

No. 1-12-2756

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).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

LUCY BROCK,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 09 M3 0702
)	
VICTORIAN PARK CONDOMINIUM)	Honorable
ASSOCIATION, an Illinois not-for-profit corporation,)	Martin Agran,
ROSALIA JORDA, and ZARINA HUSSAIN KHAN,)	Judge Presiding.
)	
Defendants-Appellees)	
)	
(Dominika Kupiec and Arkadiusz Czech, Defendants).)	

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *HELD:* The circuit court did not err in granting defendants' motion for summary judgment where the Illinois Snow and Ice Removal Act (745 ILC 75/1 *et seq.* (West 2008)) provided immunity from liability because the defendants removed or attempted to remove snow or ice from the sidewalk.

¶ 2 Plaintiff-appellant Lucy Brock filed a negligence action against defendants-appellees

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Victorian Park Condominium Association (the Association), Rosalia Jorda and Zarina Hussain Khan¹ (collectively, the owners) seeking damages for an injury sustained when she slipped and fell on an icy sidewalk located in the Victorian Park condominium development. The circuit court granted the appellees' motion for summary judgment. On appeal, Brock contends that summary judgment was improper because the Illinois Snow and Ice Removal Act (745 ILC 75/1 *et seq.* (West 2008)) does not apply where the unnatural accumulation was not caused by snow removal efforts and appellees never attempted to remove the ice in question. For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 On March 9, 2008, Brock visited her daughter, Elizabeth Greiner, who was a tenant in a condominium unit at 557 Shagbark Lane, Unit D, in Streamwood, Illinois. The unit was owned by Arkadiusz Czech and was a part of the Victorian Park condominium development. Brock visited her daughter and grandchildren several times a month and when she arrived, she would usually call Greiner and have her open the garage door so Brock could enter the unit through the garage instead of walking around on the sidewalk and entering through the foyer door. On March 9, there was a light dusting of snow on the ground and Brock entered Greiner's unit in the usual way through the garage. However, Greiner was busy with her children when Brock was ready to leave, so she exited through the foyer door and started walking on the sidewalk. Brock

¹Dominika Kupiec and Arkadiusz Czech were also named as defendants in the negligence action. The trial court entered an order on August 30, 2012, dismissing them with prejudice and they are not parties to this appeal.

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had occasionally entered and exited the unit through the foyer door and had never noticed any ice in the area where the sidewalk met the driveway, nor had she ever noticed water dripping from a gutter in that area.

¶ 5 On March 9, the sidewalk was covered with snow and Brock slipped on some ice that was underneath the snow and fell, fracturing her left arm and wrist. She called her daughter and Greiner opened the garage door so that Brock could go back inside. Greiner's husband went outside and saw that there was ice on the sidewalk, so he took a bucket of salt that was in the building foyer and put salt on the sidewalk. Brock filed a negligence action against the Association and the four unit owners whose units were located in the area where Brock fell. Brock alleged that the source of the ice patch was moisture dripping from a damaged garage gutter. Greiner was also deposed and she testified that buckets of salt were provided by the Association but there was nothing provided to scoop the salt so she put a paper cup in the bucket and that is what she and her husband used when they would spread salt. They had not spread any salt on March 9 prior to her mother's visit.

¶ 6 Appellees filed a joint motion for summary judgment on the grounds that the Illinois Snow and Ice Removal Act (Act) (745 ILC 75/1 *et seq.* (West 2008)) shields residential owners from negligence liability for any injury that results from acts or omissions in connection with snow or ice removal from residential sidewalks. Affidavits and documents established that the Association was responsible for the maintenance of the common areas and had a contract with a snow removal company at the time of the incident. Under the contract, the company would clear streets and driveways whenever there was a snowfall of two inches or more, but would not clear

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the sidewalks or salt the driveways. The Association purchased salt and distributed it to all common area foyers. After the initial distribution of salt throughout the complex, salt was replenished upon request. If ice was present, owners and residents were to spread the provided salt on the stoops and sidewalks serving their respective units.

¶ 7 The circuit court granted the motion for summary judgment. Brock timely filed this appeal.

¶ 8 ANALYSIS

¶ 9 The only issue on appeal is whether the trial court erred in granting the appellees' motion for summary judgment. Summary judgment is proper where the pleadings, affidavits, depositions, admissions, and exhibits demonstrate that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). "The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine question of material fact exists." *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 162 (2007). Our review of an order granting summary judgment is *de novo*. *Id.* at 163. In considering a motion for summary judgment, the court must construe the record strictly against the movant and liberally in favor of the nonmoving party. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 280 (2007). A motion for summary judgment should only be granted where the moving party's right to judgment is clear and free from doubt. *Id.*

¶ 10 Appellees relied on this court's decision in *Pikovsky v. 8440-8460 North Skokie Boulevard Condominium Ass'n, Inc.*, 2011 IL App (1st) 103742 in support of their motion for summary judgment and the circuit court agreed. Brock argues that *Pikovsky* does not apply

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because the unnatural accumulation of ice and snow was caused by the snow removal company in *Pikovsky* and not by a leaking gutter. Brock further contends that the Act only protects those who remove or attempt to remove ice or snow from the sidewalk and the Association never attempted to remove the ice in question.

¶ 11 In *Pikovsky*, the condominium association and its management company entered into two contracts for snow removal, one for plowing the parking lot and one for clearing a public sidewalk adjacent to the building. *Pikovsky*, 2011 IL App (1st) 103742 at ¶ 3. Neither contract provided for snow removal on a rear entrance sidewalk located between the parking lot and the building. *Id.* The company responsible for plowing the parking lot allegedly plowed snow onto the rear sidewalk, causing icy mounds of snow to accumulate on which the plaintiff subsequently slipped and fell. *Id.* at ¶¶ 4-5. This court held that the Act applied to the condominium association and the management company. *Id.* at ¶ 14. First, this court rejected the plaintiff's argument that because the defendants never attempted to remove snow from the rear sidewalk, the Act did not apply. *Id.* at ¶ 12. The *Pikovsky* court explained that because the association and management company had contracts for snow removal, the failure to remove snow and ice from the rear sidewalk constituted an omission in their overall snow removal efforts. *Id.* at ¶ 13. Second, this court rejected the plaintiff's argument that the Act only covers natural accumulations of ice and snow. *Id.* at ¶ 14. The *Pikovsky* court explained that the Act provides an exception to the common law duty that would otherwise be imposed to remedy unnatural accumulations of snow and ice. *Id.* (citing *Gallagher v. Union Square Condominium Homeowner's Ass'n*, 397 Ill. App. 3d 1037, 1043 (2010)). This court specifically stated that "it is irrelevant whether the snow

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and ice mounds on the rear entrance sidewalk were an unnatural accumulation." *Id.*

¶ 12 Section 2 of the Act provides:

"Any owner, lessor, occupant or other person in charge of any residential property, or any agent of or other person engaged by any such party, who removes or attempts to remove snow or ice from sidewalks abutting the property shall not be liable for any personal injuries allegedly caused by the snowy or icy condition of the sidewalk resulting from his or her acts or omissions unless the alleged misconduct was willful or wanton." 745 ILCS 75/2 (West 2008).

¶ 13 In the case *sub judice*, we reject Brock's argument that the Act does not apply because the Association never attempted to remove the ice from that particular sidewalk for the same reasons the *Pikovsky* court rejected a similar argument. The Association clearly had a snow removal plan in place that addressed both the removal of snow from the streets and driveways and the salting of sidewalks by the owners or tenants with salt provided by the Association. The fact that the Association did not have a contract in place requiring someone to shovel the sidewalks or for an outside agency to come out and spread salt on the walkways does not mean that the Association did not attempt to remove the snow and ice. The Association's contract with the snow removal company did not provide for removal of snow and ice from this particular sidewalk, an omission in the overall snow removal effort similar to that in *Pikovsky*. However, the Association included the sidewalk in its snow removal efforts by providing salt in each foyer for owners or residents to apply when there was ice on the stoop or walkway. The failure of any of the owners or tenants to apply salt to the sidewalk in question on the date of the incident constituted an

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omission in the overall removal efforts. Thus, the Act applies and appellees can only be liable if their conduct was willful or wanton. See 745 ILCS 75/2 (West 2008); *Pikovsky*. 2011 IL App (1st) at ¶ 13.

¶ 14 We now address Brock's argument that the Act only provides an exception to the common law duty in cases of unnatural accumulation where such accumulation is caused by the snow removal efforts, as in *Pikovsky*, but not in the instant case where the unnatural accumulation was caused by a leaking gutter. Brock cites no authority for this proposition and her attempt to distinguish *Pikovsky* on this factual distinction alone is unavailing. The *Pikovsky* court noted that the Act created an exception to the common law duty that would otherwise be imposed and that it was therefore irrelevant whether the snow and ice in question was an unnatural accumulation. *Id.* at ¶ 14. In explaining this exception, the *Pikovsky* court did not consider the origin of the unnatural accumulation. There is nothing in the language of the Act or in the reasoning of the *Pikovsky* court that would persuade us to do so here. The Act provides an exception where any owner, tenant or agent of residential property removes or attempts to remove snow or ice from the sidewalk, regardless of the origin of the accumulation. As previously discussed, the Association and the owners removed or attempted to remove snow and ice from the sidewalk and are therefore immune from liability under the Act.

¶ 15 For the reasons stated herein, we hold that the circuit court did not err in granting the appellees' motion for summary judgment.

¶ 16 Affirmed.