

STATE OF MICHIGAN
COURT OF APPEALS

TERRY EAKINS,

Plaintiff-Appellant,

v

DETAIL ONE, L.L.C. and JASON COPELAND
d/b/a COPELAND AUTO REPAIR,

Defendants-Appellees,

and

R & S PROPERTY, L.L.C.,

Defendant.

UNPUBLISHED

December 27, 2011

No. 301097

Jackson Circuit Court

LC No. 09-002557-NO

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants in this premises liability case. We affirm.

On December 3, 2007, plaintiff was working for AT & T when he went to defendants' premises to install phone service. As plaintiff was walking around his truck to get his tools, he slipped but did not fall. That is, plaintiff testified, "the left leg went up, and I fell back, but the right leg was kind of where I caught myself falling back." He did not see what he slipped on and did not know what he slipped on. Plaintiff looked around and did not see anything. He believed that it "was kind of snowy" that day and it was cold, but there was no snow in the parking lot where he parked. He felt pain in his right foot immediately, but finished the job before reporting his injury to his supervisor. Plaintiff did not seek medical treatment until seven days later and was eventually diagnosed with permanent injuries. This premises liability action followed.

Subsequently, defendants moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff did not know what caused him to slip and, because he could not prove what he slipped on, he could not prove that defendants either created an unsafe condition or knew or should have known of its existence. Plaintiff responded to defendants' motion, arguing that plaintiff likely slipped on black ice in light of the weather conditions existing at the time of his

slip. Following arguments on the motion, the trial court agreed with defendants, holding that plaintiff failed to establish that a genuine issue of material fact existed on the issue whether defendants breached a duty of care. This appeal followed.

Plaintiff argues on appeal that a question of fact existed regarding whether plaintiff slipped on black ice; thus, summary disposition was improper. After de novo review of the trial court's decision, we disagree. See *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Liparoto Constr, Inc v General Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). After the moving party has identified the matters that have no disputed factual issues and supported that position, the opposing party must establish with evidence that a genuine issue of disputed fact exists. See MCR 2.116(G)(4); *Coblentz v Novi*, 475 Mich 558, 568-569; 719 NW2d 73 (2006).

As an invitee, as defendants appear to concede, plaintiff was owed a duty by defendants to exercise reasonable care to protect him from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). In this case, plaintiff testified that he did not know what caused him to slip. He looked around and did not see anything. Thus, what is the dangerous condition on the land that defendants were to exercise reasonable care to protect him from encountering?

Plaintiff claims that weather conditions were favorable to support an inference that "black ice" existed and that reasonable inferences must be drawn in his favor as the nonmoving party. However, plaintiff offers no support for his purported "reasonable" inference that "black ice" existed. For example, plaintiff did not testify that at the time of his slip he saw any ice in the parking lot. He testified that there was no snow in the parking lot where he parked. There are no contemporaneous incident reports or witness observations of the parking lot. Plaintiff's speculation after the fact is equally as plausible as defendants' speculation that plaintiff could have slipped on fluids from his own truck or that he had something on the bottom of his shoe that caused him to slip. Further, a defendant's liability must arise from active negligence or through a condition of which defendants knew or was of such character or duration that defendants should have known of it. *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001). Here, again, plaintiff has presented no evidence of a dangerous condition that defendants knew or should have known about. In opposing defendants' motion for summary disposition, plaintiff was required to present more than conjecture and speculation to meet his burden of establishing a genuine issue of material fact. See *Bennett v Detroit Police Chief*, 274 Mich App 307, 319; 732 NW2d 164 (2006). Plaintiff did not carry his burden. Thus, the trial court properly concluded that plaintiff failed to establish a genuine issue of material fact on the issue whether defendants breached a duty of care.

Affirmed.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Patrick M. Meter