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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-364 / 88-1826

SHIRLEY A. BARLOW and **JOHN BARLOW**, Wife and Husband,

Appellants,

vs.

K MART CORPORATION,

Appellee.

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Appeal from the Iowa District Court for Black Hawk County, Robert J. Curnan, Judge.

The plaintiffs in this slip-and-fall case appeal from the granting of the defendant's motion for summary judgment. They contend summary judgment is improper because a genuine issue of material fact exists as to the defendant's negligence. **REVERSED.**

Timothy C. Boller and Edward J. Gallagher, Jr. of Gallagher, Langlas & Gallagher, P.C., Waterloo, for plaintiffs-appellants.

James E. Walsh, Jr. and Bruce L. Gettman of Clark, Butler, Walsh & McGivern, Waterloo, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ. Hayden, J., takes no part.

DONIELSON, J.

As she entered a K Mart store in Waterloo, Shirley Barlow slipped and fell on a vestibule floor which was covered with tracked-in snow and slush. The Barlows filed a petition alleging negligence resulting in personal injuries, and in due course the trial court granted K Mart's motion for summary judgment.

On appeal, the plaintiffs contend the trial court erred by removing the issue of K Mart's negligence from the jury's consideration. They argue even if Shirley was aware of the "open and obvious" risk of the snow-packed floor, K Mart was not entitled to judgment as a matter of law. They submit a plaintiff's prior knowledge of a risk does not bar recovery and there is a genuine issue of material fact as to whether K Mart should have anticipated and guarded against the danger created by the tracked-in snow.

A summary judgment is properly granted only when there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237; Froning & Deppe v. South Story Bank & Trust, 327 N.W.2d 214, 215 (Iowa 1982). A court must examine the entire record (i.e. pleadings, motions, affidavits and testimony) to determine if it discloses a genuine issue as to any material fact. City of Ankeny v. Armstrong Co. Inc., 353 N.W.2d 864, 867 (Iowa App. 1984).

The burden is upon the moving party to establish the absence of any genuine issue of material fact. Colton v. Branstad, 372 N.W.2d 184, 188 (Iowa 1985). The court must view the record in the light most favorable to the party against whom summary judgment is sought. Id. Every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party, and a fact question is generated if reasonable minds can differ on how the issue should be resolved. Knapp v. Simmons, 345 N.W.2d 118, 121 (Iowa 1984).

In reviewing the grant or denial of a summary judgment motion, this court is guided by the same principles utilized by a trial court in making that determination. Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868, 872 (Iowa 1984). Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. Id. Questions of negligence are ordinarily for a jury; it is only in exceptional cases that they may be decided as a matter of law. Iowa R. App. P. 14(f)(10).

In granting the motion for summary judgment, the trial court found the factual situation of this case fell squarely within the holding of Martin v. Nash Finch Co., 426 N.W.2d 666 (Iowa App. 1988). In Martin, we affirmed the trial court's decision to grant summary judgment in a case in which a woman slipped in a puddle of water caused

by melting snow tracked into a store. Expressing reservations with the decision in Weidenhaft v. Shoppers Fair of Des Moines, Inc., 165 N.W.2d 756 (Iowa 1969), we nonetheless deferred to it and held as a matter of law the existence of the puddle did not create a harm which the possessor of the property should have anticipated and which would have required more precautions than were taken. Martin, 426 N.W.2d at 668.

The plaintiffs offer two bases for reversing the trial court's decision in this matter. They contend the strict holding of Weidenhaft is not applicable to this set of facts, and in any case, they argue Weidenhaft should be overruled as a matter of public policy. Finding Weidenhaft distinguishable, it is unnecessary to consider the merits of their latter claim.

In addressing the scope of a possessor's duty when a plaintiff is aware of the defective condition of premises, the Iowa Supreme Court set forth the following analysis:

> Where, as here, plaintiff has actual knowledge of the condition, the possessor would be liable if he as a reasonable prudent person knows or should know the condition creates an unreasonable risk of harm which the invitee using the care of a reasonable prudent person would fail to appreciate or guard against.

Weidenhaft, 165 N.W.2d at 759.

In Weidenhaft, the court concluded the accumulation of water from tracked-in snow, making the floor wet, dirty, and slippery, did not create an unreasonable risk of harm

which the possessor should have anticipated the invitee would fail to appreciate and guard against. Id. The court specifically noted this was not a case in which there was "an unusual accumulation of water, mud and slush." Id.

The Weidenhaft court recognized some obvious dangers or defects in premises may be so inherently dangerous as to create a duty on the possessor's part to take steps to protect the invitees.

> [I]f the only path provided by the possessor of real estate is so inherently dangerous he should anticipate, notwithstanding the obviousness of the condition, a risk of harm to an invitee attempting to use such path with due care, he must, in the exercise of reasonable care for the safety of his invitees take further steps to protect them from such risk and cannot rely on the inherently dangerous condition to turn them back.

Id. at 760-61.

Evidence was presented in this case which establishes the floor of the vestibule at K Mart was covered with packed snow, ice, slush, and water. There was evidence as to the lack of floor mats in the vestibule and that K Mart's attempts to clean the area might have in fact exacerbated the dangerous conditions. Viewing the evidence in the light most favorable to the plaintiffs, it is apparent they have presented sufficient evidence as to the "unusual accumulation" of ice, snow, water, and slush which was present in the vestibule, thus taking this case out of the narrow confines of the Weidenhaft and Martin holdings. Summary judgment was improperly granted, and the decision of the trial court is reversed.

REVERSED.