

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2001-CA-002201-MR

LATISHA HILL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE F. KENNETH CONLIFFE, JUDGE  
ACTION NO. 99-CI-000597

BRADLEY REAL ESTATE  
and FLYNN BROTHERS

APPELLEES

NO. 2001-CA-002363-MR

BRADLEY REAL ESTATE, INC.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE F. KENNETH CONLIFFE, JUDGE  
ACTION NO. 99-CI-000597

FLYNN BROTHERS, INC.

APPELLEE

OPINION

AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; SCHRODER AND TACKETT, JUDGES.

EMBERTON, CHIEF JUDGE. This is a premises liability case. Tish Hill alleges she was injured when she slipped on a patch of

black ice in a Louisville, Kentucky, Kroger parking lot. She filed this action against the property owner, Bradley Real Estate. Bradley Real Estate filed a third-party complaint against Flynn Brothers, Inc., a snow removal contractor, claiming to have delegated its duties owed Hill to Flynn Brothers. At the conclusion of the proof, the trial court directed a verdict in favor of Flynn Brothers. The jury was instructed and returned a judgment in favor of Bradley Real Estate.

In the three days preceding February 8, 1998, the city of Louisville received twenty-two inches of snow. On the morning of February 8, Hill, her elderly mother-in-law, and two children drove into the Kroger parking lot where Hill noticed a large snow pile. She dropped off her mother-in-law and daughter and ran an errand at Lowes. Upon returning to Kroger, Hill parked in close proximity to the snow pile. As she proceeded to walk toward the store, she slipped and fell on what she contends was a patch of black ice formed by run-off from the melting pile of snow.

At trial it was developed that Bradley Real Estate contracted with two independent snow removal contractors, Prowash and Flynn Brothers. Prowash's responsibilities included monitoring conditions in the lot and attending to the sidewalks and entrances to tenants' businesses. Flynn Brothers removed

heavier accumulations of snow from the parking lots, including Kroger's. The evidence at trial was that on February 4, 1998, Prowash was at the Kroger site and distributed thirty bags of salt on the sidewalks. Flynn Brothers graded the parking lot and put down five tons of salt. Again on February 5 and 6, 1998, Flynn Brothers and Prowash worked on snow removal on the parking lot.

Hill contends that the trial court improperly made its own factual findings that the snow was not improperly piled. She contends that had Flynn Brothers placed all the piled snow in the rear of the parking lot instead of areas where customers parked, she would not have fallen. There was differing testimony as to the location of the giant snow pile in relation to where Hill fell. Although testimony revealed there was some twenty-two inches of natural snow accumulation confined to a landscaped median in the area of her fall, from Hill's own diagram, it appears that she fell before reaching the snow pile.

The trial court found, and we agree, that there was no evidence that the snow pile was negligently placed. The snow that hit Louisville in the days preceding Hill's fall was large compared to the area's normal winter precipitation. There was testimony that as a result of the inordinate amount of snow to be removed from the parking lot, it was impossible to pile it all in the rear of the parking lot. Hill, when first entering

the Kroger parking lot, observed the large snow pile and on a day that had been preceded by heavy snowfall, proceeded to run her errands. The risk of pedestrian travel through any parking lot, including that at Kroger, was one that was open and obvious.<sup>1</sup> Finally, we agree with the trial court that there was no evidence that the placement of the snow pile by Flynn Brothers was the cause of Hill's fall. Indeed, black ice could just as easily have formed from the melting of the natural accumulation of snow in the median. We find no error in the granting of a directed verdict in favor of Flynn Brothers.

Hill contends that the trial court erred when it refused to admit into evidence an unsigned copy of a contract between Flynn Brothers and Bradley Real Estate encompassing the parties' obligations relative to the snow removal on the Kroger premises. A trial court's ruling as to the admissibility of evidence will not be reversed unless there is a clear abuse of discretion.<sup>2</sup> The trial court was not clearly erroneous when it refused to admit the unsigned contract.<sup>3</sup> Moreover, we fail to see the prejudice to Hill by the exclusion of the document. The trial court permitted testimony regarding the contents of the document, including that Bradley Real Estate instructed Flynn

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<sup>1</sup> See PNC Bank v. Green, Ky., 30 S.W.3d 185, 187 (2000).

<sup>2</sup> Tumey v. Richardson, Ky., 437 S.W.2d 201, 205 (1969).

<sup>3</sup> See Ames Body Corp. v. Ralph, 211 Ky. 735, 277 S.W. 1028 (1925).

Brothers that, when possible, it should plow snow at the rear of the parking lot.

We find the errors raised by Hill to be without merit.

The judgment is affirmed.

ALL CONCUR.

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