STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0033

Travis J Maahs, a Minnesota resident,
Appellant,

vs.

Menard, Inc., a foreign corporation, registered in Minnesota,
Respondent.

Filed September 3, 2024
Affirmed
Worke, Judge

Sherburne County District Court
File No. 71-CV-22-141

David E. Wandling, Wandling Law, LLC, Minneapolis, Minnesota (for appellant)

Steven E. Tomsche, Samantha P. Flipp, Tomsche, Sonnesyn & Tomsche, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the summary-judgment dismissal of his negligence claim arising out of his slip and fall on ice in respondent's parking lot. Appellant asserts that the

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

district court erred by determining that respondent owed no duty because it lacked notice of the ice. We affirm.

FACTS

On January 4, 2021, at approximately 9:00 a.m., appellant Travis J Maahs visited the Elk River Menards store. When he parked his truck, Maahs did not notice anything about the condition of the parking lot and did not have any concerns about the area in which he parked. When he exited the store approximately 15-30 minutes later, Maahs again did not notice anything about the surface of the parking lot and did not see any ice. Maahs then slipped and fell. After he fell, Maahs observed a 12-inch patch of "clear" ice.

In February 2022, Maahs sued respondent Menard, Inc. (Menards) for negligence, claiming that Menards failed to 1) inspect the parking lot, 2) maintain the parking lot by treating the ice, and 3) warn about the ice.

Menards moved for summary judgment, claiming that Maahs could not prove that the ice was present for a sufficient period of time to put Menards on notice, and that ice is an obvious condition and a reasonable person in Maahs's position would have taken precautions.

After Menards moved for summary judgment, Maahs took several depositions of Menards team members who worked at the Elk River store.

The general manager testified that he arrived to work on January 4, 2021, at 7:30 a.m. He testified that he "walked probably the same distance that [Maahs] walked" though not the same path and did not recall observing any slippery conditions. The general manager did not pay attention to frost because it is a usual occurrence on a Minnesota

winter morning and usually melts. He testified: "[Y]ou should be [careful] every morning in Minnesota when it's icy and frosty." The courtesy patrol employee who assisted Maahs after the fall testified that he only saw frost in the area where Maahs fell. He testified that he did not treat the area where Maahs fell because he "wasn't aware of it until after [Maahs] fell."

Team members testified that they frequently treated the entrance-exit area and high-traffic walking areas for snow and ice. Team members were not required to treat the parking lot but treated handicapped spots, a designated parking spot for a rental truck, cart-corral areas, and high-traffic carry-out paths. Team members would also treat potential hazards when they were alerted by someone who walked through the parking lot and detected an issue.

Team members testified that there was no company-wide policy regarding inspection; it is based off "what's observed." Team members become aware of an accumulation if brought to their attention by a team member or a customer.

The general manager also testified that there was no written policy, and that Menards did not provide training specific to treating ice accumulation in the parking lot. Manager training related to ice and snow in the parking lot involved understanding the contract with the snow-removal company, Minnesota Lawn Care (MLC). MLC was constantly monitoring the forecast to know when to expect an accumulation of snowfall to clear. MLC addressed snow after "one inch [of accumulation]" and then "automatically appl[ied] de-icing agent." MLC was "on top of" plowing and salting the parking lot. If

made aware of an accumulation of ice in the parking lot, the general manager would contact MLC or assign a team member to take care of it.

The district court held a hearing on the summary-judgment motion. Maahs argued that the duty of reasonable care includes a duty to inspect and maintain the property to ensure that entrants are not exposed to unreasonable risks. Relying on the depositions, Maahs argued that "it's undisputed that Menards did nothing in terms of inspecting the property," and that the failure to treat the ice created the hazardous condition.

Menards argued that the record showed that Menards did not have notice of the ice. Menards countered that it did not fail to inspect because "[e]very single employee testified that while they didn't have a specific duty to . . . inspect the parking lot, they kept their eyes open. If they saw an issue . . . it was addressed."

The district court granted Menards's motion for summary judgment, determining as a matter of law that:

> Menards did not have actual or constructive knowledge of the dangerous condition (i.e., the black ice) in the parking lot. . . . First, to establish constructive knowledge, Mr. Maahs relies on general assertions that winter generally creates snow and icy conditions. The fact that snow may melt and refreeze, thus creating icy conditions, is insufficient to establish constructive knowledge.
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> Next, Mr. Maahs argues Menards' parking lot policies create hazardous conditions and thus created the hazardous condition that caused Mr. Maahs to fall. In support of this line of argument, Mr. Maahs points to Menards' agreement with MLC for snow removal and argues the agreement does not comply with industry standards for safe walkways/parking lots. Whether Menards' parking lot policies created the hazardous condition is pure speculation and whether Menards' agreement with MLC is deficient in some way is not immediately relevant to the issue at hand. There is no evidence

> remotely suggesting Menards created the black ice Mr. Maahs slipped on. There is no evidence in the record that the ice formed due to some artificial condition. At bottom, there simply is no evidence—other than speculation regarding melting and refreezing—as to how or when the patch of ice formed. Accordingly, Menards did not owe Mr. Maahs a duty of care with respect to the black ice because it lacked notice, and therefore Menards is entitled to summary judgment.

This appeal followed.

DECISION

Maahs argues that summary judgment was inappropriately granted because Menards breached its duty to reasonably inspect[1] the property and to provide notice of the hazard.

Summary judgment is appropriate when the record "shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. This court reviews de novo whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). "A genuine issue of material fact exists when there is sufficient evidence regarding an essential element . . . to permit reasonable persons to draw different conclusions." *St. Paul Park Refining Co. v. Domeier*, 950 N.W.2d 547, 549 (Minn. 2020) (quotation omitted). This court views "the evidence in the light most favorable to the nonmoving party . . . and resolve[s] all doubts

[1] Menards argues that Maahs forfeited his failure-of-the-duty-to-inspect argument because he raises it for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only issues presented to and considered by the district court). But Maahs raised the issue in his complaint, and it was argued at the summary-judgment hearing.

and factual inferences against the moving part[y]." *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015).

"Negligence is the failure to exercise the level of care that a person of ordinary prudence would exercise under the same or similar circumstances." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). "To recover on a claim of negligence, a plaintiff must prove: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury." *Id.* Summary judgment is appropriate when the record contains "a complete lack of proof on any of the four essential elements of the negligence claim." *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001). Here, the disputed element is the existence of a duty of care.

"A property owner has a duty to use reasonable care to prevent persons from being injured by conditions on the property that represent foreseeable risk of injury." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 364 (Minn. App. 2000). But property owners are not required to be "insurers of safety." *Id.* at 365. "Unless the dangerous condition actually resulted from the direct actions of a [property owner] or his or her employees, a negligence theory of recovery is appropriate only where the [property owner] had actual or constructive knowledge of the dangerous condition." *Id.*

Menards contends that it had no knowledge of the ice. The district court agreed and granted summary judgment. Maahs argues that Menards had knowledge of the ice because the team members knew that it was winter in Minnesota and knew that there was snow and ice in the parking lot.

A property owner's duty to clear snow and ice is triggered after a reasonable length of time after formation of the snow and ice. *Mattson v. St. Luke's Hosp.*, 89 N.W.2d 743, 746 (Minn. 1958) ("It is only when the owner or possessor having a duty to remove snow and ice, improperly permits an accumulation thereof to remain after a reasonable length of time for removal has elapsed, that liability may arise for the unsafe and dangerous condition thereby created." (quotation omitted)).

We conclude that the district court appropriately granted summary judgment.[2] There is no evidence that Menards created the ice or knew about the ice and failed to treat it. In their depositions, team members testified that they took care of hazardous conditions when they knew about them. But no employees were notified or aware of the ice. The district court did not err by granting summary judgment.

Affirmed.

[2] The evidence also shows that the incident occurred on a winter morning in Minnesota. Maahs was a life-long Minnesota resident. It is expected that ice and frost will be on a surface on a winter morning in Minnesota. *See Louis v. Louis*, 636 N.W.2d 314, 321 (Minn. 2001) (stating that a risk of harm is obvious if the dangerous condition and risk are apparent and recognizable to a reasonable person exercising ordinary perception, intelligence, and judgment). A reasonable person would be on notice of an icy, slippery patch in a parking lot. As an alternative basis for affirming summary judgment, the ice was an obvious condition that required no warning. *See Baber v. Dill*, 531 N.W.2d 493, 496 (Minn. 1995) (stating that there is "no duty to an invitee where the anticipated harm involves dangers so obvious that no warning is necessary").