

STATE OF MICHIGAN
COURT OF APPEALS

HANA YOUSIF and NABEEL YOUSIF, Next
Friend of CHRISTIAN M. YOUSIF, a Minor,
AMANDA S. YOUSIF, a Minor, and MATTHEW J.
YOUSIF, a Minor,

Plaintiffs-Appellants,

v

KERMIT FISH and NANCY FISH,

Defendants-Appellees.

UNPUBLISHED
June 8, 1999

No. 204906
Oakland Circuit Court
LC No. 96-515982 NO

Before: Gage, P.J., and MacKenzie and White, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

At about 7:00 p.m. on December 19, 1995, plaintiff Hana Yousif and her husband, Nabeel Yousif, drove to a Christmas party at the home of defendants Nancy and Kermit Fish. The roads were dry and it was very cold. Nabeel Yousif pulled into the end of defendants' driveway and Hana Yousif exited the passenger door onto the driveway. As she did so, she slipped on ice and fell. Both Hana Yousif and Nabeel Yousif testified that the location of her fall was the driveway approach, from two to five feet from the curb. It is undisputed that the area of the fall was within the City of West Bloomfield's right-of-way easement.

After hearing argument on the summary disposition motion, the trial court ruled that the easement area was not within defendants' possession or control, and that plaintiffs presented no evidence that defendants committed any acts that created or increased the hazard. Therefore, the court concluded that there was no genuine issue of material fact and granted defendants summary disposition.

A trial court's grant of summary disposition is reviewed de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition is properly granted when there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law. MCR 2.116(C)(10). Summary disposition is appropriate if the court determines that a record could not be developed that would leave open an issue upon which reasonable minds could differ. *Farm Bureau Mut Ins Co of Michigan v Stark*, 437 Mich 175, 184-185; 468 NW2d 498 (1991).

Plaintiffs assert that defendants are liable under the theory of premises liability. This Court has held that when land is subject to an easement, it is the easement owner, rather than the fee holder, who has the duty to third parties of maintaining the easement in a safe condition so as to prevent injuries, *Morrow v Boldt*, 203 Mich App 324, 329-330; 512 NW2d 83 (1994), and that property owners who retain the fee are not subject to premises liability for that portion of their land subject to a right-of-way because their residual rights are not possessory in nature. *Stevens v Drekich*, 178 Mich App 273, 277; 443 NW2d 401 (1989); *Morrow, supra* at 330. In *Morrow*, the Court further held that the fact that a private landowner routinely clears a driveway approach of ice and snow along with the rest of his driveway does not vest him with possession and control, *id.* at 330, and, the fact that a municipality delegates responsibility for maintenance and repair of driveway approaches to the fee holder does not create liability. *Id.* at 328-329.

Plaintiffs argue that *Morrow* is not controlling because the ice here was not a natural accumulation, but, rather, an unnatural condition resulting from a known water problem caused by defective sump pumps in the area, a high water table, and a crack in the driveway. There are, indeed, exceptions to the rule that neither a landowner nor a municipality owes a duty to a licensee to remove a natural accumulation of ice or snow from any area of its property. *Morrow, supra* at 324. Liability may attach when the landowner or municipality has altered the natural accumulation by some affirmative act and thereby increased the hazard. *Zielinski v Szokola*, 167 Mich App 611, 615; 423 NW2d 289 (1988). See also *Morrow, supra* at 327. Liability may also attach if a party “takes affirmative steps to alter the condition of the sidewalk itself,” which then causes an unnatural or artificial accumulation of ice at that spot. *Zielinski, supra* at 617. However, plaintiffs do not assert that defendants created the condition or increased the risk, but rather, that because they possessed the area and other unnatural factors contributed to the condition, they had a duty to their guest. These assertions do not remove the case from the ambit of *Morrow*. Under *Morrow*, there is no liability.

Affirmed.

/s/ Hilda R. Gage

/s/ Barbara B. MacKenzie

/s/ Helene N. White