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DISTRICT IV

September 19, 2013

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You are hereby notified that the Court has entered the following opinion and order:

2012AP868

Judy McRoberts, James McRoberts and Wisconsin Laborers Health Fund v. Allstate Property and Casualty Insurance Company and Jane A. DeRemer (L.C. # 2011CV54)

Before Lundsten, Sherman and Kloppenburg, JJ.

Judy McRoberts and her husband appeal a summary judgment order that dismissed their negligence and nuisance lawsuit against Jane DeRemer and her insurers for injuries McRoberts suffered when she slipped and fell on ice that had accumulated on a public sidewalk adjacent to DeRemer's driveway.¹ After reviewing the briefs and record, we conclude at conference that

¹ The summary judgment methodology is well established and need not be repeated here. See e.g., *Lambrecht v. Estate of Kaczmarczyk*, 2001 WI 25, ¶¶20-23, 241 Wis. 2d 804, 623 N.W.2d 751.

this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).² We affirm.

The parties agree on the proposition that property owners in Wisconsin have no general duty to keep public sidewalks abutting their property free from the natural accumulation of snow or ice, but may be held liable if they allow an “artificial” accumulation of ice or snow to form. *See Holschbach v. Washington Park Manor*, 2005 WI App 55, ¶10, 280 Wis. 2d 264, 694 N.W.2d 492. An artificial accumulation occurs when water is intentionally discharged (for instance, from a hose) or when “something man-made—such as a drainage system design or a downspout—[is] defective” in a manner that causes the icy condition. *Gruber v. Village of N. Fond du Lac*, 2003 WI App 217, ¶¶18-19, 267 Wis. 2d 368, 671 N.W.2d 692. Conversely, “when a properly working downspout built in the ordinary and usual manner discharges water upon the property and such water finds its way to the public sidewalk because of the natural slope and topography of the land, the resulting runoff onto the sidewalk is a natural condition.” *Holschbach*, 280 Wis. 2d 264, ¶1. The question before us is whether the facts set forth in the summary judgment materials establish that the ice upon which McRoberts slipped was the result of a natural or artificial accumulation.

DeRemer’s house had a gutter system that included three downspouts that discharged runoff along her driveway. The driveway was approximately eight feet wide with a one-foot concrete edge along each side, and it extended about forty feet from a garage to the street at a downward slope averaging just over two degrees. Over time, the concrete edges had sunk below

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

the level of the driveway, creating a channel that collected water and deposited it on the sidewalk. The pooling of water was exacerbated around a cracked and sunken area of the driveway near the sidewalk.

McRoberts does not allege that there was anything defective about the construction of the downspouts or their original design, which she asserts would have dispersed water somewhat evenly along the raised edge of the driveway. Nor does she allege that the driveway was constructed in anything other than the usual and customary manner. She argues, however, that the continual runoff of water from the downspouts created erosion that artificially changed the topography of the land along the edge of the driveway. We disagree.

The natural discharge of water from properly functioning downspouts could be expected to create erosion. Therefore, any resulting change in the topography on the side of the house along the driveway was also a natural occurrence. Moreover, the natural topography of the land already included a downward slope toward the sidewalk. We conclude that water traveling along a channel created by erosion following a natural downslope toward a sidewalk did not result in an artificial accumulation.

Accordingly,

IT IS ORDERED that the summary judgment order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals