STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0557

Karen Weiland,
Appellant,

vs.

Centro Properties Group, et al.,
Respondents,

Furniture Outlets USA,
Respondent,

Northwest Landscape, Inc.,
Respondent.

Filed August 13, 2012
Affirmed
Connolly, Judge

Sherburne County District Court
File No. 71-CV-10-1695

Wilbur W. Fluegel, Fluegel Law Office, Minneapolis, Minnesota; and

Christopher A. Johnston, Johnston Martineau, P.L.L.P., Minneapolis, Minnesota (for appellant)

Robert E. Kuderer, Jenna M. Powers, Johnson & Condon, P.A., Minneapolis, Minnesota (for respondents Centro Properties Group, et al.)

Gordon H. Hansmeier, Eric Oelrich, Rajkowski Hansmeier, Ltd., St. Cloud, Minnesota (for respondent Furniture Outlets USA)

Daniel L. Scott, Jennifer L. Olson, Leonard, Street & Deinard, Minneapolis, Minnesota (for respondent Northwest Landscape, Inc.)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Collins, Judge.*

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the summary-judgment dismissal of her negligence claims arising out of her slip and fall on an icy patch near a loading dock where she was picking up a furniture purchase. Appellant asserts that the district court erred by determining that respondents owed no duty because the icy patch was an open and obvious condition, arguing that (1) although she observed the icy patch, she did not fully appreciate the risk posed and thus the condition was not open and obvious as a matter of law; (2) even if the condition was open and obvious, respondents should have anticipated that persons could be injured and thus still owed a duty; and (3) she was distracted from the risk of slipping on the ice. We affirm.

FACTS

On the evening of January 28, 2010, appellant Karen Weiland and a companion went furniture shopping at a furniture store owned and operated by respondent Furniture Outlets USA (FOU). Upon entering the store through its front door, appellant did not notice ice in the area. After making her purchase, appellant was instructed to drive to the loading area at the back of the building to pick up her furniture. As appellant's companion drove the two of them to the loading area, they both saw "bumpy ice chunks"

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

on the ground. When they reached the loading area, appellant's companion pulled his vehicle past the loading door and parked parallel to the building and another vehicle. Upon exiting the vehicle, appellant "looked down, and . . . did see there was some like bumpy ice down there" but she "thought, well, I will put my foot down and see and try to be cautious in regards to it because I am from Minnesota." Appellant then placed her right foot on the ground and felt something bumpy under her foot, but felt that the ice under her foot was not slippery. She turned her attention to the service door and continued to walk toward the door. On her second step, appellant slipped and fell on a patch of ice that was approximately one foot by one foot. Appellant has lived in Minnesota her entire life and admitted that she knows it is necessary to be careful when walking in parking lots in the winter.

FOU is located in a strip mall managed by respondent Centro Properties Group (CPG). FOU contracted with CPG to handle snow and ice removal. CPG in turn contracted with respondent Cherry Logistics Corp. (CLC) to perform the snow and ice removal, which in turn contracted with respondent Northwest Landscapes, Inc. (NLI) to handle the removal service. NLI inspected and cleared the parking lot on four separate occasions between January 23 and January 26, when appellant contends that the ice in the lot formed. During her deposition, appellant drew a diagram showing the location of various small patches of ice around the area where she fell.

Appellant filed a complaint against respondents in August 2010 alleging negligent design, maintenance, and inspection of the property. The respondents each moved for summary judgment. Following a hearing, the district court granted the respondents'

motions for summary judgment. The district court found that appellant actually observed the ice and that "[t]he ice on which [appellant] slipped was an 'open and obvious' condition as a matter of law" and that respondents therefore did not owe appellant a duty. This appeal follows.

D E C I S I O N

Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. "A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). In opposing a motion for summary judgment, general assertions are not enough to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). However, "[a] party need not show substantial evidence to withstand summary judgment. Instead, summary judgment is inappropriate if the nonmoving party has the burden of proof on an issue and presents sufficient evidence to permit reasonable persons to draw different conclusions." *Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 507 (Minn. 2006) (emphasis omitted).

On appeal from summary judgment, an appellate court reviews de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76 (Minn. 2002). A reviewing court must view the evidence in the light most favorable to

the party against whom judgment was granted. *Id.* at 76-77. An award of summary judgment will be affirmed if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

To establish a prima facie case of negligence, a plaintiff must show that a duty was owed, breach of that duty, causation, and damages. *Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009). Summary judgment is appropriate when the record lacks proof of "any of the four elements of a prima facie case [of negligence]." *Id.* Therefore, if no duty exits, a court need not reach the remaining elements of a negligence claim. *Baber v. Dill*, 531 N.W.2d 493, 495 (Minn. 1995).

The existence of a legal duty "is an issue for the [district] court to determine as a matter of law." *Oakland v. Stenlund*, 420 N.W.2d 248, 250 (Minn. App. 1988), *review denied* (Minn. Apr. 20, 1988). "A property owner has a duty to use reasonable care to prevent persons from being injured by conditions on the property that represent foreseeable risk of injury." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 364 (Minn. App. 2000). "But even when landowners owe persons a duty to keep and maintain their premises in a reasonably safe condition, they are not insurers of safety." *Id.* at 365.

I. Open and Obvious

A landowner is not liable for harm caused by a condition whose danger is known or obvious unless the landowner should anticipate potential harm despite such knowledge or obviousness. *Louis v. Louis*, 636 N.W.2d 314, 319 (Minn. 2001) (quoting Restatement (Second) of Torts § 343A (1965)). The word "known" means "not only knowledge of the

existence of the condition or activity itself, but also appreciation of the danger it involves." *Id.* at 321. When determining whether a condition is "obvious," courts use an objective test: "the question is not whether the injured party actually saw the danger, but whether it was in fact visible." *Id.* "[A] condition is not 'obvious' unless both the condition and the risk are apparent to and would be recognized by a reasonable man in the position of the visitor, exercising ordinary perception, intelligence and judgment." *Id.* (quotation omitted).

Appellant argues that the district court erred in finding that the ice upon which she slipped was an "open and obvious" condition because, while she saw the ice, she did not appreciate the risk involved in stepping on the ice. This argument is unavailing. The undisputed evidence in the record shows that the ice was clearly visible and that appellant in fact saw the ice. A condition is obvious if it is in fact visible. *Id.* Moreover, appellant's own deposition testimony reveals that she appreciated the risk of slipping and falling on the ice. She stated that, after observing the ice, she stepped onto the ice and was "trying to be very cautious" because she is from Minnesota.

The Minnesota Supreme Court rejected a similar argument in *Geis v. Hodgman*, 255 Minn. 1, 95 N.W.2d 311 (1959). There, appellant also argued that, though she saw the ice, she did not know how slippery it was and therefore, did not appreciate the danger involved in stepping on it. *Id.* at 7, 95 N.W.2d at 315. The court held that, "if a person knows that ice is slippery he must also know that if he steps on it there is a risk of falling. If he then ventures onto the ice, he assumes that risk . . . ." *Id.* Similarly, here, appellant

knew that she was stepping onto ice and cannot complain that she did not appreciate the danger of slipping on that ice.

Moreover, even if appellant did not subjectively appreciate the risk of slipping on the ice, the standard is objective. *Louis*, 636 N.W.2d at 321. A reasonable person in appellant's situation, exercising ordinary perception, intelligence, and judgment would realize that walking on clearly visible, bumpy ice during the cold winter months in Minnesota involves a risk of slipping and falling. *See Konovsky v. Kraus-Anderson, Inc.*, 306 Minn. 508, 511, 237 N.W.2d 630, 633 (1976) ("We assume that a dangerous condition created by ice is or, by the exercise of ordinary care, should be noticeable in the absence of special circumstances . . . ."); *Parr v. Hamnes*, 303 Minn. 333, 338-39, 228 N.W.2d 234, 238 (1975) (noting that the "slipperiness of ice" is an obvious danger); *Mattson v. St. Luke's Hosp. of St. Paul*, 252 Minn. 230, 235, 89 N.W.2d 743, 746 (1958) (noting that slipperiness of steps during a freezing sleet storm "involved a normal hazard of life to which every pedestrian necessarily exposes himself when he ventures forth in a sleetstorm").

Appellant attempts to compare her slip and fall with the situation in *Rinn*, which involved a woman who slipped and fell on a puddle of an unknown liquid on a flight of stairs. 611 N.W.2d at 363. The court held that the puddle on which she slipped was not open and obvious as a matter of law because the danger of slipping in the puddle was "relatively obscure." *Id.* at 364. In contrast, here, the ice was readily apparent and the danger of slipping on patches of ice while walking outside in Minnesota during the

wintertime did not pose a "relatively obscure" risk. The ice on which appellant slipped and fell was open and obvious as a matter of law.

II. Reasonable Anticipation of the Harm

Appellant also argues that even if the ice was an open and obvious hazard, respondent should have anticipated the harm to appellant, and thus owed her a duty of care. The district court found that the icy patch on which appellant slipped was so obviously dangerous that respondents owed no duty to warn or protect appellant from it. "[E]ven if a danger is known and obvious, landowners may still be liable to an injured person if the landowner should anticipate the harm despite the injured person's knowledge or the obviousness of the condition." *Id.* "A possessor of land, however, has no duty to an invitee where the anticipated harm involves dangers so obvious that no warning is necessary." *Baber*, 531 N.W.2d at 496. "The rationale underlying this rule is that no one needs notice of what he knows or reasonably may be expected to know." *Id.* (quotation omitted).

Appellant argues that her case is nearly identical to *Peterson v. W.T. Rawleigh Co.*, 274 Minn. 495, 144 N.W.2d 555 (1966). In *Peterson*, an elderly distributor slipped and fell on an icy, unploughed parking area as he attempted to pick up products at the defendant's loading dock. *Id.* at 496, 144 N.W.2d at 557. In holding that the defendant had a duty to warn the distributor despite the obviousness of the ice, the court found that "a jury could find defendant should have foreseen that its elderly distributors would come to the loading dock for its products and attempt to negotiate the area . . . despite the slippery conditions." *Id.* at 497, 144 N.W.2d at 558. Just three years later, in *Jensen v.*

Allied Cent. Stores, Inc., 283 Minn. 332, 167 N.W.2d 739 (1969), the Minnesota Supreme Court explained the reasoning in *Peterson*: "There, the condition was patently dangerous but there were compelling reasons for salesmen to attempt to traverse the area . . . . In that case the plaintiff's livelihood was involved . . . ." *Id.* at 334, 167 N.W.2d at 741. The court went on to find that Jensen was under no such compulsion because she was merely shopping and could have been assisted by a store clerk. *Id.* Similarly, here, appellant's livelihood did not depend on reaching the service door of FOU—she was merely shopping and picking up her purchase.

Moreover, in *Peterson*, the entire lot was covered in snow and ice and had not been ploughed. 274 Minn. at 496, 144 N.W.2d at 557. In contrast, here there was undisputed evidence that the lot was ploughed several times between the last precipitation and appellant's fall. Additionally, the piece of ice upon which appellant slipped was relatively small—one foot by one foot—and could have been avoided with caution. Respondents should not and could not have anticipated that appellant would view this small patch of ice, choose to step on it anyway, and then be injured.

III. Distraction From the Risk

Finally, appellant argues that she was distracted from the risk of slipping on the ice because she had shifted her attention to the service door at the time of her fall. "[D]istracting circumstances are factors for a jury to consider and may excuse a plaintiff's failure to see that which is in plain sight." *Van Gordon v. Herzog*, 410 N.W.2d 405, 406 (Minn. App. 1987). The district court found that her alleged distraction was irrelevant because "the facts do not support an argument that [appellant] failed to see

what was in plain sight due to the distracting conditions that may have existed in the area."

Appellant testified that, even before exiting the vehicle, she looked down and saw bumpy ice, and proceeded to step on it with caution. She then testified that she made a decision to continue walking forward on the ice. The record thus amply demonstrates that appellant was not distracted at any relevant time. The fact that she may not have been looking down at the ice at the exact moment of her slip and fall is irrelevant because she did not fail to see what was "in plain sight." *See id.*

The danger posed by the ice was so open and obvious that respondents had no duty to warn appellant. Thus, respondents were not negligent as a matter of law, and the district court did not err in granting summary judgment.

Affirmed.