IN THE SUPREME COURT OF THE STATE OF NEVADA

DENISE NIVENS, AN INDIVIDUAL,
Appellant,
vs.
TA OPERATING CORP. D/B/A TRAVEL CENTERS OF AMERICA,
Respondent.

No. 55460



ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a tort action. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

In February 2007, appellant Denise Nivens visited respondent TA Operating Corp. d.b.a. Travel Centers of America in Sparks, Nevada, to put fuel in her truck and to purchase coffee. The parking lot was icy and wet, and contained small patches of snow and slush. Travel Centers attempted to rid the premises of ice and snow earlier that day. Upon exiting the restaurant in Travel Centers, Nivens slipped and fell in the parking lot, sustaining injuries to her left leg.

Thereafter, Nivens filed a complaint against Travel Centers alleging negligence, negligent supervision, and premises liability. Travel Centers filed a motion for summary judgment, alleging that it was not liable for natural accumulations of snow and ice and that the slip and fall was caused by Nivens's contributory negligence and not due to its negligence or action. After the district court heard argument on the motion for summary judgment, it submitted an order granting summary judgment declaring that, under Gunlock v. New Frontier Hotel, 78 Nev. 182, 370 P.2d 682 (1962), a defendant owes no duty to a plaintiff who slips

and falls on icy pavement where the condition is obvious. Nivens now appeals the district court's grant of summary judgment.[1]

Standard of review

""This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court."" George L. Brown Ins. v. Star Ins. Co., 126 Nev. ___, ___, 237 P.3d 92, 96 (2010) (quoting Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)). Summary judgment is proper only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. NRCP 56(c); see Wood, 121 Nev. at 729, 121 P.3d at 1029. "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Wood, 121 Nev. at 729, 121 P.3d at 1029.

In Nevada, "a claim for negligence . . . requires that the plaintiff satisfy four elements: (1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages." Turner v. Mandalay Sports Entm't, 124 Nev. 213, 217, 180 P.3d 1172, 1175 (2008). A proprietor has a duty to exercise reasonable and ordinary care in keeping its premises safe for its patrons. Moody v. Manny's Auto Repair, 110 Nev. 320, 332-33, 871 P.2d 935, 943 (1994), superseded by statute on other grounds as stated in Wiley v. Redd, 110 Nev. 1310, 1314, 885 P.2d 592, 595 (1994); see Turner, 124 Nev. at 217, 180 P.3d at 1175.

---

[1]The parties are familiar with the facts, and we do not recount them further except as necessary to our disposition.

"[G]enerally, the question of whether a defendant was negligent in a particular situation is a question of fact for the jury to resolve. However, if a plaintiff cannot recover as a matter of law, the defendant is entitled to summary judgment." Butler v. Bayer, 123 Nev. 450, 461, 168 P.3d 1055, 1063 (2007) (footnote omitted). Courts are generally reluctant to grant summary judgment in negligence actions. Harrington v. Syufy Enters., 113 Nev. 246, 248, 931 P.2d 1378, 1380 (1997).

The district court erred in granting summary judgment

Nivens contends that the district court misapplied Nevada law regarding a landowner's duty to persons when obvious dangers are present and that an entire series of disputed facts should have precluded the district court from granting summary judgment in favor of Travel Centers.[2]

---

[2]In response, Travel Centers argues that this court should follow the "Massachusetts rule," wherein a property owner owes no common law duty to remove natural accumulations of ice and snow from common areas that remain under the owner's control and, thus, cannot be found liable for injuries resulting from a natural accumulation of ice and snow. Taylor v. Mass. Flora Realty, Inc., 840 A.2d 1126, 1129-30 (R.I. 2004) (holding that, under Massachusetts law, a shopping center owner was not liable for injuries to a patron when the patron slipped and fell on ice in the parking lot). However, Massachusetts has now aligned itself with the majority of states, including Nevada, which follow the reasonable care standard by abolishing the distinction between natural and unnatural accumulation of snow and ice. Papadopoulos v. Target Corp., 930 N.E.2d.142, 154 (Mass. 2010) (holding that courts should now apply to all hazards arising from snow and ice the same obligation of reasonable care that a property owner owes to lawful visitors regarding all other hazards).

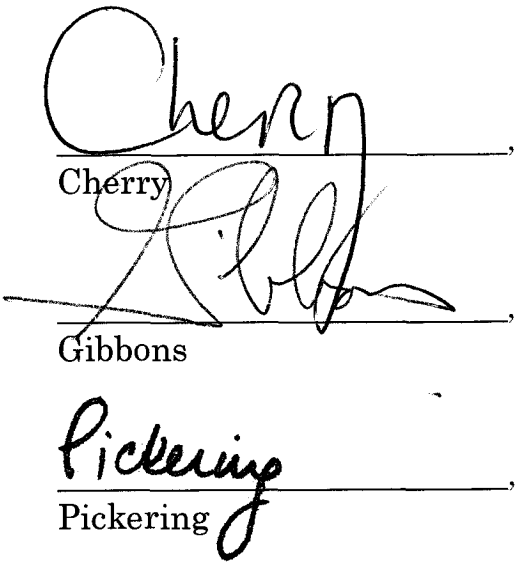
A plaintiff is barred from recovery where the danger is obvious. Gunlock, 78 Nev. at 185, 370 P.2d at 684. However, our analysis does not stop there, because an invitee's knowledge of dangerous conditions does not inevitably bar recovery as other circumstances may properly bear upon the right to recover. Rogers v. Tore, Ltd., 85 Nev. 548, 550, 459 P.2d 214, 215 (1969). For example, "even where a danger is obvious, a defendant may be negligent in having created the peril or in subjecting the plaintiff to the peril." Harrington, 113 Nev. at 250, 931 P.2d at 1381; see Restatement (Second) of Torts § 343A (1965). In addition, "an invitee's knowledge of a dangerous condition may not bar recovery if his mission justifies encounter of it." Twardowski v. Westward Ho Motels, 86 Nev. 784, 787, 476 P.2d 946, 947 (1970).

Here, a reasonable trier of fact could find that Nivens's mission was to purchase coffee from an establishment that is in the business of selling hot drinks, among other goods, to customers as an inducement to attract travelers and, thus, Nivens may have been justified in encountering the danger. See id. Moreover, whether Nivens exercised due care when she fell is not so clear as to preclude a trial on the point. See generally Joynt v. California Hotel & Casino, 108 Nev. 539, 543, 835 P.2d 799, 802 (1992) (providing that "a plaintiff may be justified in not watching every step"). Further, "it is not certain that [Travel Centers] took reasonable precautions to protect her." Rogers, 85 Nev. at 550, 459 P.2d at 215.

Accordingly, under these facts, the obviousness of the danger posed cannot properly be decided as a matter of law and, therefore, summary judgment on Nivens's negligence claim is inappropriate.

Therefore, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, J.
Cherry

_____, J.
Gibbons

_____, J.
Pickering

cc: Hon. Patrick Flanagan, District Judge
Margo Piscevich, Settlement Judge
Erickson Thorpe & Swainston, Ltd.
Paul M. Bertone
Kent Law
Washoe District Court Clerk