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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

Filed May 31, 198 3

RAYMOND E. FISHER,

Plaintiff-Appellant,

vs.

STATE OF IOWA,

Defendant-Appellee.

3-51
2-68737

Appeal from Polk District Court, A. M. Critelli, Judge.

Plaintiff appeals a judgment for defendant State of Iowa in an action to recover for injuries sustained when plaintiff slipped and fell on an icy sidewalk at an interstate rest stop. AFFIRMED.

Paul Zoss and Larry McLellan, Des Moines, for plaintiff-appellant.

Thomas J. Miller, and Craig Gregersen and Richard E. Mull, Assistant Attorneys General, for defendant-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, and Schlegel, JJ.

Hayden, J., takes no part.

OXBERGER, C.J.

Plaintiff appeals a judgment for defendant State of Iowa in an action to recover for injuries sustained when plaintiff slipped and fell on an icy sidewalk at an interstate rest stop. We affirm.

Plaintiff was driving on Interstate 80 in Iowa when freezing rain forced him to seek refuge at a rest stop in Dallas County at about 5:00 in the morning. As he was driving into the rest stop, he noticed state trucks salting the entrance and exit ramps. While walking from his truck to a restroom, plaintiff noticed that the areas of the rest stop intended for vehicular traffic had been salted. However, the sidewalk had not been salted, and when plaintiff stepped onto it, he fell and fractured his leg.

Plaintiff filed a tort claim against the State of Iowa pursuant to Iowa Code chapter 25A. The trial court concluded that in light of the late night hour and the short period of time between the beginning of the storm and plaintiff's injury, the State had not acted negligently by failing to clear the sidewalks or to post signs warning of danger. The court noted that in storm conditions the State must allocate its people and equipment to the most important tasks, and the court expressed the view that the State had not been negligent by giving first priority to the clearing of primary highways rather than to clearing or "signing" of rest stop sidewalks.

Plaintiff has appealed. He contends that the State negligently breached a duty to the traveling public by undertaking to clear the rest stop of ice but then leaving the job uncompleted by clearing only the roadway portion, but not the sidewalks. Plaintiff asserts that the State's partial performance misled him into believing that the entire rest stop would be as free from hazard as the roadway (despite the fact that, at trial, plaintiff testified that the ice on the sidewalk was visible).

When the state is a defendant in a tort action, it is held to the same duty of care as any private person when it performs functions also performed by private parties. See Iowa Code § 25A.2(5)(a). In the present case, the State of Iowa is held to the same duty to remove ice hazards that a private party would be held in relation to invitees.

In Hovden v. City of Decorah, 155 N.W.2d 534 (Iowa 1968), the Iowa Supreme Court addressed the issue of what duty a private party owed to an invitee to remove ice hazards. Quoting with approval from Walker v. Memorial Hospital, 45 S.E.2d 898, 902 (Va. 1948), the court stated:

> The authorities are in substantial accord in support of the rule that a business establishment, landlord, carrier, or other inviter, in the absence of unusual circumstances, is permitted to await the end of the storm and a reasonable time thereafter to remove ice and snow from an outdoor entrance walk, platform, or steps. The general controlling principle is that changing conditions due to the pending storm render it inexpedient and impracticable to take earlier effective action, and that ordinary care does not require it.

Hovden, at 538. This is the existing rule in this jurisdiction.

At trial, testimony was given indicating that the storm had not abated at the time plaintiff was injured. Even if it had ended, defendant was entitled to a reasonable period of time to remove the ice from the sidewalks. Defendant's first priority was to clear ice from primary roads to permit passage of emergency vehicles. In order to sand or salt rest stop sidewalks before this was completed, defendant would have had to divert people and equipment from a more critical task. There was no negligence in its failure to do so, and the trial court did not err in so holding.

AFFIRMED.