IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

CATE HAYES, Plaintiff	: :	CIVIL ACTION -- LAW
v.	:	No. 07-00,153
BOROUGH OF MUNCY, RANDY MYERS and VICKI LYONS, Defendants	: : :	

OPINION

This is a slip-and-fall case in which the plaintiff fell on ice on the side of Charles Road in Muncy, while walking her dog. The plaintiff alleges the ice was caused by the storm water management system constructed by defendants Myers and Lyons on their property in May of 2003. The system consists of two stormwater drainage pipes that extend from their dwelling to Charles Road. Plaintiff claims the pipes discharged water through the curb and onto the road gutter, which then froze and formed the ice on which the defendant slipped. The complaint also alleges Muncy Borough was well aware of this dangerous condition, but neglected to remedy it.

The defendants have moved for summary judgment on several theories. The most compelling argument is their lack of duty to the plaintiff, and the court will grant the motions on that basis because the record clearly demonstrates there are no genuine issues of material fact and that the defendants are entitled to judgment as a matter of law.

To prevail in her claim against the defendants, the plaintiff must first prove that each of the defendants owed her a duty which is recognized by law. Pennsylvania case law clearly holds that possessors of land owe no duty to prevent harm to a plaintiff from

a known or obvious danger. Hughes v. Seven Springs Farm, Inc., 762 A.2d 339 (Pa. 2000); Carrender v. Fitterer, 469 A.2d 120 (Pa. 1983). Even governmental units, entities more likely to expect that an invitee will encounter danger on land than other landowning entities, nevertheless

> may reasonably assume that members of the public will not be harmed by known or obvious dangers which are not extreme, and which any reasonable person exercising ordinary attention, perception and intelligence could be expected to avoid. *This is particularly true where a reasonable alternative way is open to the visitor, known or obvious to him, and safe."*

Carrender, *supra*, 469 A.2d at 124, *citing* Restatement (Second) of Torts, Comment g to section 343A (emphasis in original).

Although the question of whether a danger is known or obvious is usually a question of fact for the jury, the question may be decided by the court when reasonable minds could not differ as to the conclusion. Carrender, *supra*, at 124. In the case before this court, plaintiff's own testimony establishes not only that the existence of the ice was obvious to a reasonably attentive individual, but also that the plaintiff herself was aware of the ice and appreciated the risk it presented.

In her deposition, plaintiff testified that on the day of the incident that she saw the ice on the roadway, that she had seen such ice numerous times before, and that she normally walked around the ice. On her journey up the road, she walked on the opposite side of the road from the ice. On her journey back, however, she walked on the same side as the ice. N.T. p. 53, 87-88. Furthermore, although she saw the ice again on the way back, she allowed her dog to walk on the defendants' property, near the ice. The dog pulled her onto the ice patch, and she fell. N.T. pp. 59-61.

The plaintiff also testified that she had observed such ice conditions at the same spot "[w]henever there's cold weather and freezing temperatures." N.T. p. 64. The

plaintiff even called the ice conditions "a normal occurrence when there is any kind of freezing wet weather, melting snow, and this happened to be right after a cold snap . . . ." N.T. p. 65. And finally, the plaintiff testified she had complained about the ice to Borough employees several times the previous winter.

Regarding her dog, the plaintiff testified that at times she has difficulty with him pulling on the leash, that it's normal for him to pull at the leash, and that she sometimes loses balance when that happens. N.T. p. 54-57. Even realizing this danger, however, she allowed her dog to walk near the ice.

In light of the plaintiff's testimony, we must conclude that the danger posed by the ice was both obvious and known, and that the defendants could have reasonably expected that the danger would be avoided. Reasonable minds could not differ on this point. Thus the plaintiff has failed to establish the element of duty, and the defendants are entitled to judgment as a matter of law. Carrender, *supra*, at 123.

O R D E R

AND NOW, this 17th day of March, 2008, after argument, for the reasons stated in the foregoing opinion, the Motions for Summary Judgment filed by the defendants are granted and judgment is entered for the defendants.

BY THE COURT,

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Richard A. Gray, J.

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