STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1171

Mark Larson,
Appellant,

vs.

Saint Paul College,
Respondent.

Filed March 24, 2014
Affirmed
Chutich, Judge

Ramsey County District Court
File No. 62-CV-12-4952

Michael A. Bryant, Nicole L. Bettendorf-Hopps, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant)

Lori Swanson, Attorney General, Jacob Campion, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Chutich, Judge; and Smith, Judge.

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

CHUTICH, Judge

Appellant Mark Larson challenges the district court's grant of summary judgment to respondent Saint Paul College, contending that the district court erred in its determination that Saint Paul College did not owe a legal duty to Larson. Because the

record shows that a winter storm was ongoing at the time that Larson fell on the college's property, we affirm.

FACTS

On Saturday, February 12, 2011, appellant Mark Larson took his daughter, who is hearing impaired, to a college-entrance examination at Saint Paul College. The night before the examination, Larson and his daughter agreed to leave their home in Monticello early the next morning because the roads were likely to be icy from a freezing rain storm. "Freezing rain" and "icy rain" continued throughout the night and into the next morning. Larson put salt down outside of his house because of the "slippery" conditions. Larson and his daughter left their home at 6:30 a.m. to get to Saint Paul College in time for the examination.

Larson and his daughter arrived at Saint Paul College at 7:45 a.m. The weather was "misty," and "freezing rain" continued. After parking the car, the two of them walked up the sidewalk to enter through the main entrance to Saint Paul College. Larson helped his daughter over icy snow to get to the sidewalk. Larson noticed that the sidewalk was "wet" and "icy," and he told his daughter, "Be careful, it's icy." The doors to the main entrance were under an overhang, and Larson noticed it was icy under the overhang as he approached the doors. Larson explained, "[I]t was a windy day. It was misty and blowing, so it was all open and it's just an overhang, it's going to go all underneath it." Larson saw that mats were on the ground in front of the doors and that "[t]hey had a little ice and a little snow on them." He stated that "[i]t was a little dark that morning," but that he could see where he was going.

As Larson and his daughter approached the doors, they spoke to each other in sign language, requiring Larson to look at his daughter. A friend of Larson's daughter was waiting for them inside of the doors, and both Larson and his daughter saw the friend as they were walking. When Larson got to the doors, he tried to grab the door handle with his left hand to hold the door open for his daughter, but his right foot slipped and kicked his left foot out from under him. Larson fell on his right side and tried to stop himself from hitting his head by putting his right arm out. Larson got up and took his daughter inside of the building. He had pain in his right shoulder, right hip, and lower back and eventually required shoulder surgery.

Larson sued Saint Paul College, alleging that his injuries were caused by the college's negligence. Larson said during his deposition that he did not notice ice on the mats until after he fell. His daughter testified in her deposition that she did not see the ice in front of the door before Larson fell. Larson's daughter's friend, who arrived to Saint Paul College ten minutes before the Larsons, testified that the sidewalk up to the doors of the main entrance was wet, had "a little bit of ice," and was "slippery."

Larson has lived in Minnesota for 35 years and is familiar with Minnesota's winters. He also worked for the United Parcel Service (UPS), where he received extensive training on preventing slip and falls. In addition to the training he received, he trained other UPS employees every week for four years about preventing slip and falls.

Saint Paul College did not have formal policies on ice and snow removal at the time of Larson's fall. On the day Larson fell, Saint Paul College had one maintenance worker scheduled to work. The maintenance worker scheduled on February 12 came to

work at 7:00 a.m. and was responsible for addressing the snow and ice removal needs of the entire campus. The maintenance worker could not remember the specific Saturday of Larson's fall.

Saint Paul College moved for summary judgment, which the district court granted, concluding that Saint Paul College did not owe a duty to Larson. This appeal followed.

D E C I S I O N

Larson asserts that the district court erred by ruling that the college did not owe a legal duty to him to clear the walkway to the school's main entrance of ice and snow. Because no evidence exists in the record to show that the winter storm had abated that morning, we hold that the district court properly ruled that Saint Paul College did not owe a legal duty to Larson to cure the slippery conditions of the walkway at the time of Larson's fall.

We review de novo a district court's grant of summary judgment, determining "whether the district court properly applied the law and whether . . . genuine issues of material fact . . . preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). No genuine issue exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (quotation omitted). "[W]hen the nonmoving party bears the burden of proof on an element essential to the nonmoving party's case, the nonmoving party must make a showing sufficient to establish that essential element" to survive summary judgment. *Id.* at 71. We recognize that "summary judgment is a blunt instrument and is inappropriate when

reasonable persons might draw different conclusions from the evidence presented." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotations and citations omitted).

A defendant is entitled to summary judgment for a negligence claim when "the record reflects a complete lack of proof on any of the four essential elements of the claim: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of the duty being the proximate cause of the injury." *Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002). "The general rule is that pedestrians may assume that the city has exercised ordinary and reasonable care to maintain its sidewalks and streets in a safe condition." *Brittain v. City of Minneapolis*, 250 Minn. 376, 385, 84 N.W.2d 646, 652 (1957). This duty is "not absolute," however. *See Louis v. Louis*, 636 N.W.2d 314, 319 (Minn. 2001).

Under the ongoing storm rule, "a business establishment or other inviter may, without violating its duty to exercise reasonable care for the safety of business guests or invitees, await the end of a freezing rain or sleetstorm and a reasonable time thereafter before removing ice and snow from its outside entrance walks, platform, or steps." *Mattson v. St. Luke's Hosp. of St. Paul*, 252 Minn. 230, 233, 89 N.W.2d 743, 745 (1958). The ongoing storm rule exists because "it would be unreasonable to expect the possessor of the premises to remove the freezing precipitation as it falls." *Id.* "Reasonable care requires only that the possessor shall remove the ice and snow, or take other appropriate corrective action, within a reasonable time after the storm has abated." *Id.*; *see also Niemann v. Nw. Coll.*, 389 N.W.2d 260, 262 (Minn. App. 1986) (holding the respondent

"was not duty bound to clean the sidewalks until a reasonable period of time after the storm ended"), *review denied* (Minn. Aug. 27, 1986).

In *Mattson*, the supreme court ruled that a hospital had no duty to clear its sidewalks from slippery conditions during ongoing winter precipitation because

> [t]he source and sole cause of the hazardous condition resulting in plaintiff's unfortunate injury was the unusual but natural result of extraordinary weather over which the hospital had no control. The freezing sleetstorm rendered slippery not only defendant's outside entrance steps but also all other exposed walks and places within the city. It involved a normal hazard of life to which every pedestrian necessarily exposes himself when he ventures forth in a sleetstorm. Reasonable care for the safety of an invitee does not require an inviter to engage in an unending and impractical, if not useless, contest with the uncontrollable forces of nature while a storm is in progress. Any rule to the contrary would impose upon the hospital, as an inviter, a duty of extraordinary care which it does not have, or erroneously constitute it an insurer of the safety of invitees.

252 Minn. at 235, 89 N.W.2d at 746–47. Citing *Mattson*, the district court ruled that "[s]ince the storm was still in progress, the College had no duty to remove the ice and snow from its outdoor entrance mat prior to [Larson's] fall." The record and *Mattson* support the district court's ruling.

Here, no factual dispute exists as to whether the storm was ongoing. Larson described the weather as "freezing rain" the night of February 11 "into the morning" of February 12, and he described the weather before leaving his home for St. Paul as "foggy, misty, freezing rain." Larson testified that when he arrived at Saint Paul College it was "misty and blowing" outside. Larson's daughter testified that the weather on the morning of February 12 was "muggy" from "freezing rain." Larson and his daughter were the

only witnesses who testified about the weather conditions in St. Paul the morning of February 12, and they both described ongoing precipitation. Based on this record, a rational trier of fact could not find that the freezing rain had ended or that Saint Paul College had a reasonable time after the storm to clear the walkway of ice before Larson fell. Under established case law, Saint Paul College did not owe a duty of care to Larson.

Because the evidence in the record shows that the storm was ongoing, the district court properly concluded that Saint Paul College did not owe a legal duty to Larson under the ongoing storm rule.[1] Without any evidence in the record to support Larson's argument that Saint Paul College owed him a legal duty, we hold that the district court properly granted summary judgment to Saint Paul College.

Affirmed.

[1] Because we hold that Saint Paul College did not owe a legal duty to Larson under the ongoing storm rule, we need not address Larson's contentions that the slippery conditions were not obvious and that Saint Paul College had constructive knowledge of the ice.