

STATE OF MICHIGAN
COURT OF APPEALS

PAUL D. CRIPPEN,

Plaintiff-Appellant,

v

5 STAR LANES, INC.,

Defendant-Appellee.

UNPUBLISHED

June 18, 2015

No. 321477

Macomb Circuit Court

LC No. 2013-001940-NO

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

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition in this slip and fall case. We affirm.

Plaintiff allegedly slipped on black ice in the parking lot of defendant's bowling alley. In its motion for summary disposition, defendant argued that it had no notice of the alleged condition and, in the alternative, the condition posed an open and obvious danger. The trial court granted the motion, holding that plaintiff failed to establish genuine issues of material fact existed regarding whether defendant had actual or constructive notice of the alleged condition and whether it was an open and obvious danger. Plaintiff challenges these holdings on appeal.

We review de novo a trial court's decision on a motion for summary disposition. *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 115; 839 NW2d 223 (2013). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. The documentary evidence is viewed in a light most favorable to the opposing party to determine whether a disputed material fact exists upon which reasonable minds might differ. *Id.* at 115-116.

We first consider the issue of notice. A premises possessor "has 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." *Banks v Exxon Mobil Corp*, 477 Mich 983; 725 NW2d 455 (2007). But this duty only arises when the premises possessor has actual or constructive notice of the condition, i.e., the possessor knows of the condition or should know about it because of its character or the duration of its existence. *Id.* at 983-984, citing *Kroll v Katz*, 374 Mich 364, 372; 132 NW2d 27 (1965). Accordingly, when a premises possessor fails to conduct an adequate inspection of the property, "the law will impute knowledge of the dangerous condition to the premises possessor if the dangerous condition is of such a character or has existed for a sufficient

time that a reasonable premises possessor would have discovered it.” *Grandberry-Lovette v Garascia*, 303 Mich App 566, 575; 844 NW2d 178 (2014). On a motion for summary disposition, “the premises possessor must show that the type of inspection that a reasonably prudent premises possessor would have undertaken under the same circumstances would not have revealed the dangerous condition at issue.” *Id.* at 579. This Court has cautioned, however, that “during the winter, a premises possessor cannot be expected to remove snow and ice from every portion of its premises, including areas adjacent to a cleared walkway, and Michigan caselaw makes it clear that such extraordinary measures are not required.” *Buhalis v Trinity Continuing Care Servs*, 296 Mich App 685, 697; 822 NW2d 254 (2012).

In this case, plaintiff primarily argues that knowledge of the black ice should be imputed to defendant because a reasonable premises possessor would have discovered it upon proper inspection. However, contrary to plaintiff’s assertion, defendant presented ample evidence of the reasonable inspections performed by its employees. James Grant, Patrick Cusick, and the co-owner of the bowling alley, Michael Mocerri, all testified at length in their depositions about defendant’s inspection regimen on the night of this incident. Mocerri “made his rounds” when he arrived at work between 3:00 p.m. and 5:00 p.m. and the premises was salted throughout the day. Mocerri also inspected the outside of the building on an hourly basis and performed a basic inspection for snow and ice when he left the bowling alley around midnight or 1:00 a.m. Grant checked all the building’s entrances for snow and ice when he arrived for work at 5:00 p.m. Cusick checked the porches and sidewalk areas shortly after arriving for work at 5:00 p.m., put down salt around the building once or twice that night, directed employees to use salt on the premises a number of other times, and specifically checked the parking lot sometime before plaintiff’s fall. Therefore, defendant undertook reasonably prudent inspections of the premises, especially considering the lack of precipitation on the night at issue and the fact that defendant had received no complaints of icy conditions. Nevertheless, the inspections failed to reveal the dangerous condition, meaning that defendant lacked both actual and constructive notice.

And plaintiff presented no evidence that defendant should have known about the alleged black ice because of its character or the duration of its existence. See *Grandberry-Lovette*, 303 Mich App at 575. Instead, the near-invisible nature of black ice militated against defendant discovering it at all. Plaintiff’s witnesses, who each went outside numerous times throughout the night, did not see any patches of ice on the premises before plaintiff’s fall. And defendant had received no complaints of icy conditions. Regarding the length of time the ice existed, none of the deponents could say when the ice had formed, and plaintiff himself walked through the same parking lot without incident when he first arrived a few hours before his fall. Further, contrary to plaintiff’s claim, defendant’s regular use of salt as a preventive measure does not lead to an inference that defendant had either actual or constructive notice of the particular patch of ice that allegedly caused plaintiff to fall. See *Altairi v Alhaj*, 235 Mich App 626, 640; 599 NW2d 537 (1999). Instead, it simply indicates that defendant was generally aware that ice could form in winter temperatures. This general awareness is insufficient to show constructive notice of the specific condition at issue. See *id.*

In summary, even when the evidence is viewed in a light most favorable to plaintiff, there is no genuine issue of material fact regarding whether defendant had actual or constructive notice of the alleged black ice. Accordingly, the trial court properly granted defendant’s motion for summary disposition. In light of our resolution of this dispositive issue, we need not consider

whether the trial court properly concluded that the allegedly dangerous condition was open and obvious because the issue is moot.

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Kurtis T. Wilder