Shopkeepers, Bare Feet, and Liability

Shopkeepers, when encountering a barefooted patron, often claim that they do not mind the bare feet, but must prohibit them for "liability reasons." This note, by presenting an illustrative Ohio court case, demonstrates that the burden of protection falls on the barefooted patron, not the shopkeeper. A barefooted patron who tried to sue a shopkeeper for an injury for stepping on something while barefooted would have the case thrown out of court (and probably have to pay the lawyer fees of the shopkeeper).

Under Ohio Law, for a shopkeeper to be liable for an injury to a business invitee, four elements must be shown: 1) a duty to the patron to make the place reasonably safe, 2) a breach of the shopkeeper of that duty, 3) a showing of facts that this breach was the proximate cause of the injury, and 4) that the shopkeeper's negligence was greater than the patron's.

By looking at the attached court case, Perry v. McDonald's, it can be seen that a barefooted patron who tried to sue would not make it over even the first hurdle. While this case is a "slip-and-fall" case, it effectively illustrates the principal of law that would apply, and provides a nice summary of Ohio Law. To quote the most relevant part:

> *"The premises owner's duty . . . is premised on the owner's superior knowledge of particular dangers that might cause injury. It is only where the owner is imputed to have superior knowledge that liability will fall, 'because in such a case the invitee may not reasonably be expected to protect himself from a risk he cannot fully appreciate.'"*

However, an invitee going barefoot in a store **may** reasonably be expected to protect himself from the risk of going barefoot. A barefooted person is **expected** to be aware of any dangers of going barefoot. Just as

> *"everyone is assumed to appreciate the risks associated with natural accumulations of ice and snow and, therefore, everyone is responsible to protect himself or herself against the inherent risks presented by natural accumulations of ice and snow,"*

so is everyone assumed to appreciate the risks of going barefoot in a shop, and, therefore, everyone is responsible to protect himself or herself against any inherent risks of going barefoot.

Note that this case was the review of a "summary judgement." A summary judgement is a decision in which a case is thrown out of court before it even makes it to a jury. That means that the case was so cut-and-dried that there was no issue to consider. So too would be the case of any barefooted person who tried to sue a shopkeeper for an injury.

Finally, even if, somehow the first three hurdles were met, there is still the issue of comparative negligence. If a case somehow made it to a jury, they would still have to decide that the barefooted person was less than 50% negligent in causing their injury. Yet, any reasonable jury would easily find that the barefooted person was probably negligent by not wearing shoes.

Thus, a shopkeeper has nothing to worry about.

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

COMMUNITY INSURANCE CO.	:	
Plaintiff-Appellant	:	
v.	:	C.A. Case No. 17051
McDONALD'S RESTAURANTS OF OHIO, INC.	:	T.C. Case No. 97-1201
Defendant-Appellee	:	

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REBECCA A. AND CLAUS PERRY	:	
Plaintiffs-Appellants	:	
v.	:	C.A. Case No. 17053
McDONALD'S CORPORATION	:	T.C. Case No. 97-1712
Defendant-Appellee	:	

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O P I N I O N

Rendered on the 11th day of December, 1998

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BROGAN, J.

Plaintiffs-appellants; Community Insurance, Inc., Rebecca A. Perry and Claus Perry; appeal from a decision of the Montgomery County Common Pleas Court granting summary judgment in favor of defendant-appellee, McDonald's Restaurants of Ohio, Inc. Appellants sought to recover damages arising from an accident in which Rebecca Perry slipped and fell on ice that had accumulated on a walkway leading to one of appellee's restaurants. Because we agree with the trial court that appellee owed no duty to its customers to protect them from dangers related to a natural accumulation of ice, we affirm.

I.

The facts of this case are not in dispute. They begin on January 25, 1995, between 2:30 and 3:00 p.m. when Rebecca and Claus Perry, driving in their car, approached the McDonald's restaurant on Main Street in Englewood, Ohio. Mrs. Perry asked her husband to stop at the McDonald's so that she could get something to drink. After Mr. Perry parked the car, Mrs. Perry got out and stepped onto the sidewalk. After taking two or three steps, Mrs. Perry stepped onto a clear patch of ice, which caused her to slip and fall to the ground. Neither she nor her husband noticed the patch of ice until after she fell. The fall caused Mrs. Perry to severely fracture her right arm.

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II.

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Both Community Insurance and the Perrys raise a single assignment of error on appeal. They raise essentially the same issue: whether the trial court erred in granting summary judgment. The propriety of summary judgment is a question of law, which this court reviews *de novo*. *Williams v. Veterans of Foreign Wars, Brookville Mem. Post No. 3228, Inc*. (1994), 99 Ohio App.3d 213, 218. Pursuant to Civ.R. 56(C), summary judgment is appropriate when: (1) there is no genuine issue as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co*. (1978), 54 Ohio St.2d 64, 67. "A party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims." *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. Once the moving party has met that burden, the nonmoving party has a reciprocal burden of showing that a genuine issue of material fact does exist. *Id*. at 294. The nonmoving party is not permitted to rely on mere allegations or denials in his pleadings, but must point to some evidence in the record. See Civ.R. 56(E). Where the moving party fails to meet its burden, summary judgment is appropriate.

It is a well-worn axiom of Ohio law that a premises owner or occupier is not an insurer of the safety of his business invitees while they are on the premises. *Howard v. Rogers* (1969), 19 Ohio St.2d 42, paragraph two of the syllabus; see also *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203, 203. The premises owner's duty is to either warn invitees about or remedy any unreasonable dangers that the owner actually knows about or that he should know about in the exercise of reasonable care. See *Jackson v. Kings Island* (1979), 58 Ohio St.2d 357, 359. This duty, however, is premised on the owner's superior knowledge of particular dangers that might cause injury. *Id*. It is only where the owner is imputed to have superior knowledge that liability will fall, "<u>because in such a case the invitee may not reasonably be expected to protect himself from a risk he cannot fully appreciate.</u>" *LaCourse v. Fleitz* (1986), 28 Ohio St.3d 209, 210.

It has long been the law in Ohio that a premises owner is not liable for dangers arising from natural accumulations of snow and ice. *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, paragraphs one and two of the syllabus; see also *Brinkman v. Ross* (1992), 68 Ohio St.3d 82, 83. A premises owner is under no duty to remove natural accumulations of snow and ice regardless of the dangers they present. See *Debie v. Cochran Pharmacy-Berwick, Inc*. (1967), 11 Ohio St.2d 38, paragraph two of the syllabus. **The rationale underlying these rules is "<u>that everyone is assumed to appreciate the risks associated with natural accumulations of ice and snow and, therefore, everyone is responsible to protect himself or herself against the inherent risks presented by natural accumulations of ice and snow.</u>**" *Brinkman*, 68 Ohio St.3d at 84.

Other cases involving injuries resulting from snow and ice have held that liability can arise when slippery conditions are due to "unnatural" accumulations of ice or snow. *E.g., Tyrrell v. Investment Associates, Inc.* (1984), 16 Ohio App.3d 47, 49; *Weaver v. Standard Oil Co.* (1989), 61 Ohio App.3d 139, 141; cf. *Lopatkovich v. City of Tiffin* (1986), 28 Ohio St.3d 204, 207.

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The knowledge that the law imputes to the plaintiff about natural accumulations of ice does not derive from the fact that a particular condition is visually obvious. Nor does it derive from the obviousness of other slippery conditions in the vicinity of the icy spot that actually causes injury. **Instead, it is assumed**

that reasonable individuals will understand that winter conditions can create dangers from ice and snow, and individuals will take the necessary precautions. It is not that patches of ice and snow are obvious. Many are not. It is that, as a general matter, the potential for dangerous conditions in winter is obvious. **Dangers from natural accumulations of ice and snow are, therefore, generically treated by the law as open and obvious.** See *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, 49 ("The danger from ice and snow is an obvious danger and an occupier of premises should expect that an invitee on his premises will discover and realize that danger and protect himself against it."); see also *Brinkman v. Ross* (1993), 68 Ohio St.3d 82, 84 ("**Everyone is assumed to appreciate the risks associated with natural accumulations of ice and snow and, therefore, everyone is responsible to protect himself or herself against the inherent risks presented by natural accumulations of ice and snow.**"). Consequently, the fact that Mrs. Perry could not see the icy patch until it was too late does not create a predicate for liability in this case.

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Id. at 84. Thus, even when a premises owner has actual knowledge of a dangerous condition resulting from ice and snow, and the danger is hidden from the plaintiff, no duty arises either to warn of or to remedy the situation. The premises owner's actual knowledge in such a circumstance is still not superior to the knowledge that the law imputes to the average winter traveler. In light of this rule, the constructive knowledge that appellant's assign to McDonald's is insufficient to create liability for a natural accumulation of ice.

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III.

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IV.

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V.

For the forgoing reasons, **we affirm the decision of the trial court granting summary judgment** in favor of the appellee. Because appellants failed to provide the trial court with any evidence showing the icy patch that caused Mrs. Perry's injury was an unnatural or improper accumulation, the grant of summary judgment was warranted.

Judgment affirmed.

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WOLFF, J., and KERNS, J., concur.

(Honorable Joseph D. Kerns, Retired from the Court of Appeals, Second Appellate District, Sitting by Assignment of the Chief Justice of the Supreme Court of Ohio)