

**87-LW-4235 (10th)**

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Angela SMITH, Plaintiff-Appellant,

v.

Reschs BAKERY, Defendant-Appellee.

No. 87 AP-897.

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

Decided on December 10, 1987.

Appeal from the Franklin County Municipal Court.

Barkan & Neff, and Sanford A. Meizlish, for appellant.

Lane, Alton & Horst, John M. Alton and Douglas M. Kennedy, for appellee.

OPINION

BOWMAN, Judge.

On February 21, 1986, appellant went to appellee's bakery to pick up a sheet cake. Appellant had frequented the bakery two to three times a month for a period of ten years. On the day in question, it was snowing and somewhat icy, and there was an accumulation of snow and ice on the sidewalk in front of the store. Appellant testified in her deposition that she had to be careful as she walked on the sidewalk, and that she had attempted to enter the store by a street level door so she would not have to climb the stairs entering the bakery; however, the door was locked and she had to use the stairs anyway. After picking up the cake, appellant left the bakery through the same door. As she started down the stairs, she slipped on the top step and fell, injuring her back.

Appellant filed her complaint on March 2, 1987 alleging that appellee was negligent for failing to properly maintain its premises in a reasonably safe condition for all its business invitees. After appellee took appellant's deposition, it filed a motion for summary judgment, which was granted. Appellant now brings this appeal and asserts the following assignment of error:

"That the trial court erred in finding that the Defendant-Appellee herein, Resch's Bakery, was entitled to judgment as a matter of law."

Pursuant to Civ.R. 56(C), summary judgment may be rendered where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Summary judgment cannot be rendered unless reasonable minds can come to but one conclusion, which is adverse to the party against whom the motion is made.

To defeat a properly supported motion for summary judgment filed by defendant in a negligence action, the plaintiff must identify a duty owed him by the defendant, and the evidence must be sufficient, considered most favorably to the plaintiff, to allow reasonable minds to infer that a specific duty was breached, that the breach of the duty was the proximate cause of plaintiff's injury, and that plaintiff was injured. Keister v. Park Centre Lanes (1981), 3 Ohio App.3d 19.

Appellant acknowledges that she knew of the dangers of ice and snow on the stairway and that she took all reasonable efforts to protect herself from the conditions. However, appellant contends that the conditions outside the bakery were extraordinary and that appellee unreasonably and unnecessarily exposed her to conditions which it knew, or had reason to know, were dangerous since appellee could have opened an alternative means of ingress and egress for its premises.

In Debie v. Cochran Pharmacy-Berwick, Inc. (1967), 11 Ohio St.2d 38, the court held in the first syllabus:

"1. Where the owner or occupier of business premises is not shown to have notice, actual or implied, that the natural accumulation of snow and ice on his premises has created there a condition substantially more dangerous to his business invitees than they should have anticipated by reason of their knowledge of conditions prevailing generally in the area, there is a failure of proof of actionable negligence."

The decision in Debie was affirmed in Sidle v. Humphrey (1968), 13 Ohio St.2d 45, wherein the court stated in the syllabus:

"1. An occupier of premises is under no duty to protect a business invitee against dangers which are known to such invitee or are so obvious and apparent to such invitee that he may reasonably be expected to discover them and protect himself against them.

"2. 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 \* \* \*.

"3. Ordinarily, an owner and occupier has no duty to his business invitee to remove natural accumulations of snow and ice from private walks and steps on his premises \* \* \*.

"4. The common-law duty, owed by a landlord to a business invitee of his tenant who is on a portion of the premises over which the landlord has retained control, is no greater than the common-law duty that any other occupier of premises would owe to his business invitee \* \* \*." [Citations omitted.]

Appellant contends that appellee had knowledge of the increased danger of the condition of the stairs and that the obvious and apparent danger of the stairway was not, as a matter of law, a danger that she might reasonably be expected to protect herself against since the stairway was the only available means of ingress and egress.

Appellant cites to Mizenis v. Sands Motel, Inc. (1975), 50 Ohio App.2d 226, as being controlling in this case; however, this court finds that appellant's reliance on Mizenis is misplaced. In Mizenis, the plaintiff alerted the defendant of the slippery and dangerous conditions of the stairs on a number of occasions; however, the defendant never cleaned them off. Although the plaintiff used the stairs with caution, he fell and was injured.

In the case at bar, appellant testified in her deposition that she could not remember ice on the stairway. In fact, she did not know what caused her to fall, and she stated that she did not think there was anything on the step that caused her to slip.

In Cleveland Athletic Assoc. Co. v. Bending (1934), 129 Ohio St. 152, the court found that where a person does not know what caused her to slip and fall, reasonable minds can come to no other conclusion than there was no negligent act or omission on the part of the defendant.

In the case at bar, appellant really had no idea why she fell. Therefore, since she cannot identify the cause of her fall, she cannot show that appellee breached a duty of care owed to her. Accordingly, she cannot maintain a cause of action in negligence. Cleveland Athletic, supra.

In addition, appellant did not testify that there was anything more dangerous on the stairway than the natural accumulation of ice and snow of which she was already aware. Pursuant to Sidle, supra, the bakery had no duty to protect appellant from the dangers and conditions of which she was already aware. Appellee also had no duty to protect appellant from the natural accumulations which were so obvious and apparent that appellant should have protected herself against them.

Accordingly, for the foregoing reasons, appellant's assignment of error is not well-taken and is hereby overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

STRAUSBAUGH, P.J., and REILLY, J., concur.