

RENDERED: MAY 5, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-001542-MR

LUCAS PERKINS, JR.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
ACTION NO. 04-CI-03625

JAMES DAVID SAMS AND  
KENTUCKY AMERICAN WATER  
COMPANY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI, SCHRODER, AND TACKETT, JUDGES.

GUIDUGLI, JUDGE: Lucas Perkins, Jr., appeals from an order of the Fayette Circuit Court granting the motions for summary judgment of James David Sams and Kentucky American Water Company (Kentucky American). Perkins filed the instant negligence action after he fell on a wet driveway and was injured. He argued that the municipal water company was negligent in failing to repair a leaking water meter which allegedly caused the driveway to be wet, and that the landowner improperly failed to warn Perkins of the hazard. Perkins now maintains that the

summary judgment was premature because genuine issues of material fact remain to be resolved. For the reasons stated below, we affirm the order on appeal.

On July 15, 2004, Lucas Perkins visited his uncle, James David Sams, at Sams's residence in Fayette County, Kentucky. On arriving, Perkins walked from the street through Sams's yard to the front door of the residence. This path did not take him across the driveway.

Sometime thereafter, and apparently while it was still light outside, Perkins was leaving Sams's residence when he slipped and fell on Sams's driveway and allegedly sustained an injury. Perkins would later maintain that it was only after his fall that he noticed the driveway was covered with what he described as pooling, stagnant water.

Perkins filed the instant action in Fayette Circuit Court alleging that Sams was negligent in failing to warn him of the hazardous condition. He also alleged that Kentucky American was negligent in failing to fix a leaking water meter of which Kentucky American had knowledge, and which allegedly caused the driveway to become wet. Sams and Kentucky American entered general denials.

After discovery was conducted, Sams and Kentucky American filed motions for summary judgment. Upon considering the record, Judge Clark entered an order July 14, 2005, granting

the motions and dismissing Perkins's action. The basis for the order was the court's finding that Perkins was aware, or should have been aware, of the hazard. It found that no genuine issues of material fact remained, and that Sams and Kentucky American were entitled to summary judgment as a matter of law. This appeal followed.

Perkins now argues that the trial court erred in granting the summary judgment motions of Sams and Kentucky American. He maintains that the question of whether the hazard was open and obvious (thus relieving Sams of a duty to warn) is one which remains unanswered and is appropriate for resolution by a jury. He argues that the water was not readily apparent in the exercise of ordinary care, and that the circuit court improperly failed to rule that Kentucky American breached a duty to Perkins by failing to repair the water meter. In sum, Perkins seeks an order reversing the summary judgment and remanding the matter for trial.

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a

judgment as a matter of law."<sup>1</sup> "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor."<sup>2</sup> "Even though a trial court may believe the party opposing the motion may not succeed at trial, it should not render a summary judgment if there is any issue of material fact."<sup>3</sup> Finally, "[t]he standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law."<sup>4</sup>

Having closely examined the written arguments, the record and the law, we find no basis for tampering with the summary judgment on appeal. Prior to the entry of summary judgment, evidence was tendered by way of depositions showing that the water meter may have been leaking for several weeks to a few months; that Perkins was aware of the leak and had previously helped Sams check the meter; that the slip and fall occurred during the daylight hours; that the water on the driveway was readily visible; and that, according to Perkins, he

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<sup>1</sup> CR 56.03.

<sup>2</sup> Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., Ky., 807 S.W.2d 476, 480 (Ky. 1991).

<sup>3</sup> Id.

<sup>4</sup> Scifres v. Kraft, Ky. App., 916 S.W.2d 779, 781 (1996).

may not have been paying attention and might have seen the water if he had looked down.

Even when viewed in a light most favorable to Perkins, the record nevertheless forms a sufficient basis for the circuit court to conclude that no genuine issues of material fact remained, and that Sams and Kentucky American were entitled to a judgment as a matter of law. That is to say, the uncontroverted facts supported the conclusion of law that the wet driveway was open and obvious. Since the landowner is under no duty to warn social guests of an open and obvious hazard,<sup>5</sup> the circuit court properly so concluded. The circuit court did not err in granting the motions for summary judgment.

For the foregoing reasons, we affirm the order of the Fayette Circuit Court granting summary judgment.

ALL CONCUR.

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<sup>5</sup> Id.