Court of Appeals, State of Michigan

ORDER

Jo Ann McAmis v The Blake Company

Docket No. 266111

LC No. 04-428555-CZ

Brian K. Zahra
Presiding Judge

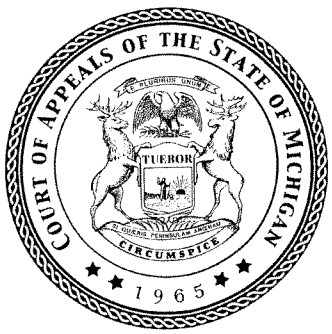
Michael J. Talbot

Kirsten Frank Kelly
Judges

The Court orders that the motion to file a reply brief is GRANTED.

Pursuant to MCR 7.205(D)(2), in lieu of granting the application, the Court further orders that the October 6, 2005, order of the Wayne County Circuit Court is REVERSED because the trial court erred in ruling that the ice on the porch at the rear entrance of the apartment building was effectively unavoidable. It is undisputed that there was another entrance in the front of the building that plaintiff could have used to gain entry to the building and her apartment. See *Joyce v Rubin*, 249 Mich App 231, 242-243; 642 NW2d 360 (2002). Indeed, plaintiff testified at her deposition that after her fall on the porch at the rear entrance, she entered the building and then later exited the building through the front entrance. There was no evidence presented by plaintiff that she encountered any icy hazard in exiting the building through the front entrance and in reaching her sister's vehicle before departing for the hospital. Because the ice on the porch was not the type of unavoidable condition intended by the Supreme Court in *Lugo v Ameritech Corp, Inc,* 464 Mich 512, 516; 629 NW2d 384 (2001), there were no special aspects of the open and obvious icy condition rendering it unreasonably dangerous. Although plaintiff claims that the ice was clear and not visible, she admitted at her deposition that before she stepped on the porch, she saw that the porch was wet. Any reasonable Michigan resident with ordinary intelligence, on a cold day in January, would have been able to determine if the wetness on the porch was ice before stepping on the porch. See *Kenny v Katz,* 264 Mich App 115, 120; 642 NW2d 360 (2004), (Griffin dissenting), rev 472 Mich 929; 697 NW2d 526 (2005) (reversing in lieu of granting leave to appeal for the reasons stated in the dissenting opinion). Accordingly, we REMAND the matter to the trial court for entry of an order granting defendants' motion for summary disposition.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 08 2006
Date

Sandra Schultz Mengel
Chief Clerk