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Court Holds Weather Data Doesn't Prove Notice

By David Kinzer **June 11, 2025**

In *Marcus Hargrave v Oak Park Partners LLC*, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2025 (Docket No. 366643), Plaintiff slipped and fell on ice late at night on January 30, 2021. Plaintiff found his apartment parking lot overcrowded when he returned home, and instead parked on the side of the building. When Plaintiff walked around the car to get his children from the backseat, he slipped and fell on his back. Only after he fell did he see ice on the ground.

Plaintiff filed suit against his landlord alleging negligence and statutory liability under MCL 554.139. Defendant moved to dismiss based on lack of notice of the alleged ice. Both parties agreed that notice was a required element of both Plaintiff's statutory and common law claims. The trial court dispensed with oral arguments and granted Defendant summary disposition, underlining how compelling the lack of notice defense can be.

A notice defense begins with the premise that a defendant needs notice ("knew or should have known") of a dangerous condition before it can be held liable for that dangerous condition on its property. As the seminal case *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1 (2016) makes clear, it is a plaintiff's burden to present evidence of notice to survive summary disposition. Actual notice exists when the defendant created the hazardous condition or knew of the hazardous condition, whereas constructive notice exists when "the hazard was of such a character, or had existed for a sufficient time, that a reasonable premises possessor would have discovered it." *Marcus Hargrave*, unpub. op. 12.

In this case, there was no evidence of actual notice because the Defendant's owner testified that he had no prior knowledge of the ice. Plaintiff instead pointed to the fact that Defendant employed a leasing manager on site during business hours, but Plaintiff fell at 11:30 p.m. on a Saturday, more than an entire day outside business hours. Regardless, even if an employee was onsite when Plaintiff fell, that fact alone would not indicate the employee knew about the existence of ice prior to Plaintiff's injury.

As for constructive notice, Plaintiff failed to provide any evidence as to how long the ice existed since he admitted that he did not know how long the ice had been there or when it formed. Plaintiff relied on weather reports "to assert that the ice must have been present since the last snow fall three days earlier," but the Appellate Court rejected this argument, stating that such conjecture was "far too speculative to establish when the ice actually formed." Most importantly, the Court held "weather data is insufficient to establish actual or constructive knowledge of a dangerous condition."

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Marcus Hargrave v Oak Park Partners LLC, unpublished per curiam opinion of the Court of Appeals, issued May 19, 2025 (Docket No. 366643), affirmed a plaintiff's burden in a premises liability action to produce evidence of the defendant's notice of the dangerous condition ("knew or should have known") to survive a motion for summary disposition. In doing so, the Court again demonstrated the viability of "lack of notice" as a complete defense to premises liability claims.

The Court of Appeals also rejected Plaintiff's use of weather reports to suggest that the ice Plaintiff slipped on *may* have existed for three days prior to Plaintiff's fall, but such an inference was ultimately just conjecture. The Court held that "weather data is insufficient to establish actual or constructive knowledge of a dangerous condition."

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