RENDERED: MAY 9, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000654-MR

CHRISTINA ADAMS — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
CIVIL ACTION NO. 01-CI-00899

GRCS, INC. — APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: EMBERTON, Chief Judge; BAKER and HUDDLESTON, Judges.

HUDDLESTON, Judge: Christina Adams appeals a summary judgment for GRCS, Inc. in a case arising from an incident in which Adams slipped and fell on a sidewalk. She alleges that GRCS was negligent per se in failing to remove the ice from the sidewalk

in front of its property as required by Lexington-Fayette Urban County Ordinance § 17.31.[1]

The circuit court held that under Schilling v. Schoenle,[2] the local ordinance imposed no duty on landowners for the benefit of pedestrians. Adams argues alternatively that Schilling is distinguishable from the present case, or that we should reverse its holding on public policy grounds.

In Schilling,

> the City of Newport had enacted an ordinance which required landowners to maintain and keep in good repair the sidewalk abutting their property. This ordinance was enacted for public safety purposes, it was claimed, and therefore an injury resulting from a

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[1] Ordinance § 17.31 provides that:

> The owner or occupant or any person having the care of any building or lot abutting any sidewalk shall remove all snow therefrom within four (4) hours after daylight and after the falling of snow has ceased, and the provisions of this section shall apply to the falling of snow or ice from any building or structure. Whenever the sidewalk, or any portion thereof, adjoining any building or lot on any street shall be encumbered with ice it shall be the duty of the owner or occupant or any person having the care of any such building or lot to cause such sidewalk to be made safe and convenient by removing the ice therefrom or by covering the same with sand or some other suitable substance.

[2] Ky., 782 S.W.2d 630 (1990).

> violation of the ordinance created a liability for damages upon [] abutting landowners.[3]

The Schilling court looked to Vissman v. Koby[4] and Webster v. Chesapeake & O. Ry. Co.,[5] in which Kentucky's highest court had considered similar allegations.

> In Vissman v. Koby, [the Court] held that the effect of such an ordinance was to create only a duty from the landowner to the city to bear the cost of maintenance and repair of the sidewalk, but that it did not impose any liability upon the landowner to travelers injured by the defective walk. Vissman also held that even though the ordinance was enacted as a public safety measure, the violation of the ordinance did not amount to negligence per se, and did not impose liability per se upon the abutting landowner.[6]

Similarly, in Webster v. Chesapeake O. Ry. Co., the Court held that:

> If, under an ordinance authorized by the charter, the city may require the property owner to

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[3] Id. at 631.

[4] Ky., 309 S.W.2d 345 (1958).

[5] 32 Ky. 404, 105 S.W. 945 (1907).

[6] Schilling, supra, n. 2, at 632.

> keep in repair the sidewalks in front of his premises, the obligation to do so is one that he owes to the city and not to the individual. It does not impose any duty, the breach of which would render him liable to the traveler.[7]

Adams attempts to distinguish Schilling by arguing that the ordinance and facts in that case dealt only with a city-owned sidewalk, whereas the sidewalk on which Adams fell is privately owned. Therefore, her argument goes, Schilling's discussion of an obligation owed only to the city is inapplicable.

GRCS responds that Adams's proffered evidence regarding ownership of the subject property and the details thereof is inadmissible, lacking a sufficient basis for introduction. However, we need not reach this issue because the distinction Adams attempts to draw is irrelevant.

In Estep v. B.F. Saul Real Estate Inv. Trust,[8] a similar argument was raised and rejected where the plaintiff slipped and fell on the sidewalk abutting a McAlpin's store at the Lexington Mall. The Saul Trust owned the mall property, which included the building housing the McAlpin's, the sidewalk

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[7] Id. at 633, citing Webster, supra, n. 5, 105 S.W. at 946.

[8] Ky. App., 843 S.W.2d 911 (1992).

and the parking lot. In that case, this Court refused to distinguish Schilling when faced with an argument also dealing with Lexington-Fayette Urban County Government Ordinance § 17-31. We see no reason to overrule the decision in Estep, and accordingly hold that Ordinance 17-31 creates no liability per se on the part of a landowner to a passing pedestrian.

We cannot, as Adams invites us to do, overrule Schilling on public policy grounds. We are bound by decisions of the Supreme Court,[9] and are without authority to depart from valid precedent established by that Court.

Because liability per se is not created by the ordinance, this case is governed by the common law as expressed in Standard Oil Co. v. Manis.[10] "The rule [] is that natural outdoor hazards do not create unreasonable risks when the hazards are as obvious to the invitee as they are to the landowner."[11] While there may be a factual issue regarding how obvious the hazard was to the invitee,[12] such is not the case here.

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[9] Rules of the Supreme Court (SCR) 1.030(8)(a). See also Fields v. Lexington-Fayette Urban County Govt., Ky. App., 91 S.W.3d 110 (2002), where a similar invitation was also declined.

[10] Ky., 433 S.W.2d 856 (1968).

[11] Schreiner v. Humana, Inc., Ky., 625 S.W.2d 580 (1982), citing Standard Oil, id.

[12] See, e.g., Schreiner, id.

Summary judgment is only proper "where the movant shows that the adverse party could not prevail under any circumstances."[13] However, "a party opposing a properly supported summary judgment motion cannot defeat that motion without presenting at least some affirmative evidence demonstrating that there is a genuine issue of material fact requiring trial."[14] The circuit court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor."[15] "The trial judge must examine the evidence, not to decide any issue of fact, but to discover if a real issue exists."[16]

Adams admitted in a deposition that there was ice on the street and that she anticipated that there might be ice on the sidewalk. However, despite knowing there was a substantial likelihood the sidewalk was icy, she exercised no additional care in traversing the sidewalk and made no attempt to ascertain whether it was covered with ice. In light of her admission, there is no question but that the natural hazard presented by

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[13] Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476, 480 (1991), reaffirming Paintsville Hospital v. Rose, Ky., 683 S.W.2d 255 (1985).

[14] Hubble v. Johnson, Ky., 841 S.W.2d 169, 171 (1992).

[15] Steelvest, supra, n. 13.

[16] Id.

the icy conditions on that day were as obvious to Adams as they were to GRCS, and that any injury she sustained came about as a result of her own negligence and not that of GRCS. The circuit court correctly determined that no genuine issue of material fact remained to be decided.

The judgment is affirmed.

ALL CONCUR.

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