pile. Plaintiff has not shown that the ice was directly "contiguous" to the snow pile, or that there is any other reason, other than his mere speculation, which would allow such an inference.

¶ 22 Plaintiff, however, points out that he also presented photographs of the area in which he fell. He asserts that these photographs show that "the snow piles that created the ice slick were immediately next to the ice." We note, however, that the photographs plaintiff included in the record are extremely poor quality photocopies, from which it is impossible for this court to discern the snow pile and ice, or draw any conclusions as to their connection. It is plaintiff's burden, as the appellant, to supply this court with a sufficient record to support his claims of error (*Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)), yet he did not do so.

¶ 23 Moreover, even if plaintiff had included better quality versions of the photographs in the record on appeal, we question what value those images would serve in this case. The deposition testimony indicated that the photographs were taken in the evening after plaintiff's fall, after Boyd had completed his snow removal responsibilities and the other employees brushed snow off of the vehicles. Under these circumstances, it is unclear what relevance the photographs would have to the ground conditions at the time of plaintiff's fall.

¶ 24 We thus conclude that the evidence presented was insufficient to raise a genuine issue of material fact as to whether the ice on which plaintiff fell was created by an unnatural accumulation of snow, and we affirm the trial court's grant of summary judgment in favor of defendants.

¶ 25 Affirmed.