

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

AARON JOHNSON,
Plaintiff,

vs.

ROBIN HARRIS-DENT,
Defendant.

:
: No. 23-00,097
:
: CIVIL ACTION - LAW
:
:

OPINION AND ORDER

AND NOW, this 8th day of July, 2024, upon consideration of the Defendant's Motion for Summary Judgment filed on December 18, 2023 (the "Motion"),¹ the Plaintiff's Response (the "Response"),² and the briefs³ and arguments⁴ of the parties, it is hereby ORDERED and DIRECTED that the Motion is DENIED, as explained at length below.

I. BACKGROUND.

Plaintiff Aaron Johnson commenced this action by Complaint filed on January 23, 2023 (the "Complaint").⁵ The Defendant is Robin Harris-Dent, who resides at 720 Center Street, Williamsport, Lycoming County, Pennsylvania (the "Property").⁶ Plaintiff alleges that he slipped and fell on black ice on the Property at approximately 4:30 a.m. on February 1, 2021 (the "Incident"). He had arrived at the Property as Defendant's invitee on January 31, 2021 at approximately 4:00 to 4:30 p.m.

¹ "Motion of the Defendant, Robin Harris-Dent, for Summary Judgment," filed on December 18, 2023; "Additional Exhibits Offered by the Defendant, Robin Harris-Dent, in Support of Motion for Summary Judgment, filed on January 5, 2024.

² "Plaintiff's Response to Defendant's Motion for Summary Judgment," filed on January 29, 2024.

³ The parties filed the following briefs: (i) "Brief of the Defendant, Robin Harris-Dent, in Support of Motion for Summary Judgment," filed on December 18, 2023 ("Defendant's Brief"); (ii) "Plaintiff's Memorandum of Law in Opposition of Defendant's Motion for Summary Judgment," filed on January 29, 2024 ("Plaintiff's Brief").

⁴ The Court heard oral argument on the Motion on April 2, 2024. Scheduling Order dated December 22, 2023 and entered December 26, 2023; Continuance Request and Order dated January 9, 2024 and entered January 10, 2024.

⁵ Plaintiff's "Civil Action [Complaint]," filed on January 23, 2023.

⁶ *Id.*, ¶ 2.

Defendant was inside the Property in her upstairs bedroom at the time of the Incident, which, Plaintiff asserts, occurred on the covered front porch near the stairs leading from the elevated front porch to the walkway.⁷

Plaintiff contends that it was dark at the time, that the porch was dark in color, and that he was unable to see a patch of black ice near the top of the stairs. He also maintains that he attempted to turn on the porch light, which was inoperable.⁸ The Complaint alleges that Plaintiff slipped and fell as a result of the conditions on the porch; that Defendant had a duty to maintain the porch and keep it free from hazards; that she breached that duty; and that he suffered injury as a result.⁹

The parties agree that a winter storm had occurred on January 31, 2021 and that the storm created icy conditions at and around the Property. Although the storm stopped for a time on January 31/February 1, the parties agree that it began snowing again at some point and that snow was falling at the time of the Incident, although Plaintiff contends that the snow was melting as it hit the ground.¹⁰

A. The Motion.

Defendant moved for summary judgment on December 18, 2023, prior to the close of discovery.¹¹ Defendant contends that the Plaintiff's claims are barred by the "hills and ridges" doctrine. She further contends that her duty to mitigate slippery conditions on her property requires action on her part within a reasonable time after notice of the condition and that she has no duty to correct snow and ice conditions

⁷ Plaintiff's Brief, at 1-2; Defendant's Brief, at 1-2.

⁸ *Id.*

⁹ Complaint.

¹⁰ Plaintiff's Brief, at 1-2; Defendant's Brief, at 1-2.

¹¹ Motion; *see also* Scheduling Order dated August 17, 2023 and entered August 18, 2023 (establishing a cut-off date of May 17, 2024 for completion of discovery; of June 14, 2024 for Plaintiff providing his expert report to Defendant; of July 12, 2024 for Defendant providing her expert report to Plaintiff; and of August 2, 2024 for rebuttal reports).

while a winter weather event is occurring. She argues that Plaintiff failed to produce any evidence of hills and ridges that would permit recovery on her part.¹² Finally, she contends that Plaintiff assumed the risk of a slip and fall because Plaintiff often assisted Defendant with snow and ice removal and knew that the area where he fell was prone to slippery conditions.¹³

B. The Response.

Plaintiff first argues that the Motion is premature because “discovery and expert report deadlines have not passed and ruling on the Motion would deprive Plaintiff of the ability to conduct further discovery and obtain a meteorologist report.”¹⁴ Additionally, Plaintiff contends that the Incident did not occur while it was still snowing, in that it had stopped snowing at some point and then re-started without accumulating¹⁵ and that the hills and ridges doctrine is not applicable under the circumstances because the Incident occurred on a specific, localized patch of ice on a covered porch, when there is no proof of general slippery conditions in the community at the time.¹⁶ Finally, Plaintiff asserts that summary judgment is inappropriate because Defendant did not address Plaintiff’s allegation that Defendant failed to provide adequate lighting.¹⁷

C. The argument.

The Court heard oral argument on the Motion on April 2, 2024.¹⁸ As the Motion has been fully briefed and argued by both sides, it is now ripe for disposition.

¹² Motion.

¹³ Defendant’s Brief, at 2.

¹⁴ Response, ¶ 3.

¹⁵ *Id.*, ¶ 4; Plaintiff’s Brief, at 7.

¹⁶ *Id.*, ¶¶ 7-11; Plaintiff’s Brief, at 4-7.

¹⁷ *Id.*, ¶¶ 6, 12; Plaintiff’s Brief, at 7.

¹⁸ Scheduling Order dated December 22, 2023 and entered December 26, 2023; Continuance Request and Order dated January 9, 2024 and entered January 10, 2024. *See, supra*, n.4.

II. LAW AND ANALYSIS.

A party may move for summary judgment, in whole or in part,

[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial ...

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.¹⁹

The Court finds that Defendant's Motion is timely. The pleadings are closed,²⁰ and Defendant filed her Motion within such time as not to delay trial unreasonably.²¹

Once a party has filed a motion for summary judgment,

(a) ... the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty days after service of the motion identifying

(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or

(2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.²²

¹⁹ Pa. R. Civ. P. 1035.2.

²⁰ "[T]he pleadings in an action are limited to ... a complaint and an answer thereto ... [and] a reply if the answer contains new matter...." Pa. R. Civ. P. 1017(a). Plaintiff filed his "Civil Action [Complaint]" on January 23, 2023. Defendant filed her "Answer, New Matter and New Matter Crossclaim of Defendant Robin Harris-Dent, to the Plaintiff's Complaint" on August 14, 2023. Plaintiff did not reply to the New Matter, but, to the extent a reply to the New Matter was required, it was required to be filed within twenty days after service of the New Matter. See Pa. R. Civ. P. 1026(a). No further pleadings were filed, so all relevant, authorized pleadings have been filed.

²¹ This Court's Scheduling Order dated August 17, 2023 and entered August 18, 2023 places this case on the Court's January/February 2025 trial list and provides a cut-off date for filing dispositive motions of August 12, 2024. See, *supra*, n. 11. Accordingly, the Court finds that the Motion for Summary Judgment will not delay trial unreasonably.

²² Pa. R. Civ. P. 1035.3(a).

The court may enter summary judgment against a party who fails to respond.²³ “Where a motion for summary judgment has been made and properly supported, parties seeking to avoid the imposition of summary judgment must show by specific facts in their depositions, answers to interrogatories, admissions or affidavits that there is a genuine issue for trial.”²⁴ Plaintiff filed a Response to the Motion,²⁵ alleging “one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion.”²⁶ Therefore, the Court will not enter summary judgment for failure to respond.

When considering a motion for summary judgment, a court views the record in the light most favorable to the non-moving party and resolves all doubts as to the existence of a genuine issue of material fact against the moving party.²⁷

“Summary judgment is properly granted where ‘the pleadings, depositions, answers to interrogatories, and admission on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law’....”²⁸

²³ Pa. R. Civ. P. 1035.3(d) (“Summary judgment may be entered against a party who does not respond”). Although the Court is permitted to rule against a party who does not respond timely, this rule does not abrogate the Court’s discretion to determine whether briefs and/or oral argument are required or whether the motion can best be disposed of from a review of the record alone. *Smitley v. Holiday Rambler Corp.*, 707 A.2d 520, 526 (Pa. Super. 1998).

²⁴ *Marks v. Tasman*, 589 A.2d 205, 206 (Pa. Super. 1991) (citing *Overtly v. Kass*, 554 A.2d 970 (Pa. Super. 1989); *Tom Morello Construction Co., Inc. v. Bridgeport Federal Savings and Loan Ass’n*, 421 A.2d 747 (Pa. Super. 1980)).

²⁵ Pa. R. Civ. P. 1035.3(a) ([T]he adverse party ... must file a response within thirty days after service of the motion....”; Scheduling Order, entered August 18, 2023, ¶ 5 (“Responses and Responsive briefs are due within thirty (30) days the filing of the motion”). Plaintiff’s response was not filed within thirty days after filing of the Motion; however, Defendant filed “Additional Exhibits” in support of her Motion, and the Response was filed within thirty days after that. Furthermore, “[i]t is within the discretion of the court, *sua sponte*, to allow the non-moving party to respond to a motion for summary judgment after the thirty-day period has elapsed. *Com. ex rel. Fisher v. Jash Intern., Inc.*, 847 A.2d 125, 130 (Pa. Commw. 2004) (citing *Thomas v. Elash*, 781 A.2d 170, 177 (Pa. Super. 2001)). As such, the Court will treat the Response as timely.

²⁶ Pa. R. Civ. P. 1035.3(a)(1).

²⁷ *Sevast v. Kakouras*, 915 A.2d 1147, 1152-53 (Pa. 2007) (citing *Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001)).

²⁸ *Ducjai v. Dennis*, 656 A.2d 102, 107 (Pa. 1995) (quoting *Pa. State Univ. v. Cnty. of Centre*, 615 A.2d 303, 304 (Pa. 1992) (citations omitted)), disapproved of on other grounds by *Gardner v. Erie Ins. Co.*, 722 A.2d 1041 (Pa. 1999).

A court will grant summary judgment “only in cases where the right is clear and free from doubt.”²⁹ The burden is on the moving party to show that there is no genuine issue of material fact,³⁰ and the court's function is to ascertain whether a material issue of fact exists rather than to determine the facts.³¹

A. Timing of the Motion.

Plaintiff argues that the Motion is premature because “discovery and expert report deadlines have not passed and ruling on the Motion would deprive Plaintiff of the ability to conduct further discovery and obtain a meteorologist report.”³² The Rules of Civil Procedure provide that the Court may “rule upon the motion for judgment or permit affidavits to be obtained, depositions to be taken or other discovery to be had or make such other order as is just.”³³

Notwithstanding that the relevant deadlines have not yet passed, the Court may, in its discretion, decide the Motion prior to expiration of those deadlines without impairing the Plaintiff's due process rights if Plaintiff is fully apprised of the issues raised and if Plaintiff is given a full and fair opportunity to respond.³⁴ Here, the Defendant made her Motion on December 18, 2023. Plaintiff responded to the Motion on January 29, 2024 and has not sought leave to respond further or

²⁹ *Marks, supra*, 589 A.2d at 206 (citing *Musser v. Vilsmeier Auction Co., Inc.*, 562 A.2d 279, 280 (Pa. 1989)).

³⁰ *Adamski v. Allstate Ins. Co.*, 738 A.2d 1033, 1035 (Pa. Super. 1999) (citing *Accu-Weather v. Prospect Communications*, 644 A.2d 1251 (Pa. Super. 1994)).

³¹ *Swartley v. Hoffner*, 734 A.2d 915, 918 (Pa. Super. 1999) (citing *McDonald v. Marriott Corp.*, 564 A.2d 1296, 1298 (Pa. Super. 1989)).

³² Response, ¶ 3; Plaintiff's Brief, at 7.

³³ Pa. R. Civ. P. 1035.3(c).

³⁴ See, e.g., *Nobles v. Staples, Inc.*, 150 A.3d 110, 117-19 (Pa. Super. 2016) (affirming dismissal of the case where the trial court granted a “motion to dismiss” the day after a jury was empaneled but before the presentation of any evidence, the motion was treated as a motion for summary judgment, which was proper because the moving party “had notice that he must respond to the legal issue on which the motion is based and was afforded a full and fair opportunity to argue his position”); *Robertson v. Port Auth. of Allegheny Cnty.*, 144 A.3d 980, 983-84 (Pa. Commw. 2016) (“Where the plaintiff has sufficient notice of the issues raised by the summary judgment motion and a full opportunity to respond and raise any factual and legal arguments against the motion, the granting of summary judgment on a motion made on the day of trial is not reversible error”).

introduce additional evidence in opposition to the Motion as of the date of this Opinion. Accordingly, the Court finds that Plaintiff has been fully apprised of the issues raised by the Motion and that he has had a full and fair opportunity to respond.

Accordingly, summary judgment will not be denied based upon the timing of Defendant's Motion.

B. The hills and ridges doctrine.

1. The doctrine in general.

Plaintiff's suit sounds in tort and alleges that he suffered injury as a result of Defendant's negligence.³⁵ To prevail in a negligence action, Plaintiff must prove: (1) that Defendant owed him a duty or obligation recognized by law; (2) that Defendant breached that duty; (3) that there is a causal connection between the Defendant's conduct and the resulting injury; and (4) that Plaintiff suffered actual damages.³⁶

The central contention of Defendant's Motion is that the "hills and ridges" doctrine bars recovery by Plaintiff in this case.³⁷

The "hills and ridges" doctrine is a long standing and well entrenched legal principle that protects an owner or occupier of land from liability for generally slippery conditions resulting from ice and snow where the owner has not permitted the ice and snow to unreasonably accumulate in ridges or elevations.³⁸

Essentially, the hills and ridges doctrine clarifies the duty a possessor of land owes to third parties when there is a dangerous condition on the land caused by ice and snow, because "to require that one's walks be always free of ice and snow would be to impose an impossible burden in view of the climatic conditions in this

³⁵ Complaint.

³⁶ *Toro v. Fitness International LLC*, 150 A.3d 968, 976-77 (Pa. Super. 2016).

³⁷ Motion, ¶¶ 7-15.

³⁸ *Morin v. Traveler's Rest Motel, Inc.*, 704 A.2d 1085, 1087 (Pa. Super. 1997) (citing *Harmotta v. Bender*, 601 A.2d 837 (Pa. Super. 1992)).

hemisphere.”³⁹ Therefore, in order to recover for injuries that he claims resulted from a slip and fall on an ice or snow covered surface, Plaintiff must prove

(1) that snow and ice had accumulated on the sidewalk in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians travelling thereon; (2) that the property owner had notice, either actual or constructive, of the existence of such condition; (3) that it was the dangerous accumulation of snow and ice which caused the plaintiff to fall.⁴⁰

What constitutes notice of a dangerous condition depends on the facts and circumstances of the case, “but one of the most important factors to consider is the time that elapsed between the origin of the condition and the accident.”⁴¹ Indeed, “the only duty upon the property owner or tenant is to act within a reasonable time after notice to remove [the snow and ice] when it is in a dangerous condition.”⁴²

Thus, when affirming an award of summary judgment the Superior Court held that

Genuine issues of material fact do not exist. It was not reasonable for the snow and ice in the parking lot, that had begun to fall sometime the night before, to be removed by 7:45 a.m. the following morning, particularly in light of the fact that Biernacki fell in snow that had accumulated between the parked cars. It would be totally unreasonable to require a landlord to clear the areas between his tenants' parked cars, prior to removal of the cars in the early morning after a snowfall.⁴³

Defendant contends that, because snow was still falling at the time of the Incident, she cannot be liable for any injury that Plaintiff suffered, since her duty to mitigate any slippery condition caused by the ice and snow did not attach until a reasonable time after the end of the storm.⁴⁴ “[T]he entire ‘gist’ of the hills and

³⁹ *Wentz v. Pennswood Apartments*, 518 A.2d 314, 316 (Pa. Super. 1986). The hills and ridges doctrine applies to private areas, such as private walks and parking lots, as well as to public areas, such as public sidewalks. *Id.*

⁴⁰ *Morin, supra*, 704 A.2d at 1088 (quoting *Rinaldi v. Levine*, 176 A.2d 623, 625 (Pa. 1962)).

⁴¹ *Collins v. Philadelphia Suburban Development Corp.*, 179 A.3d 69, 74 (Pa. Super. 2018) (citing *Neve v. Insalaco's*, 771 A.2d 786, 791 (Pa. Super. 2001)).

⁴² *Gilligan v. Villanova University*, 584 A.2d 1005, 1007 (Pa. Super. 1991).

⁴³ *Biernacki v. Presque Isle Condominiums Unit Owners Ass'n, Inc.*, 828 A.2d 1114, 1117 (Pa. Super. 2003).

⁴⁴ Motion, ¶¶ 13-14.

ridges doctrine is that a landowner has no duty to correct or take reasonable measures with regard to storm-created snowy or icy conditions until a reasonable time after the storm has ceased.”⁴⁵

2. Whether there were generally slippery conditions.

Plaintiff contends that the hills and ridges doctrine does not apply here because the incident occurred on a specific, localized patch of ice on the Defendant’s porch.⁴⁶ Our Supreme Court has held that the hills and ridges doctrine does not apply where the injury resulted from a fall on an isolated, localized patch of ice as opposed to where there are “general icy conditions due to recent or continuing inclement weather.”⁴⁷

Since it is virtually impossible for a property owner to keep his sidewalk completely free of ice or snow when general slippery conditions exist, and since under these conditions a pedestrian is better prepared to exercise a greater degree of caution when traversing the ice or snow, courts have been reluctant to permit recovery without a showing of hills and ridges.

However, where a specific, localized, isolated patch of ice exists, it is comparatively easy for a property owner to take the necessary steps to alleviate the condition, while at the same time considerably more difficult for the pedestrian to avoid it even exercising the utmost care. We therefore conclude that under the facts and circumstances of this case, it was error for the court below to require proof of hills and ridges.⁴⁸

The evidence offered by the Defendant establishes that, at the time of the incident, there were “general icy conditions due to recent or continuing inclement weather” in the area. Plaintiff testified that a wet snow was coming down when he

⁴⁵ *Collins, supra*, 179 A.3d at 76 (citing *Biernacki, supra*).

⁴⁶ Response, ¶¶ 9-12; Plaintiff’s Brief, at 5, 7.

⁴⁷ *Williams v. Shultz*, 240 A.2d 812, 814 (Pa. 1968); see also *Tonik v. Apex Garages, Inc.*, 275 A.2d 296 (Pa. 1971) (holding that the hills and ridges doctrine is not applicable where plaintiff fell on a crack in a public sidewalk where ice had been formed when there had been no recent precipitation, since general slippery conditions did not prevail in the community at the time); *Harmotta, supra*, 601 A.2d at 842 (holding that the hills and ridges doctrine applies where there are generalized slippery conditions in the community but not where there is a specific, localized patch of ice).

⁴⁸ *Id.*

went outside and that there had been a build-up of snow overnight.⁴⁹ Indeed, Plaintiff testified that he frequently performed snow-removal services for Defendant, and that he was going outside to clean off the cars so that he and Defendant could take Defendant's granddaughter to school.⁵⁰

Accordingly, the Court will not deny summary judgment because of the absence of "general icy conditions due to recent or continuing inclement weather."

3. Applicability of the doctrine on a covered porch.

Plaintiff contends that the hills and ridges doctrine is not applicable here because the Incident occurred on a porch covered by a roof.⁵¹ The Superior Court has held that the hills and ridges doctrine did not apply to a fall occurring inside an outdoor storage shed. In *Heasley v. Carter Lumber*,⁵² the plaintiff slipped and fell while walking in a shed containing lumber supplies in the defendant's lumberyard. The shed had three walls, with the fourth side open, and an overhead roof with an awning extending from it.⁵³ The trial court concluded that the hills and ridges doctrine applied, and the jury found for the defendant. The Superior Court reversed, stating that

this Court cannot find, and neither [defendant] nor the trial court has cited to, any case that has extended the doctrine to a fall which took place inside of a structure or even to a case that has applied the doctrine where the fall took place under some type of awning or overhang....

"[H]ills and ridges" was intended to protect property owners from the undue burden of ensuring that open spaces such as sidewalks and parking lots are constantly kept clear of snow and ice. [Defendant] has presented nothing which demonstrates that, keeping a structure, which is only partially open to the elements, free of snow and ice presents

⁴⁹ Deposition of Plaintiff, November 28, 2023 ("Plaintiff's Deposition"), Motion Exh. F, at 24, 26-27; see also Response, ¶ 13.

⁵⁰ *Id.*, at 26-27.

⁵¹ Response, ¶¶ 4, 7, 9, 10; Plaintiff's Brief, at 5-6.

⁵² *Heasley v. Carter Lumber*, 843 A.2d 1274 (Pa. Super. 2004).

⁵³ *Id.*, at 1275.

any burden at all, let alone an undue burden upon its owners. Further, the doctrine requires that a plaintiff prove that the accumulation of snow and ice unreasonably obstructs travel.

The extension of this doctrine to structures and/or other partially open areas would present many questions: (1) how much of the structure must be open to the elements before the doctrine applies; (2) how does one distinguish between snow and ice that is naturally occurring and snow and ice that has been tracked into the structure by people; (3) does the doctrine apply throughout the structure or only to slips and falls which occur near that portion of the structure which is open to the elements.

In the case at bar, the structure consisted of a roof, three walls, and an awning; [defendant] stored products in it because it provided protection from the elements; and [plaintiff] slipped and fell some four to five feet inside its interior. Given this, and given the concerns expressed by this Court about the difficulty in applying the "hills and ridges" doctrine to structures, we find that the application of the "hills and ridges" doctrine in the instant matter was unnecessary and unwarranted, and thus, constituted an abuse of discretion by the trial court....⁵⁴

Plaintiff alleges that he fell on the Defendant's covered front porch.⁵⁵ If that allegation is proven, then it appears that the hills and ridges doctrine is not applicable to the instant litigation, in accordance with *Heasley, supra*. If, on the other hand, the fall occurred elsewhere, hills and ridges may apply. In any event, it is clear to the Court that this is a genuine issue of material fact that must be resolved at trial by the fact-finder and that precludes entry of summary judgment based on the hills and ridges doctrine.⁵⁶

C. Plaintiff's allegation of improper lighting.

Plaintiff also asserts that entry of summary judgment is inappropriate here because Defendant did not address Plaintiff's allegation that Defendant failed to

⁵⁴ *Id.*, at 1277.

⁵⁵ Response, ¶¶ 4, 7, 9-12.

⁵⁶ *N.B.*, this finding is not tantamount to a determination that liability is established. Some of the other facts referenced by the parties raise questions concerning what duties may have been owed to whom and what, if any, breaches of those duties occurred.

provide adequate lighting.⁵⁷ In light of the Court's determination that summary judgment cannot be entered on the basis of hills and ridges, the Court declines to reach this issue.

III. CONCLUSION AND ORDER.

For the reasons explained above, the Defendant's Motion for Summary Judgment filed December 18, 2023 is DENIED. Because the Court has found that there is at least one genuine issue of material fact requiring resolution at trial, entry of summary judgment for the Defendant would be inappropriate.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/bel

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⁵⁷ *Id.*, ¶¶ 6, 12; Plaintiff's Brief, at 7.