NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

STEVEN A. McLAMB,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
SUPERVALU INC., BRISK TRANSPORTATION, L.P. d/b/a BRISK TRANSPORTATION,	:	
	:	
Appellees	:	No. 2139 MDA 2013

Appeal from the Order Entered October 28, 2013,
In the Court of Common Pleas of Dauphin County,
Civil Division, at No. 2007-CV-00551-CV.

BEFORE: SHOGAN, LAZARUS and MUSMANNO, JJ

MEMORANDUM BY SHOGAN, J.: **FILED AUGUST 15, 2014**

Steven A. McLamb ("Appellant") appeals from the trial court's order granting summary judgment and dismissing his complaint. We affirm.

The trial court summarized the history of this case as follows:

> At all relevant times, [Appellant] was an independent contractor truck driver who drove a tractor leased from Brisk Transportation. At the time of the accident in question, [Appellant] was transporting goods in a trailer owned by defendant Supervalu. [Appellant] testified to the following undisputed facts at his deposition: On Friday January 21, 2005, it began to snow in the Harrisburg area and the snow continued into the following day. Despite the poor weather conditions, [Appellant] was directed to make a delivery to a new grocery store customer in the Philadelphia area Saturday January 22, 2005. After picking up his trailer from the Supervalu distribution center in the morning, [Appellant] left to make his delivery in conditions he described as "treacherous", noting his trip took four to five hours longer than normal. [Appellant] arrived back

> in the Harrisburg area around 9 p.m. It was still snowing then. He first stopped at a separate location owned by defendant Supervalu to drop off pallet jacks. He then proceeded a mile or so to [Supervalu's] distribution center lot to drop off the trailer. He checked in at [the] security gate then proceeded to the trailer drop/uncoupling area, after which he intended to return his tractor to the Brisk Transportation lot. After having backed his trailer into the designated slot between two other trailers, [Appellant] stepped out of his tractor and then up on his tractor to uncouple the air and electrical lines. When he had completed that task, he stepped back down to the ground and fell on snow and ice. [Appellant] variously described [Supervalu's] entire lot as "basically a sheet of ice," "ice and snow, basically" and that "there was just ice and snow all over the lot." He stated that [Supervalu's] entire lot was untreated and unplowed and that nothing had been done to it. He further indicated that even if plowing had been done, plows could not have reached the area in which he parked, between other trailers. [Appellant] finally testified that due to the poor weather, only four trucks left [Supervalu's] distribution center the entire day (January 22, 2005).
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> [Appellant] commenced his action by writ in January 2007 against both Supervalu and Brisk Transportation. [Appellant] later filed his complaint January 2011 asserting negligence. The delay in filing was due to [Appellant's] failed attempt to obtain a remedy under the Workers' Compensation Act. The parties later stipulated to the dismissal of Brisk Transportation from this action. Following the completion of discovery, defendant Supervalu filed a summary judgment motion seeking the dismissal of [Appellant's] complaint under the "hills and ridges" doctrine.

Trial Court Opinion, 3/20/14, at 1-2 (internal citations omitted). The trial court granted Supervalu's motion for summary judgment and dismissed Appellant's complaint, with prejudice. Appellant timely appealed.

Appellant presents the following issue for our review:

> A. Whether the trial court erred in granting summary judgment to Defendant Supervalu where genuine issues of material fact exist as to whether the condition causing plaintiff's fall was entirely natural, thereby implicating whether the hills and ridges doctrine applies in this case, and where genuine issues of material fact exist as to whether snow and ice were permitted to remain in the parking lot for such time as to allow hills and ridges to develop?

Appellant's Brief at 6.

At the outset, we note our standard of review:

> In reviewing an order granting summary judgment, our scope of review is plenary, and our standard of review is the same as that applied by the trial court. Our Supreme Court has stated the applicable standard of review as follows: An appellate court may reverse the entry of a summary judgment only where it finds that the lower court erred in concluding that the matter presented no genuine issue as to any material fact and that it is clear that the moving party was entitled to a judgment as a matter of law. In making this assessment, we view the record in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. As our inquiry involves solely questions of law, our review is *de novo*.
>
> Thus, our responsibility as an appellate court is to determine whether the record either establishes that the material facts are undisputed or contains insufficient evidence of facts to make out a *prima facie* cause of action, such that there is no issue to be decided by the fact-finder. If there is evidence that would allow a fact-finder to render a verdict in favor of the non-moving party, then summary judgment should be denied.

Majorsky v. Douglas, 58 A.3d 1250, 1257 (Pa. Super. 2012).

Central to the resolution of this case is the applicability of the "hills and ridges" doctrine. The doctrine is "a long standing and well entrenched legal principle that protects an owner or occupier of land from liability for

generally slippery conditions resulting from ice and snow where the owner has not permitted the ice and snow to unreasonably accumulate in ridges or elevations." ***Biernacki v. Presque Isle Condominiums Unit Owners Ass'n, Inc.,*** 828 A.2d 1114, 1116 (Pa. Super. 2003) (quoting ***Morin v. Traveler's Rest Motel, Inc.***, 704 A.2d 1085, 1087 (Pa. Super. 1997)).

> [T]he doctrine of hills and ridges provides that an owner or occupier of land is not liable for general slippery conditions, for to require that one's walks be always free of ice and snow would be to impose an impossible burden in view of the climactic conditions in this hemisphere. Snow and ice upon a pavement create merely transient danger, and the only duty upon the property owner or tenant is to act within a reasonable time after notice to remove it when it is in a dangerous condition.

Harvey v. Rouse Chamberlin, Ltd., 901 A.2d 523, 526 (Pa. Super. 2006) (quoting ***Harmotta v. Bender***, 601 A.2d 837, 841 (Pa. Super. 1992)). Further, we have stated:

> the "hills and ridges" doctrine may be applied only in cases where the snow and ice complained of are the result of an **entirely natural accumulation**, following a recent snowfall, as . . . the protection afforded by the doctrine is predicated on the assumption that [t]hese formations are [n]atural phenomena incidental to our climate.

Harvey, 901 A.2d at 526 (emphasis in original) (quoting ***Bacsick v. Barnes***, 341 A.2d 157, 160 (Pa. Super. 1975)) (internal citations and quotations omitted). Additionally, the doctrine of "hills and ridges" will not prevent a plaintiff's recovery when the hazard is not the result of a "general

slippery condition prevailing in the community, but of a localized patch of ice." ***Bacsick***, 341 A.2d at 160.

The doctrine precludes recovery for a fall on snow or ice unless a plaintiff can demonstrate:

> (1) that snow and ice had accumulated on [the surface] in ridges and elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians travelling thereon; (2) that the property owner had notice, either actual or constructive, of the existence of such condition; [and] (3) that it was the dangerous accumulation of snow and ice which caused the plaintiff to fall.

Biernacki, 828 A.2d at 1117 (quoting ***Morin***, 704 A.2d at 1088).

Appellant argues that genuine issues of material fact exist as to whether the condition that caused Appellant's accident was of entirely natural origin, or whether human intervention played a part in bringing about the condition. Appellant's Brief at 14. Appellant asserts that if human intervention did occur, then the "hills and ridges" doctrine is not applicable. ***Id.*** Appellant contends that there is ample evidence in the record to support the argument that the condition at issue was not entirely natural, as the condition that may have caused Appellant's fall "may have been the result of heavy foot traffic while setting up equipment, unloading other trucks, moving other trailers throughout the drop, and any of the other tasks associated with unloading a tractor-trailer." ***Id.*** at 15.

Appellant argues in the alternative, that even if the "hills and ridges" doctrine applies, issues of material fact exist as to whether hills and ridges accumulated. Appellant's Brief at 16. He maintains that:

> Supervalu fails to consider the other drivers that unloaded prior to Appellant on the day in question, the other trailers that were still parked in the trailer drop, the other trucks whose wheels were spinning in the lot, and the equipment that was placed for Appellant in the drop zone that Appellant used in order to unload, all of which could have created hills and ridges in the immediate area where Appellant's fall occurred.

Id.

Review of the record reveals that Supervalu attached a copy of Appellant's deposition as "Exhibit 2" to its motion for summary judgment. Motion for Summary Judgment of Defendant, Supervalu, Inc., Exhibit 2, Deposition of Steven A. McLamb, 1/26/12. During his deposition, Appellant testified that the weather on the day of the accident was "[b]ad. Really bad." ***Id.*** at 50. Appellant explained that there was a large amount of snow and ice, and that it was snowing steadily, on the date at issue. ***Id.*** at 51. He testified that it had been snowing since the night before, and that it snowed the entire day and into the evening, until the time of his accident at approximately 9:00 p.m. ***Id.*** at 46, 51-52. Upon his arrival at work that morning, Appellant had a discussion with the terminal manager for Brisk regarding the weather conditions and whether deliveries would be made that day. ***Id.*** at 47-50. Appellant was directed that he was to make the

deliveries that day, despite Appellant's suggestion to the Manager that it was not a "good idea". ***Id.*** at 49. Appellant testified that the road conditions were such that in order to make his deliveries, he and another driver entered the turnpike, but pulled off at the first stop and waited for the salt trucks to pass. ***Id.*** at 50-51. They then followed the salt truck and snow plow into Philadelphia, where the deliveries were to be made. ***Id.*** Appellant also stated that due to the weather conditions, only four trucks went out that day and the rest of the deliveries were cancelled. ***Id.*** at 53.

As noted, Appellant's accident occurred upon his return to the Supervalu distribution center at approximately 9:00 p.m. Motion for Summary Judgment of Defendant, Supervalu, Inc., Exhibit 2, Deposition of Steven A. McLamb, 1/26/12, at 54. Appellant testified that after "undoing the air lines . . ., lowering the landing gear and pulling [the] level for the uncoupling," he fell when he attempted to step back down onto the ground from the tractor. ***Id.*** at 55-56. In describing the condition of the lot, Appellant stated: "the lot was basically a sheet of ice, the entire lot." ***Id.*** at 57. Appellant further testified as follows:

> [Counsel]: Did it appear that the lot had been treated in any way?
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> [Appellant]: No.
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> [Counsel]: Where was all the snow?
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> [Appellant]: What do you mean?

[Counsel]: You said, you are describing a sheet of ice?

[Appellant]: Well, ice and snow, basically.

[Counsel]: Was there snow?

[Appellant]: It's snowing. I mean, because again, it had been going for a day already. There's already ice there and we had been dealing with that and coming in the night before. So it's just more accumulation on Saturday of what was already there. So it's not like -- I mean, there was just ice and snow all over the lot from the conditions.

[Counsel]: Did it appear that the lot had been plowed at all?

[Appellant]: The lot had not been plowed at all.

[Counsel]: Was it white or was it clear?

[Appellant]: White.

[Counsel]: White. So the snow had been packed down because it had been driven over?

[Appellant]: Well, it's -- I don't know the answer you're looking for here. But when substance that's falling, it was a mixture of ice, you know, seemed like snow, rain. It snowed previously, like sleeting rain or whatever. So what you have that you're driving on is basically ice, because everything gets cold. Everything hitting the ground is like freezing.

[Counsel]: So your recollection is that the entire lot was snow and ice covered?

[Appellant]: Snow and ice.

[Counsel]: It didn't appear that any plowing, or did it look like there had been any anti-skid or any --

[Appellant]: No.

> [Counsel]: -- anti-skid or salt put anywhere?
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> [Appellant]: No.
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> [Counsel]: Didn't look like the lot had had anything done to it?
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> [Appellant]: Because, again, where I was physically was between trailers. Because, again, I had to back my trailer beside another trailer on each side. So once you get in there, even if the lot itself had been treated, they're still trailers in there. So there haven't been -- nobody was -- it was pretty much the only people that were there were the employees for Brisk, and no one was outside. You know, it's snowing, icing, so not like people were accumulated outside. It's just it was what it was.
>
> [Counsel]: And it didn't appear to you that anything had been done to this lot?
>
> [Appellant] No, it didn't.

Id. at 58-60.

Based on the evidence of record, specifically Appellant's own testimony, we conclude that the "hills and ridges" doctrine applies in this case. First, we note that snow continued to fall from the evening before, and throughout the day of Appellant's accident, until the time of his accident at approximately 9:00 p.m. Appellant testified as to the treacherous road conditions and the fact that other deliveries for that day had been cancelled. As experienced by, and testified to by Appellant, these conditions existed from Harrisburg to Philadelphia. As a result, we conclude that generally slippery conditions prevailed in the community. ***Bacsick***, 341 A.2d at 160.

Additionally, Appellant testified that the lot had not been plowed or salted. He described the lot as being covered with snow and ice as a result of the recent and continuing snowfall. As Appellant explained, due to the treacherous conditions, only four trucks went out for delivery on the day of Appellant's accident. Moreover, he maintained that due to the weather conditions, there were few employees at the distribution lot and "no one was outside". No evidence was presented that would suggest that any human intervention in the condition of the lot occurred.[1] Thus, the evidence of record supports the conclusion that this is a case where the "snow and ice complained of are the result of an entirely natural accumulation following a recent snowfall." ***Harvey***, 901 A.2d at 526.

Furthermore, we find no merit to Appellant's claim that the condition causing "Appellant's fall **may have been** the result of heavy foot traffic while setting up equipment, unloading other trucks, moving other trailers throughout the drop, and any of the other tasks associated with unloading a tractor-trailer." Appellant's Brief at 15 (emphasis added). Appellant asks us to speculate as to the possibility that human intervention **may have** caused the condition resulting in Appellant's accident, but has presented no

[1] We note that Appellant also attached a copy of his deposition testimony to its response in opposition to Supervalu's motion for summary judgment, but excerpted out pages that were included in the copy attached to Supervalu's motion for summary judgment. This was the only evidence, or exhibit, provided by Appellant in response to Supervalu's motion for summary judgment.

evidence that such referenced activity took place. In fact, as outlined previously, Appellant's own testimony, including the statements that only four trucks were operating that day and that few employees were at the lot, belies this argument. Thus, we cannot agree that Appellant has established an issue of material fact as to whether the condition that caused Appellant's fall was a result of human intervention. Accordingly, the doctrine of "hills and ridges" is applicable in this case and the trial court did not err in finding so.

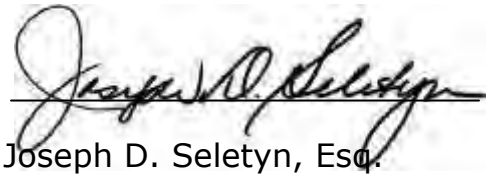
Appellant also argues that, even if the "hills and ridges" doctrine applies in this case, there exist genuine issues of material fact as to whether hills and ridges accumulated. We disagree.

There is no evidence of record to suggest that "ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians traveling thereon" existed in the lot. ***Morin***, 704 A.2d at 1088. Appellant again asks us to speculate as to the possibility that the activities in the distribution lot may have created hills and ridges, Appellant's Brief at 16, but presents no evidence of record to support such a claim. To the contrary, as stated, Appellant's testimony reveals that the lot looked like "a sheet of ice" and had not been "treated" in any way, that only four trucks had gone out for deliveries that day, that few employees were at the distribution lot and that those employees were inside due to the weather

conditions. Thus, Appellant has failed to establish a genuine issue of material fact as to the presence of ridges and elevations in the lot where Appellant fell. Accordingly, the trial court did not err in entering summary judgment in favor of Supervalu, Inc. and dismissing Appellant's complaint.

Order affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/15/2014