IN THE COURT OF APPEALS OF IOWA

No. 7-699 / 06-2091
Filed November 15, 2007

DELINDA R. WELCH,
Plaintiff-Appellant,

vs.

YWCA OF CLINTON, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Clinton County, Nancy S. Tabor, Judge.

The plaintiff appeals from the district court's order granting summary judgment in favor of the defendant. **REVERSED AND REMANDED FOR TRIAL.**

Jeffrey Walters of Clemens, Walters, Conlon & Meyers, P.C., Dubuque, for appellant.

Troy Howell, Davenport, for appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

VOGEL, J.

Delinda Welch appeals from the district court's grant of summary judgment in favor of the YWCA in her premise liability action based on injuries she received when she slipped and fell on an icy sidewalk. Determining there is a factual dispute as to whether the YWCA should have known of the icy condition, we reverse and remand for trial.

On February 21, 2004, Welch slipped and fell on a thin patch of ice or "black ice" on the sidewalk in front of the YWCA building. A nearby police officer came to her aid and told her that there was black ice where she had fallen. He summoned an ambulance and Welch was taken to the hospital where it was determined that she had broken her ankle.

Welch filed a negligence action against the YWCA. After deposing Welch, the YWCA moved for summary judgment. The district court granted the motion, finding there was no evidence that the YWCA had actual or constructive knowledge of the sidewalk's icy condition. It found there was no evidence to demonstrate the icy condition existed for a period of time such that through the exercise of reasonable care the YWCA should have known of the hazard.

We review the district court's grant of summary judgment for correction of errors at law. Iowa R. App. P. 6.4; *Rucker v. Humboldt Cmty. Sch. Dist.*, 737 N.W.2d 292, 293 (Iowa 2007). Summary judgment shall be granted when the entire record, viewed in the light most favorable to the nonmoving party, demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Rucker*, 737 N.W.2d at 293. "Negligence questions are typically for the jury and in only

exceptional situations may negligence cases be decided by the court as a matter of law." *Wieseler v. Sisters of Mercy Health Corp.*, 540 N.W.2d 445, 449 (Iowa 1995) (citations omitted).

Under Iowa premise liability law, a possessor of land has a duty to use reasonable care to maintain the premises in a reasonably safe condition to protect invitees against foreseeable risks of harm. *Frantz v. Knights of Columbus*, 205 N.W.2d 705, 708-09 (Iowa 1973). Our supreme court has adopted the Restatement (Second) of Torts, which states the general rule of possessors of land's liability for injuries occurring to invitees:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) fails to exercise reasonable care to protect them against the danger.

Benham v. King, 700 N.W.2d 314, 318 (Iowa 2005) (quoting Restatement (Second) of Torts § 343 (1965)). A possessor of land must have actual or constructive knowledge of the dangerous condition before liability will be imposed. *Id*; *see Hopping v. College Block Partners*, 599 N.W.2d 703, 705 (Iowa 1999) (discussing that a possessor of land must have notice and an opportunity to remove natural accumulation of ice and snow).

Welch does not argue that the YWCA had actual knowledge of the condition or that actual knowledge could be imputed to the YWCA because it

created the dangerous condition. *Richardson v. Commodore, Inc.*, 599 N.W.2d 693, 697 (Iowa 1999) ("Knowledge of a dangerous condition is imputed to a possessor of land who has created the condition that causes the plaintiff's injury." (citations omitted)); *see Hopping*, 599 N.W.2d at 705 (finding a possessor of land created and consequently had notice of an icy condition when the building did not have gutters and an icy sidewalk resulted from runoff from the roof). Therefore, the issue in this case is whether Welch introduced evidence that the sidewalk's icy condition had existed for such a time that the YWCA, in the exercise of reasonable care, should have known of it. *Frantz*, 205 N.W.2d at 712. A possessor of land has a duty to inspect for foreseeable dangers. *Benham*, 700 N.W.2d at 320; *e.g.*, *Frantz*, 205 N.W.2d at 712 (finding that where there is a natural accumulation of ice and snow, a possessor of land must use reasonable care to ascertain the condition of the premises and either remedy any dangers to make it reasonably safe for invitees or warn invitees of the actual condition).

Welch testified that the sidewalk was clear of ice and snow, except for the location where she slipped and fell. She did not see any ice before she fell but actually felt the ice after the fall. It was February in Iowa and the weather report indicated freezing and thawing temperatures during the prior week. *See Capener v. Duin*, 173 N.W.2d 80, 86 (Iowa 1969) (determining there was evidence for a jury to find that a possessor of land had knowledge of an icy step when the step had previously been icy and there was precipitation, freezing, and thawing); *Christianson v. Kramer*, 255 Iowa 239, 246, 122 N.W.2d 283, 287 (Iowa 1963) (holding a jury could find the possessor of land had actual or constructive knowledge of icy conditions that had occurred in the past and were

caused by snow melting off a second-story ledge in freezing and thawing temperatures). There had been some precipitation the day before and a low temperature of thirty-four degrees the night before. *See Frantz*, 205 N.W.2d at 712 (finding the defendant had constructive knowledge because of the weather conditions). Two YWCA employees stated that the ice "could have occurred naturally as a result of snow or rainfall, as the result of vehicles splashing rain, snow or slush from the adjacent roadway or from a variety of other ways."

Welch also introduced a statement[1] by a YWCA employee, who was responsible for the maintenance of the sidewalk, that the sidewalk slopes toward the street and he had previously witnessed ice forming at the location of her fall. *See Richardson*, 599 N.W.2d at 697 (finding a duty to inspect when there was an indication of a problem and an inspection would have been easy to perform and would have likely revealed the defect). The YWCA opened for business at 6:30 A.M but the sidewalk was not inspected and the employee responsible for maintaining the sidewalk did not arrive at work until 8:00 A.M. *See Benham*, 700 N.W.2d at 319 (stating the conduct necessary to satisfy the duty to inspect depends on the circumstances and is generally a question for the jury). Furthermore, our supreme court has distinguished between indoor and outdoor slip-and-fall cases. *Wieseler*, 540 N.W.2d at 451 ("In other premises liability cases . . . involving invitees who sustained injuries after slipping and falling on icy conditions outdoors, we have commonly held that fact questions existed for a jury

[1] The YWCA claims the affidavit of Glen Jahn, executed after the district court's deadline for submission of evidence, was likely not relied upon by the court in its ruling. While it may have been untimely, there was no motion to strike, nor any ruling by the district court to exclude it from the summary judgment record. Consequently, we consider it part of the record.

or trier of fact to consider and decide" (citations omitted)). We hold that Welch has introduced sufficient evidence to trigger a jury question as to whether the YWCA had constructive knowledge of the icy condition on the sidewalk. *See Benham*, 700 N.W.2d at 320 (stating the inspection required by a possessor of land is dependent on the circumstances and is generally a question for the jury). We therefore reverse the grant of summary judgment and remand for trial.

REVERSED AND REMANDED FOR TRIAL.