

STATE OF MICHIGAN
COURT OF APPEALS

SHELDON WETHERHOLT,

Plaintiff-Appellee,

v

LEAH MCCARRICK,

Defendant-Appellant.

UNPUBLISHED

March 27, 2007

No. 271349

Genesee Circuit Court

LC No. 05-080986-NO

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

SERVITTO, J. (*dissenting*)

I respectfully dissent.

Plaintiff testified at deposition that he saw no ice on the sidewalk, and became aware of the ice only after falling, when he could feel that ice caused his fall. This indicates that the ice may have been “black ice” i.e., that which is difficult, if not impossible to see upon casual inspection. Plaintiff also testified that he saw no salt or melting substance on the sidewalk. Defendant, on the other hand, testified that she “thinks” there was ice on the sidewalk at the time of plaintiff’s fall. If defendant was aware of the ice, yet had no reason to believe plaintiff would see the same, a duty may arise on her part to warn plaintiff of the danger posed by the hidden ice. It being not entirely clear from the testimony whether defendant was, in fact, aware of the ice through careful observation or otherwise prior to plaintiff’s fall, I would find that a genuine issue of fact precluded summary disposition in defendant’s favor and would thus affirm.

/s/ Deborah A. Servitto