

**81-LW-3846 (10th)**

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Irene Mason, and Charles T. Mason, Plaintiffs-Appellants,

v.

Sawmill Lanes, Defendant-Appellee.

No. 80AP-962.

10th District Court of Appeals of Ohio, Franklin County.

Decided on July 2, 1981.

MR. ROBERT KARL HANDELMAN, 186 East Eleventh Avenue, Columbus, Ohio 43201, For Plaintiffs-Appellants.

LANE, ALTON & HORST, MR. JOHN M. ALTON, 155 East Broad Street, Columbus, Ohio, For Defendant-Appellee.

DECISION

McCORMAC, J.

Plaintiffs filed a complaint in Franklin County Common Pleas Court alleging that Irene Mason fell in defendant's parking lot on November 28, 1977, as a result of the negligence of defendant in failing to properly clear patches of ice which had accumulated on the parking lot. Defendant answered, denying negligence, and filed a motion for summary judgment based upon the pleadings and the depositions of Irene Mason and Bernard O'Koon, which had been filed with the court.

The trial court sustained defendant's motion for summary judgment, finding that there was no evidence before the court to indicate that the ice upon which plaintiff slipped in defendant's parking lot was anything but a natural accumulation and, hence, defendant was under no duty to remove the ice from his parking lot.

Plaintiffs have appealed, asserting the following assignments of error:

"I. The lower court erred in its finding of summary judgment in favor of the appellee where, as here, there are genuine issues of material fact.

"II. The lower court erroneously applied the standard of Jeswald v. Hutt under the facts of this case.

"III. The lower court erred in holding that appellee had no duty to remove the accumulation of ice from its parking lot.

"IV. Under the facts of this case, the appellee breached the standard of ordinary care to its business invitee."

Irene Mason testified in her deposition that she had accompanied her husband to Sawmill Lanes Bowling Alley on November 28, 1977, for purposes of bowling. They parked in defendant's parking lot. She left the car and, after taking a few steps, fell on a thin glaze of ice about four to five feet in diameter. She said it was cold, there was snow on the ground but not on the roads, and that the parking lot looked like it had been shoveled, as there were snow piles but no snow on the parking lot. It looked like the snow had been pushed off. There were no defects in the surface of the parking lot where she fell. The parking lot was lighted and she was looking where she was going but did not see the ice until after she fell, as she walked to the rear of the car in the narrow space between parked cars. After she fell, she could see other thin sheets of ice on the parking lot.

O'Koon testified that he was in charge of heavy maintenance and repair work at Sawmill Lanes in November, 1977. His duties included having a private contractor remove snow from their four-acre parking lot when conditions warranted. When the private contractor removed snow, he used a scraper with the blade set about 1/2 " above the surface, which

sometimes left a residue of ice that might be difficult to see. However, he stated that no snow removal was ordered in November, 1977. When there was less snow, Sawmill employees would clear areas around the entrance ways and salt within a 15 to 20 foot circumference around the entrance. O'Koon testified that a check of November 27 and 28, 1977 weather conditions showed that there was rain turning to snow on November 27 with about a 2" accumulation and temperatures ranging from 15 to 35 F. and temperatures of 23 to 35 F. on November 28.

The issue is whether reasonable minds could conclude that defendant breached a duty to Irene Mason, proximately resulting in her injury, after construing the pleadings and depositions most strongly in plaintiffs' favor.

The trial court found that there was no evidence to indicate that the ice upon which Irene Mason fell was anything more than a natural accumulation of ice which defendant had no duty to remove, citing Debie v. Cochran Pharmacy-Berwick, Inc. (1967), 11 Ohio St. 2d 38.

There is a question of fact concerning defendant's activity in clearing the parking lot on November 27 or 28, 1977. O'Koon denied any clearing of the lot other than possibly around the entrance door. Irene Mason stated that the lot appeared to have been scraped. Thus, there is a factual issue of whether the thin sheet of glazed ice upon which Irene Mason fell was a result of scraping of the lot or from natural conditions.

Plaintiffs' assignments of error are combined for discussion as they are interrelated.

In Debie v. Cochran Pharmacy-Berwick, Inc., *supra*, the Supreme Court held as follows:

"The mere fact standing alone that the owner or occupier has failed to remove natural accumulations of snow and ice from private walks on his business premises for an unreasonable time does not give rise to an action by a business invitee who claims damages for injuries occasioned by a fall thereon." (Syllabus 2.)

In Sidle v. Humphrey (1968), 13 Ohio St. 2d 45, the Supreme Court stated that the dangers from natural accumulations of ice and snow are ordinarily so obvious and apparent that an occupier of premises may reasonably expect that a business invitee on his premises will discover those dangers and protect himself against them. Sidle, *supra*, syllabus 2.

In Jeswald v. Hutt (1968), 15 Ohio St. 2d 224, the owner or occupier was held not liable for a natural accumulation of ice and snow that was dangerous, but not created by defendants. Moreover, Jeswald, an invitee, who walked in the dark with knowledge that the parking-area was covered with a natural accumulation of ice and snow, was held to either have assumed the risk or be chargeable with contributory negligence.

There are questions of fact remaining in this case which cannot be resolved by a summary judgment. The factual question of whether the ice, which was on the parking lot, was a result of a natural Accumulation of snow or ice, or whether it resulted from defendant's activities in removing snow from the parking lot, leaving a thin glaze of ice or a situation that resulted in that condition, which caused a substantially more hazardous condition for users of the parking lot than would be caused by a natural accumulation of snow and ice. Since there was testimony that the parking lot was adequately lighted and appeared clear, as the thin glaze of ice was difficult to see, there was an issue of fact relating to contributory negligence and assumption of risk. Irene Mason had walked only a few steps in the area between the parked cars when the fall occurred before she was aware of the existence of the glaze of ice.

Defendant had the burden of showing that, pursuant to Civ. R. 56(C), there was no possible liability on behalf of defendant. Under the Debie and Jeswald doctrines, defendant failed to carry that burden because it has not been established that the condition causing Mason's fall was a result of a natural accumulation of snow and ice rather than the result of defendant's removal of snow and ice, which left a more hazardous condition than was apparent to Mason. If defendant assumed the duty of removing snow, defendant is required to exercise reasonable care.

Even considering O'Koon's deposition, there is a question as to whether Irene Mason could reasonably have anticipated the ice that she encountered on the parking lot as well as whether the glaze of ice was a result of natural conditions or of the manner of removal of snow by defendant or his contractor.

Plaintiffs' assignments of error are sustained to the extent that we hold that summary judgment was erroneously granted, in that there were genuine issues of material fact referred to herein which were not resolved by the pleadings or depositions of Irene Mason and Bernard O'Koon.

The judgment of the trial court is reversed and the case is remanded for further procedure consistent with this decision.

Judgment reversed and case remanded.

WHITESIDE and NORRIS, JJ., concur.