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Straying From Safe Path Does Not Make Defendant Liable

By Sidney Klingler

The Michigan Court of Appeals recently held that "as a matter of law, if a premises possessor provides a clear means of ingress and egress and an invitee strays off the normal pathway onto an area that is obviously not reserved for that purpose, the landowner has not breached its duty of 'reasonable care.'" In *Buhalis v Trinity Continuing Care Services,* _ Mich App _ (2012), Plaintiff, an eighty-six year old woman, parked her tricycle in an unsalted and uncleared patio area adjacent to the main entrance walkway to Defendant's nursing home, with the intention of donating a bag of clothing. As she walked toward the building carrying the bag of clothing, she slipped and fell on ice in the patio area.

The Court of Appeals initially ruled that summary disposition should have been granted with respect to Plaintiff's negligence claim because it was really a claim for premises liability merely mislabeled as negligence. On cross appeal, Plaintiff challenged the trial court's grant of summary disposition on her separately pled premises liability claim. The Court of Appeals, in a divided decision, affirmed on two separate grounds.

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This decision is significant because it articulates that a premises owner may satisfy its duty of reasonable care with respect to snow and ice on its premises by providing a clear means of ingress and egress. Therefore, if an invitee strays from the "normal pathway" onto an area "obviously not reserved for that purpose, the landowner has not breached its duty of 'reasonable care.'"

Whether a premises owner may satisfy its duty merely by clearing a path to a "main entrance," as the dissent posits, is not entirely clear. An auxiliary entrance might qualify as a "normal pathway" rather than an area "obviously not reserved" for the purpose of ingress and egress. The deceptively simple holding of this case awaits development as various factual scenarios are presented to the courts.

First, the majority concluded that the ice on which Plaintiff fell was an open and obvious hazard. The majority noted the overriding public policy requiring people to "take reasonable care for their own safety" which precludes a duty on the part of a landowner "to take extraordinary measures to warn or keep people safe unless the risk is unreasonable." Furthermore, the hazard presented by ice and snow is generally open and obvious. In *Buhalis*, the Court concluded that, even if the ice was clear, it could be fairly characterized as open and obvious because Plaintiff knew of the danger of ice and "other indicia of a potentially icy condition would have alerted an average user of ordinary intelligence to discover the danger upon casual inspection." Specifically, it had rained and snowed the day before Plaintiff's fall. She knew that water could drip off of the awning covering the walkway onto the patio and ice could develop from a "freeze-thaw cycle." She was aware of a sign advising that common areas could be wet, snow-covered, and slippery. Under these circumstances, the majority held, "the danger of ice was actually known to [Plaintiff] and a reasonably prudent person in [her] position would have foreseen the danger of slipping on ice."

The majority further held that Defendant had exercised reasonable care to protect invitees from the dangers of ice and snow. Its duty was not to guarantee that ice would never form on its premises, "but to ensure that invitees are not unnecessarily exposed to an unreasonable danger." The majority noted that Defendant provided a "sizeable, fully cleared walkway to its main entrance, covered by a large awning to protect the walkway from the elements" and that "all sidewalks surrounding the building were clear and free of ice and snow." The majority instructed that "during the winter, a premises possessor cannot be expected to remove snow and ice from every portion of its premises, including areas adjacent to a cleared walkway . . .." Such measures, the majority reasoned, would be "extraordinary" and are not required by Michigan law. The fact that Plaintiff "chose to stray from the safe means of ingress and egress to the building" did not impose liability on Defendant.

The dissenting judge opined that there was evidence from which a jury could find that Plaintiff's use of the patio area was "consistent with the intentions and purposes of the owner or occupant," so that "there was a question of fact as to whether Trinity had a duty to warn or protect Buhalis from the hazards posed by snow and ice on the patio." By finding that Defendant had no duty to clear the patio because it was closed for the winter, the dissent reasoned, the majority had improperly weighed the evidence, and incorrectly treated Plaintiff as a trespasser. The dissent broadly characterized the majority's holding as a "new rule" that "a premises possessor no longer has any duty to clear snow and ice except to provide a path to the 'main entrance.'"

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