

STATE OF MICHIGAN
COURT OF APPEALS

EVELYN DORIS SMALLEY and BRUCE
DARWIN SMALLEY,

UNPUBLISHED

Plaintiffs-Appellees,

v

PIZZA CRUST COMPANY, INC.,

No. 191340

Ingham Circuit Court

LC No. 94-077311-NO

Defendant-Appellant.

Before: Michael J. Kelly, P.J., and Reilly and Jansen, JJ.

MICHAEL J. KELLY, P.J. (concurring).

I concur in the result, principally because, on this record, I am unable to determine the dimensions of the sidewalk and curb. If the snow shoveled by defendant off the sidewalk in front of its place of business was deposited in the space between the sidewalk and the street, I believe defendant would have been entitled to a directed verdict. See *Hutchinson v Ypsilanti*, 103 Mich 12, 14; 61 NW 279 (1894) (observing that the removal of snow from city sidewalks and streets “necessarily implies the piling of snow to a greater or lesser extent along the sides of the streets and crossings”). Since the photographs of the pile of snow “at the curb,” which were exhibits in the trial court, do not show what part of that snow pile was on the sidewalk, on top of the curb, or on top of the street, it is impossible to say whether Lansing City Ordinance, § 1020.06(b) has been violated. That subsection provides: “Perhaps on remand the parties will be required to address the question of what quantity of snow or ice is sufficient to “impair vehicular or pedestrian traffic”?”

Defendant argues that at least a portion of the snow piled along the curb resulted from the actions of a city plow cleaning the street. That is no help as to whether the sidewalk accumulation was increased, thus increasing the hazard for pedestrians. I do not believe that pedestrians are entitled to a clear path (of uncertain dimension) from the street, between the curb and sidewalk, as this would require the landowner to carry away the snow in order to satisfy the ordinance, and would thus actually impede the prompt clearing of snow-covered sidewalks.

I concur in the result.

/s/ Michael J. Kelly