STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1946

Joan Wienbar,
Appellant,

vs.

Westridge Mall Limited Partnership,
Respondent.

Filed June 16, 2014
Affirmed
Connolly, Judge

Otter Tail County District Court
File No. 56-CV-13-1359

Tatum O'Brien Lindbo, Timothy M. O'Keeffe, Kennelly & O'Keeffe, Ltd., Fargo, North Dakota (for appellant)

Bradley J. Beehler, Morley Law Firm, Ltd., Grand Forks, North Dakota (for respondent)

Considered and decided by Peterson, Presiding Judge; Schellhas, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant, a customer of respondent shopping center, challenges the summary judgment dismissing her claim for injuries caused by a fall on the ice in respondent's

parking lot. Because respondent could not have foreseen that appellant would be injured on the ice, the district court correctly concluded that respondent had no duty to warn or protect appellant. We therefore affirm the grant of summary judgment.

FACTS

Appellant Joan Wienbar has shopped at the mall owned by respondent Westridge Mall Limited Partnership hundreds of times; she generally goes once or twice a month. On the afternoon of December 16, 2008, she went to the mall to buy a card and parked where she usually did in a back parking lot, not the front lot used by most shoppers. Although snow had been removed from the back parking lot the day before, appellant noticed the presence of ice and snow and the absence of any sand. Inside the mall, two people warned appellant about the icy conditions. When she was leaving the mall, she fell as she was walking around the front of her car and injured her wrists.

She brought this action against the mall to recover for her injuries. The mall successfully moved for summary judgment on the ground that it owed no duty to appellant. Appellant now challenges the summary judgment, arguing that it is precluded by genuine issues of material fact as to the foreseeability of her injury.

D E C I S I O N

This court reviews a summary judgment decision de novo, determining whether the district court properly applied the law and whether any genuine issue of material fact precludes summary judgment. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). On a negligence claim, a defendant is entitled to summary judgment when there is a complete lack of proof on any one of the four

elements: existence of defendant's duty of care to plaintiff, defendant's breach of that duty, plaintiff's injury, and causation of that injury by the breach. *Schaefer v. JLE Food Sys., Inc.*, 695 N.W.2d 570, 573 (Minn. 2005). The district court concluded that respondent had no duty to protect appellant from or warn her of the ice in the parking lot, reasoning that:

> [I]t was not foreseeable to [respondent] that [appellant] would suffer injury. A reasonably prudent person, acting in [the] same or similar circumstances, would have chosen not to go out that day, perhaps would have turned back upon discovering the icy conditions, or could have more carefully selected a different path that was not so slick.
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> . . . [Respondent] could not anticipate such harm to a shopper who willingly set out to traverse the parking lot in its icy condition.

Appellant argues that the district court erred in concluding that her injury was not foreseeable because foreseeability cannot be resolved on summary judgment. For this argument, she relies on *Gilmore v. Walgreen Co.*, 759 N.W.2d 433, 436 (Minn. App. 2009) ("The issue of whether the [defendant] could have anticipated harm despite the obviousness of the danger posed is a question for the fact-finder."), *review denied* (Minn. Mar. 31, 2009). But *Gilmore* is distinguishable: the cause of harm in that case was not the natural, familiar condition of ice on the ground in winter but a pallet left on the floor by an employee. *See id.* at 436-37.[1] Moreover, the danger caused by ice on the ground

[1] Relying on *Snilsberg v. Lake Washington Club*, 614 N.W.2d 738,744(Minn. App. 2000) (concluding there was no duty to warn of danger of diving into shallow lake), *review denied* (Minn. Oct. 17, 2000) and *Betzold v. Sherwin*, 404 N.W.2d 286, 289 (Minn. App. 1987) (concluding homeowner had duty to warn of danger presented by open stairwell), *review denied* (Minn. June 25, 1987), as well as on *Gilmore*, the district court noted that

"is or, by the exercise of ordinary care, should be noticeable in the absence of special circumstances." *Konovsky v. Kraus-Anderson, Inc*., 306 Minn. 508, 511, 237 N.W.2d 630, 633 (1976). No "special circumstances" are alleged here.

Appellant concedes that she was warned about the condition of the parking lot by two people in the mall, and she testified that the snow in the parking lot was noticeable and that she noticed it, but did not fall on it, when she walked into the mall. The mall could not have foreseen that appellant would fall on the ice when she walked out. Appellant does not show that a genuine issue of material fact as to whether the mall anticipated her injury precludes summary judgment.

Affirmed.

"[c]ase law suggests that structural abnormalities are more likely to require the landowner to warn an entrant of danger than natural conditions of land and the outdoors."