IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DENISE ELEAZER,	:	**No. 06-02635**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
DON L. GETGEN, individually and d/b/a	:	
GETGEN EXCAVATING,	:	
Defendant	:	**1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of this Court's Order docketed December 12, 2007, which granted Defendant's motion for summary judgment. The relevant facts follow.

Plaintiff was an employee of the Roseview Center. In October 2005, Defendant sent a proposal for snow plowing, snow removal and salting to the Roseview Center for the winter of 2005-2006. There was a snow storm in the Williamsport area December 15-16, 2005. Employees of Roseview Center called Defendant and he plowed and salted the driveways and parking lots. When Defendant finished working of December 16, 2005, the driveways and parking lots were free of snow and ice. Watkins Dep., pp. 13-14.

On Sunday, December 18, 2005, the weather warmed up during the day, but it got cold again during the night. Watkins Dep., pp. 15, 19.

Roseview's director of maintenance, John Watkins, arrived early Monday morning to check for any ice that may have formed as a result of melting and re-freezing. Plaintiff rode the bus to work. Shortly before 7:00 a.m. Plaintiff got off the bus at the top of

Roseview's driveway. Plaintiff walked down the edge of the driveway toward the Roseview Center to go to work. As Plaintiff approached the bottom of the driveway, she slipped and fell on a patch of black ice, which was approximately 8 inches in diameter.

Plaintiff filed suit against Defendant. After the close of discovery, Defendant filed a motion for summary judgment. On December 12, 2007, the Court granted Defendant's motion for summary judgment. On January 10, 2007, Plaintiff filed a notice of appeal.

The sole issue raised on appeal is whether the Court erred in finding there was no genuine issue of fact to be submitted to the jury. The Court viewed the issue more as Plaintiff failing to establish a prima facie case of negligence, but either way there was insufficient evidence in the record for this case to be submitted to the jury.

Plaintiff essentially had three alternate theories of Defendant's negligence: (1) Defendant failed to properly salt; (2) Defendant failed to remove the snow piles from the premises; or (3) Defendant piled the snow too high, which caused it to melt onto the driveway. The Court will address each theory.

Plaintiff first asserted that Defendant failed to properly salt the driveway. The Court could not agree. Plaintiff did not know how long the patch of ice had been there. Plaintiff did not present any evidence to show that the ice had been there continuously since the snow event ended on Friday, December 16, 2005. Mr. Watkins testified in his deposition that the driveways and parking lots were free of ice and snow after Defendant plowed and salted. Mr. Watkins also testified that it had warmed up during the day on Sunday and then it got cold that night, so he went into work early on Monday the 19th to check for ice or runoff from the snow. Watkins Dep., pp. 14-15. He further indicated that patches of ice that would

develop as a result of the snow melting were the responsibility of Mr. Watkins. Id. at pp. 31-32, 35. Plaintiff did not present any evidence contrary to Mr. Watkins deposition testimony. She also did not present any evidence expert or otherwise how long the salt spread on Friday should have lasted. Based on the record presented, the Court did not believe the jury could find that Defendant negligently plowed and salted on Friday, December 15, 2005 or that Defendant had a duty to address the small patch of ice that appears from the evidence of record to have formed Sunday night.

Plaintiff also contended Defendant was negligent because he failed to remove the snow piles from Roseview's premises. Plaintiff, however, failed to present evidence to show that Defendant had a duty to remove the snow from the premises. Defendant did not own the property. Defendant provided a price quote to Roseview for snow removal services, but no evidence was presented to show that Roseview requested Defendant to remove the snow prior to the time Plaintiff fell.[1] Furthermore, no evidence was presented to show how high the snow piles were. For the jury to infer Defendant was negligent, Plaintiff would need to show Defendant had the authority to unilaterally remove the snow and that the snow was high enough that it needed to be removed.

Finally, Plaintiff claimed Defendant piled the snow too high and pressure from the weight of the snow caused it to melt and form the patch of ice that caused Plaintiff to fall. The Court could not agree. Plaintiff did not offer any expert testimony to support this theory. She also did not present any testimony regarding how high the snow was piled in the area in question. The only testimony in the record regarding why the snow melted was from Mr. Watkins, who testified the temperature warmed up during the day on Sunday and

1 There was some evidence in the record that Roseview requested Defendant to remove or re-pile the snow after

then it dropped over night.

In conclusion, the Court found that there was insufficient evidence in the summary judgment record to show Defendant either owed a duty to Plaintiff or breached any duty owed to Plaintiff on any of the theories argued. Plaintiff wanted the jury to assume Defendant owed a duty to Plaintiff and breached it without presenting sufficient evidence, expert or otherwise, to support her theories.

DATE: _____________ By The Court,

____
Kenneth D. Brown, P. J.

cc: Joseph Musto, Esquire
Timothy A.B. Reitz, Esquire
320 Market Street Lewisburg PA 17837
Denise Eleazer, 734 Memorial Avenue, Williamsport PA 17701
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)

Plaintiff fell and he performed services pursuant to that request later on Monday, December 18, 2005. Subsequent remedial measures, however, are not admissible to prove negligence. Pa.R.E. 407.