

STATE OF MICHIGAN
COURT OF APPEALS

RENEE YOUNG,

Plaintiff-Appellant,

and

KEVIN YOUNG,

Plaintiff,

v

MICHIGAN TREE APARTMENTS LLC,

Defendant-Appellee.

UNPUBLISHED

May 19, 2015

No. 320439

Macomb Circuit Court

LC No. 2012-002758-NO

Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Plaintiff Renee Young¹ appeals as of right a trial court order granting summary disposition to defendant Michigan Tree Apartments pursuant to MCR 2.116(C)(10). For the reasons set forth in this opinion, we affirm.

I. FACTS

In February 2011, plaintiff was a lessee of an apartment owned and operated by defendant. On February 7, 2011, plaintiff slipped and fell on “black ice” in the parking lot of the apartment complex when she was walking to her vehicle with her friend Chris Wright. Plaintiff commenced this lawsuit alleging (1) a common law negligence/premises liability claim and (2) a statutory claim under MCL 554.139(1).

During discovery, plaintiff testified that on February 7, 2011, there was a lot of snow outside, but the parking lot to the apartment complex had been plowed that day. Plaintiff

¹ For purposes of this opinion, we refer to Renee Young as “plaintiff” because the claims of plaintiff Kevin Young were voluntarily dismissed in the trial court.

testified that there were no lights in the parking lot and it was dark outside and residents had problems with the parking lots not being cleared. Plaintiff testified that she had lived in Michigan since she was 13 years old and was familiar with the melt and freeze cycle and the possibility of ice underneath snow.

At about 6:15 p.m. that evening, plaintiff and Wright walked side by side toward Wright's vehicle. There was a little concrete slab outside the door and then a sidewalk. The two women turned left. The sidewalk was a little icy and may have had a little snow. Wright and plaintiff walked around the ice on the sidewalk "until we ran into the snow-bank." Then Wright told plaintiff that she had to park "over there," and plaintiff asked, "Why didn't you tell me? We would have gone the other way." But even if they had gone right instead of left, they would have encountered a snow-bank. The snow was piled up over the sidewalk, and they had to go around the snow-bank to get to Wright's car. Otherwise, the sidewalk was mostly clear with maybe a light dusting of snow. The snowbank was "covering both portions of the sidewalk," and plaintiff decided, "I'm not going through all that snow." They walked behind the cars through the parking lot because plaintiff "didn't want to walk between snow and the car bumpers."

Plaintiff testified that she and Wright walked by two or three cars and "then I was down." They were almost to Wright's vehicle, about one car away. Plaintiff did not notice snow on the parking lot surface and she did not "feel any [ice] and I'm usually very conscious of slips." Plaintiff did not see any ice just before she fell. She was looking straight ahead. She and Wright walked around or stepped over the ice on the sidewalk. After she fell, plaintiff raised her head and saw "this parking lot's a sheet of ice, but you couldn't see it."

Plaintiff testified that her son and the emergency medical personnel (EMS) did not fall while attending to her in the parking lot. The next day, plaintiff had surgery and a titanium rod and pins were placed in her leg.

Wright testified that when she arrived on February 7, 2011, she encountered snow-banks "up by the sidewalk" and "[i]t was kind of hard to walk . . . there was a little bit of snow." Wright walked over the snow-bank and then continued straight ahead on the sidewalk. She did not encounter any ice in the parking lot. The snow-bank was "[m]aybe three feet high" and "it [k]ind of swallowed up my boot."

Wright stayed inside with plaintiff about 40 to 45 minutes and then they left about 5:15 to 5:20 p.m. Wright testified that when the women left the building, they went "the wrong way" because plaintiff thought Wright would have parked on the other side. Had they gone the more direct route, they could have walked from the sidewalk to the vehicles without traversing as much of the parking lot. As it was, they "went around and then I [Wright] showed her where I parked and I was talking to her, and I looked back to see her and she was laying on the ground." In the area where plaintiff fell, "[t]he parking lot was a sheet of ice, black ice, too, . . . it was dark and it was hard to see."

Wright testified that the parking lot did not appear to have been plowed or recently cleaned near the cars where plaintiff fell. Wright saw snow in front of the cars, but no snow on top of the ice where plaintiff fell. The lot had emptied out and plaintiff fell about eight parking spaces from Wright's car. Wright was able to see the ice with the aid of the flashing lights from

the emergency vehicles. No overhead lights illuminated the parking lot. Wright thought “there was a place where the light had been, but the light wasn’t working at the time.”

In its motion for summary disposition, defendant argued, in part, that plaintiff’s negligence claim was barred by the “open and obvious” danger doctrine. With respect to statutory liability, at a motion hearing, defendant agreed that the parking lot was a common area, but argued that defendant was not liable for snow and ice on the common area.

The trial court granted defendant’s motion with respect to plaintiff’s statutory claim but denied the motion with respect to plaintiff’s common law claim, finding that there was a question of fact as to whether the icy condition was open and obvious.

Defendant moved for reconsideration. Defendant contended that constructive knowledge of weather conditions did not show knowledge of the icy condition of defendant’s parking lot. At a hearing, the trial court stated, “the Court gave credence to the weather forecasters as a basis of creating a factual basis. . . . And I’ve obviously reconsidered that.” The trial court further noted that “the meteorologist’s affidavit as to general weather conditions does not constitute actual or constructive knowledge on the part of the defendant.” The trial court granted summary disposition to defendant on the record and entered an order granting reconsideration “for the reasons stated on the record” and dismissing plaintiff’s lawsuit with prejudice. Plaintiff appeals as of right.

II. ANALYSIS

We review a trial court’s ruling on a motion for summary disposition de novo. *Devillers v Auto Club Ins Ass’n*, 473 Mich 562, 566-567; 702 NW2d 539 (2005). Motions for summary disposition under MCR 2.116(C)(10) should be granted if “there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law.” *Joseph v Auto Club Ins Ass’n*, 491 Mich 200, 206; 815 NW2d 412 (2012). The court considers the pleadings, affidavits, depositions, and other evidence in a light most favorable to the nonmoving party. *Id.* Rulings on motions for reconsideration are reviewed for an abuse of discretion. *Sherry v East Suburban Football League*, 292 Mich App 23, 31; 807 NW2d 859 (2011).

Although plaintiff’s complaint was somewhat ambiguous, the complaint contained two claims (1) a common law negligence/premises liability claim and (2) a statutory claim under MCL 554.139(1). See *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007) (“it is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond more procedural labels to determine the exact nature of the claim.”) We proceed by separately addressing whether the trial court properly dismissed each of these claims.

“In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff’s injury, and (4) the plaintiff suffered damages.” *Benton v Dart Props*, 270 Mich App 437, 440; 715 NW2d 335 (2006). “The duty that a landlord owes a plaintiff depends on the plaintiff’s status on the land.” *Id.* A tenant is an invitee of his or her landlord and the landlord “owes a duty to an invitee to exercise reasonable care to protect the

invitee from an unreasonable risk of harm caused by a dangerous condition on the land.” *Id.* (quotation marks and citation omitted). However, “[a]bsent special aspects, this duty generally does not require the owner to protect an invitee from open and obvious dangers.” *Id.* at 441 (quotation marks and citations omitted).

Our Supreme Court has explained that “black ice” conditions are “open and obvious when there are indicia of a potentially hazardous conditions, including the specific weather conditions present at the time of the plaintiff’s fall.” *Janson v Sajewski Funeral Home, Inc*, 486 Mich 934, 934-935; 782 NW2d 201 (2010). In *Janson*, the Supreme Court found that the black ice that the plaintiff slipped on in a parking lot was open and obvious because “the slip and fall occurred in winter, with temperatures at all times below freezing, snow present around the defendant’s premises, mist and light freezing rain falling earlier in the day, and light snow falling during the period prior to the plaintiff’s fall in the evening.” *Id.* The Supreme Court explained that “[t]hese wintry conditions by their nature would have alerted an average user of ordinary intelligence to discover the danger upon casual inspection . . . Moreover, the alleged condition did not have any special aspect. It was avoidable and not unreasonably dangerous.” *Id.*

In this case, the evidence showed that there were indicia of potentially hazardous conditions in the parking lot where plaintiff slipped and fell. *Id.* Here, plaintiff slipped and fell in February in Michigan and plaintiff was aware of the melt-freeze cycle that occurs in the winter in Michigan. There was a lot of snow around plaintiff’s apartment building and, although the parking lot had been plowed on the day of the accident, tenants had a problem with parking lots not being cleared of snow. Furthermore, there was a “light dusting” of snow outside, there were snow-banks near the sidewalk, and Wright encountered a “little bit of snow” on her way into the apartment complex about 45 minutes before plaintiff fell on the ice. Additionally, Wright testified that there were patches of ice and snow on the sidewalk near the exit of the building. Like in *Janson*, in this case, “all these wintry conditions by their nature would have alerted an average user of ordinary intelligence to discover the danger upon casual inspection.” *Id.* Similarly, like in *Janson*, the slippery parking lot did not have any “special aspect.” *Id.* The danger was avoidable where Wright testified about an alternate, more direct, route to her vehicle and where our Supreme Court has held that this type of icy condition is not unreasonably dangerous. *Id.*, see also *Joyce v Rubin*, 249 Mich App 231, 243; 642 NW2d 360 (2002).

In short, there was no genuine issue of material fact to support that defendant breached its duty to plaintiff where plaintiff’s injury arose from an open and obvious hazard. *Benton*, 270 Mich App at 440-441. Accordingly, the trial court properly granted defendant summary disposition pursuant to MCR 2.116(C)(10) as to plaintiff’s common law negligence claim albeit it appears to have done so for different reasons. See *Gleason v Dep’t of Trans*, 256 Mich App 1, 3; 662 NW2d 822 (2003) (“A trial court’s ruling may be upheld on appeal where the right result issued, albeit for the wrong reason.”)

With respect to plaintiff’s statutory claim, although the open and obvious danger doctrine does not apply to a statutory duty, in this case, because there was no evidence to support that defendant breached its statutory duty to maintain the parking lot fit for its intended use, plaintiff’s claim under MCL 554.139 failed as a matter of law.

MCL 554.139 provides in relevant part as follows:

(1) In every lease or license of residential premises, the lessor or licensor covenants:

(a) That the premises and all common areas are fit for the use intended by the parties.

(b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants wilful or irresponsible conduct or lack of conduct.

A parking lot to a leased residential complex is a “common area” for purposes of this statute. *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 428; 751 NW2d 8 (2008). However, “the lessor’s duty to repair under MCL 554.139(1)(b) does not apply to common areas and, therefore, does not apply to parking lots.” *Id.* at 435. Moreover, “[a] lessor has no duty under MCL 554.139(1)(b) with regard to the natural accumulation of snow and ice.” *Id.*

With respect to a lessor’s duty to maintain a parking lot so that it is “fit for the intended use. . .” under MCL 554.139(1)(a), our Supreme Court has explained as follows:

While a lessor may have some duty under MCL 554.139(1)(a) with regard to the accumulation of snow and ice in a parking lot, it would be triggered only under much more exigent circumstances than those obtaining in this case. The statute does not require a lessor to maintain a lot in an ideal condition or in the most accessible condition possible, but merely requires the lessor to maintain it in a condition that renders it fit for use as a parking lot. Mere inconvenience of access . . . will not defeat the characterization of a lot as being fit for its intended purposes. [*Allison*, 481 Mich at 430.]

In *Allison*, the plaintiff was walking in a parking lot covered in one to two inches of snow when he slipped and fractured his ankle. *Id.* at 423. When the plaintiff was on the ground, he noticed that there was ice underneath the displaced snow. *Id.* Our Supreme Court held that these conditions did not render the parking lot unfit for its intended use because the plaintiff could not show that the snow and ice prevented him access to his vehicle. *Id.* at 430. The Supreme Court explained that the plaintiff’s statutory claim under MCL 554.139(1)(a) failed as a matter of law because, irrespective of the snow and ice, evidence showed that tenants were able to “enter and exit the parking lot, to park their vehicles therein, and to access those vehicles.” *Id.*

In this case, *Allison* is controlling as to plaintiff’s statutory claim. To the extent that plaintiff alleged a claim under MCL 554.139(1)(b), that claim failed as a matter of law because defendant, as a lessor, “has no duty under MCL 554.139(1)(b) with regard to the natural accumulation of snow and ice.” *Allison*, 481 Mich at 428. Similarly, plaintiff’s claim under MCL 554.139(1)(a) fails as a matter of law where, like in *Allison*, plaintiff could not show that apartment tenants were unable to “enter and exit the parking lot, to park their vehicles therein, and to access those vehicles.” *Id.* at 430. Specifically, Wright testified that she parked in the parking lot, exited her vehicle, and entered the apartment complex approximately 40 minutes

before plaintiff slipped and fell. In addition, Wright traversed the parking lot with plaintiff to within a few steps of her vehicle and then back into the building after plaintiff fell and she did not fall. Moreover, Wright testified that there was an alternate more direct route to access her parked vehicle and there was no other evidence to show that tenants were unable to use the parking lot for its intended use. Accordingly, the trial court did not err in granting defendant's motion for summary disposition with respect to plaintiff's statutory claim.

For the foregoing reasons, we conclude that the trial court did not abuse its discretion in granting defendant's motion for reconsideration and it did not err in granting defendant's motion for summary disposition as to both of plaintiff's claims in this case.

Affirmed. No costs awarded. MCR 7.219(A). We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Stephen L. Borrello