IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

JOSEPH IRVIN, Plaintiff	:	CV-21-00360
vs.	:	
WEGMANS FOOD MARKET, INC., *et al.*, Defendant	:	

OPINION AND ORDER

AND NOW, this 11th day of April 2023, the Court issues the following Opinion and Order regarding Defendant Wegmans Food Market, Inc.'s ("Wegmans")[1] Motion for Summary Judgment, filed October 24, 2022.

BACKGROUND

Plaintiff Joseph Irvin commenced this action on February 11, 2021 with the filing of a Writ of Summons in the Bucks County Court of Common Pleas, followed by a Complaint on March 9, 2021. By stipulation of the parties, the Bucks County Court of Common Pleas transferred the case to this Court, which received it on April 5, 2021.

[1] Plaintiff's Praecipe for Writ of Summons and Complaint, both filed in the Bucks County Court of Common Pleas, each list a single Defendant, Wegmans Food Markets, Inc. The caption of Orders issued by the Bucks County Court of Common Pleas shortly after the initiation of the lawsuit includes "Wegmans Food Markets, Inc., *et al.*," though the Court can find no filings on either the Bucks County or Lycoming County dockets concerning the joinder or intervention of any other Defendant. Therefore, although this case is docketed as "Joseph Irvin v. Wegmans Food Market, Inc., *et al.*," the Court believes that Wegmans is the only Defendant.

Plaintiff alleges that on February 12, 2019 at approximately 9:00 p.m., he was a business invitee at Wegmans' supermarket in Williamsport. Plaintiff contends that he slipped at the boundary of Wegmans' sidewalk and parking lot due to "an accumulation of ice covering the... area," suffering injury. Specifically, Plaintiff asserts that Wegmans:

- "caused or permitted the ice to remain upon the sidewalk/parking lot of the property at a point where it posed an unreasonable risk to... business invitees";
- "failed to make a reasonable inspection... which would have revealed the existence of the dangerous condition";
- "failed to properly clear the property sidewalk/parking lot of the accumulated ice";
- failed to properly warn the Plaintiff of the existence of the dangerous condition"; and
- "violated [local] ordinances... pertaining to the maintenance of commercial properties."

Wegmans filed an Answer and New Matter on May 17, 2021. In addition to asserting general defenses, Wegmans specifically pled that it maintained its "walks and lots... in a reasonable manner given the prevailing conditions," and that Plaintiff's injuries were caused in whole or in part by his haste, inattentiveness, or other comparative negligence. Wegmans further pled that "it is not liable for general slippery conditions due to ongoing weather events," that "Plaintiff's claim is barred by the 'hills and ridges' doctrine," and that "[p]rior to the incident at issue Wegmans

did not have a reasonable opportunity to act to address the ongoing weather created conditions."

MATTER BEFORE THE COURT

A. Threshold Issue: New Matter and Reply

Wegmans filed a Motion for Summary Judgment on October 24, 2022. Prior to reaching the factual and legal analysis of its argument in favor of summary judgment, Wegmans noted as a threshold matter that it filed a New Matter endorsed with a Notice to Plead on May 17, 2021, and asserted that Plaintiff had never filed a Reply to that pleading. Therefore, Wegmans argued, any factual assertions in its New Matter are deemed admitted pursuant to Rule of Civil Procedure 1029(b).

In its Motion for Summary Judgment, Wegmans described the convoluted procedural history of Plaintiff's attempts to litigate this matter. Wegmans asserted, and Plaintiff agreed, that Plaintiff's first attorney filed an action related to this incident in the United States District Court for the District of New Jersey, a venue to which Wegmans objected. This first attorney withdrew the case and refiled it in the Superior Court of New Jersey, but Wegmans disputed venue in any New Jersey Court and ultimately won a dismissal of that first action on this ground. Plaintiff retained a second attorney who filed the instant action in Bucks County in March 2021, but shortly thereafter stipulated to the transfer to this Court. Plaintiff's current counsel – his third attorney – entered his appearance in May of 2022.

Plaintiff filed a Reply to the New Matter on January 26, 2023, contemporaneous with his Answer to Wegmans' Motion for Summary Judgment. Plaintiff's Reply denied each operative paragraph of the New Matter as a conclusion of law to which no response was required. Additionally, Plaintiff's Reply reiterated his averment that Wegmans' "entrance and egress were unreasonably dangerous at all relevant times," and asserted that "Plaintiff was proceeding with reasonable care."

B. Wegmans' Motion for Summary Judgment – Merits

On the merits, Wegmans notes that its security camera system showed that Plaintiff walked from the parking lot to the sidewalk in front of the supermarket at 8:49 p.m., and fell as he "exited along the same path of travel from the sidewalk to the [parking lot] pavement and cross-walk" at 8:53 p.m. Wegmans characterizes the weather that day as "continuous wet, snowy, freezing, wintry conditions" that began the previous evening and continued for hours after Plaintiff's fall, with "accumulated and measurable precipitation" recorded each hour on February 12, 2019. Wegmans contends that there was no material change in the condition of the path Plaintiff travelled during the four minutes he was inside the store, and that Plaintiff was or should have been aware of the weather conditions.

Wegmans cites Plaintiff's deposition testimony that the weather on the evening of February 12, 2019 was "sleeting and raining and snowing," and that during his drive to Wegmans it was "[r]aining, sleeting...." Plaintiff stated that after

he exited his car the road was "[s]lushy [and] wet...." Plaintiff testified that as he was entering the store, at the sidewalk "there was ice and stuff"; when asked whether he noticed if "there was stuff along the sidewalk" as he was entering the store, he replied "I think so, I think so." Plaintiff stated that he "[did]n't think" the conditions had changed during his four minutes in the store. Plaintiff described the area of the parking lot where cars travel as "slushy and wet," with the ground "all wet all the way to the door." Plaintiff testified that there was no accumulated snow in the "areas that were paved or shoveled," and stated that when he fell he did not "feel like [he] stepped on something different than when [he was] walking into the store," instead "just... normally walking... to [his] car...."

On these facts, Wegmans contends that it is entitled to summary judgment as a matter of law under the "hills and ridges" doctrine as set forth in *Rinaldi v. Levine*.[2] Noting that this doctrine is a "well-entrenched legal principle that protects an owner or occupier of land... from liability for generally slippery conditions where the owner has not permitted the ice and snow to unreasonably accumulate in ridges or elevations," Wegmans contends that under the hills and ridges doctrine it "has no duty to correct or take reasonable measures with regard to a storm-created snowy or icy condition until a reasonable time after the snow has ceased."[3] Ultimately,

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[2] *Rinaldi v. Levine*, 176 A.2d 623 (Pa. 1962).
[3] This principle, and cases relevant to its application to the instant matter, are discussed in detail *infra*.

Wegmans contends, Plaintiff has not produced evidence upon which a jury could conclude that Wegmans was negligent.

C. Plaintiff's Answer – Merits

In response to the factual averments in Wegmans' Motion for Summary Judgment, Plaintiff first disputed any effort to characterize his fall as occurring "in the crosswalk," instead asserting that the video footage showed his "left foot [was] still on [Wegman's] sidewalk area" when he fell. Plaintiff suggests that the dispute over the precise character of the spot where he fell is "a genuinely disputed issue of material fact" sufficient to justify the denial of Wegmans' Motion for Summary Judgment. Plaintiff argues that Wegmans' citations to various weather reports are hearsay at this stage.

Plaintiff contends that Wegmans admitted it "engaged in an undertaking by attempting to clear snow and ice from its property," and that the continued existence of "a slippery area at [Wegmans] exit into the parking lot" meant that Wegmans' efforts in this regard were "not sufficiently performed...." Plaintiff disputes any contention that the fact that he had already traveled over the area in which he fell suggested that area was not dangerous; rather, Plaintiff suggests, this merely suggests that the dangerous nature of this area was hidden. Plaintiff emphasizes that Wegmans designed and intended this area to be used by business invitees to enter the store. Ultimately, Plaintiff rejects the applicability of the "hills and ridges"

doctrine to this case, and instead asserts the existence of multiple material issues of fact justifying the submission of this case to a factfinder.

ANALYSIS

A. Motions for Summary Judgment

Under Rule of Civil Procedure 1035.2, a party may move for summary judgment in two situations:

> "(1) whenever there is no genuine issue of 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
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> (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."

Under Rule 1035.3, the adverse party must respond by identifying "one or more issues of fact" or "evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced."

When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party.[4] The party moving for summary judgment bears the burden of proving both the absence of an issue of material fact and its right to judgment as a

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[4] *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. 2011).

matter of law.[5] The Court will only grant summary judgment "where the right to such judgment is clear and free from all doubt."[6] An "adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response" to a motion for summary judgment "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."[7] For the purposes of summary judgment, the "record" includes "(1) pleadings, (2) depositions, answers to interrogatories, admissions and affidavits, and (3) reports signed by an expert witness...."[8]

B. Hills and Ridges Doctrine

Wegmans' Motion for Summary Judgment rests upon the hills and ridges doctrine. The Superior Court of Pennsylvania has described the hills and ridges doctrine as "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

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[5] *Holmes v. Lado*, 602 A.2d 1389, 1391 (Pa. Super. 1992).
[6] *Summers v. Certainteed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010) (quoting *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007)).
[7] Pa R.C.P. 1035.3(a).
[8] Pa. R.C.P. 1035.1.

unreasonably accumulate in ridges or elevations."[9] This doctrine clarifies the general principle that in order to recover against a property owner "for a fall on an ice or snow covered surface, a plaintiff must show" three elements:

> "(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; [and] (3) that it was the dangerous accumulation of snow and ice which caused the plaintiff to fall."[10]

Thus, under this standard, a plaintiff who "present[s] no evidence of either the size [or] the character of any ridge or other elevation of snow or ice" and "fail[s] to establish a causal connection between any improper accumulation of snow or ice and his fall" may not recover.[11]

The Pennsylvania courts have addressed the application of the hills and ridges doctrine to numerous factual scenarios. The Superior Court has repeatedly cautioned that the hills and ridges doctrine "may be applied only in cases where the snow and ice complained of are the result of an *entirely natural accumulation*, following a recent snowfall"; when a particular danger is "influenced by human intervention" such as plowing, the hills and ridges doctrine does not apply.[12]

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[9] *Collins v. Philadelphia Suburban Development Corporation*, 179 A.3d 69, 72 (Pa. Super. 2018) (quoting *Biernacki v. Presque Isle Condominiums Unit Owners Ass'n, Inc.*, 828 A.2d 1114, 1116 (Pa. Super. 2003)).
[10] *Id.* at 74; *see Rinaldi*, 176 A.2d at 625-26.
[11] *Rinaldi*, 176 A.2d at 626.
[12] *Harvey v. Rouse Chamberlin, Ltd.*, 901 A.2d 523, 526-27 (Pa. Super. 2006) (quoting *Bacsick v. Barnes*, 341 A.2d 157, 160 (Pa. Super. 1975)) (emphasis in original).

However, a landowner's undertaking to address slippery conditions on some portion of its property does not automatically impose a duty of reasonable care in that undertaking, as long as the intervention does not increase the risk of harm or cause injury by inducing reliance on the undertaking.[13]

In *Harvey*, the plaintiff testified that "[a]fter it had stopped snowing, and the roads had been plowed by [the defendant], the plaintiff... had to walk on the street as portions of the sidewalk had not been cleared"; forced to walk in the street, the plaintiff slipped on black ice, sustaining injury.[14] The Superior Court explained that the trial court's grant of a compulsory nonsuit premised on the hills and ridges doctrine was erroneous in light of evidence suggesting "the condition of the land was influenced by human intervention," as well the factual question of "[w]hether a sufficient amount of salt was applied... to prohibit the formation of ice... [from the] residue left after plowing."[15]

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[13] *Morin v. Traveler's Rest Motel, Inc.*, 704 A.2d 1085, 1089 (Pa. Super. 1997). *Morin* establishes that a landowner's attempts to address snow and ice are not excepted from the scope of Restatement (Second) of Torts § 323, which states:

> "One who undertakes, gratuitously, or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking."

[14] *Harvey*, 901 A.2d at 525.
[15] *Id.* at 527-28.

A number of cases since *Harvey*, however, have discussed factual scenarios in which the hills and ridges doctrine precludes recovery. In *Biernacki*, the plaintiff fell at 7:45 a.m. in the parking lot of the condominium she leased, slipping on "snow that had accumulated between the parked cars."[16] The Superior Court sustained the trial court's grant of summary judgment, agreeing that "[i]t 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."[17] In *Collins*, the Superior Court noted that a plaintiff who "slip[s] and [falls] on ice/snow during an active blizzard; that is, at a time when 'generally slippery conditions' prevail[]," is generally precluded from recovery as a matter of law, because "a landowner has no obligation to correct the conditions until a reasonable time after the winter storm has ended."[18] The Court rejected the plaintiff's invitation to impose a duty on the landowner "to salt or sand a parking lot during/immediately after an ice storm," noting that "the entire 'gist' of the hills and 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."[19]

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[16] *Biernacki*, 828 A.2d at 1115, 1117.
[17] *Id.* at 1117.
[18] *Collins*, 179 A.3d at 75.
[19] *Id.* at 76.

C. **Discussion**

Wegmans contends that this case presents a straightforward application of the hills and ridges doctrine, in that 1) Plaintiff slipped and fell during an ongoing winter storm at a time when generally slippery conditions prevailed, 2) Plaintiff can point to no evidence of record suggesting an unreasonable accumulation of snow or ice, and 3) Plaintiff can point to no evidence of record suggesting that any action of Wegmans' caused or contributed to the conditions where he fell. Wegmans further contends that, even without the doctrine of hills and ridges, Plaintiff's "claim fails because he was familiar with the area at issue [having] walked through it moments before his fall."

Plaintiff's response to this argument is essentially two-fold. First, Plaintiff argues that the hills and ridges doctrine does not apply to the scenario presented here, undermining Wegmans' asserted grounds for summary judgment. Second, Plaintiff contends that disputed issues of material fact preclude a grant of summary judgment regardless of whether the hills and ridges doctrine applies.

The Court must determine whether the situation presented is one in which the hills and ridges doctrine is categorically inapplicable. If the doctrine applies, the Court must then determine whether Wegmans is entitled to summary judgment as a matter of law.

1. Application of Hills and Ridges Doctrine

The hills and ridges doctrine applies to shield a landowner from liability for generally slippery conditions attributable to an entirely natural accumulation of ice or snow that the landowner has neither caused to accumulate in ridges or elevations nor permitted to remain for an unreasonable amount of time. Here, as Wegmans notes, Plaintiff repeatedly testified at his deposition that it was raining and sleeting as he drove to Wegmans, and that the conditions were slushy and wet. Thus, the hills and ridges doctrine appears to facially apply, subject to factual disputes as to whether any accumulations were natural or whether Wegmans somehow caused those accumulations.[20]

Plaintiff asserts numerous arguments why this is not so. First, Plaintiff contends that the hills and ridges doctrine "does not apply to matters where an owner/possessor has already taken some action to address the condition." Because Wegmans "[took] steps to remove ice and snow from its premises, but [failed] to remove it from the entirety of its area of invitation," Plaintiff argues, "Wegmans

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[20] Plaintiff argues that the weather reports Wegmans attaches to its Motion are hearsay, and notes that the *Nanty-Glo* rule, as expanded by *Hoffman*, precludes the entry of summary judgment based solely upon oral testimony, including that of the non-moving party. *See Penn Center House, Inc. v. Hoffman*, 553 A.2d 900 (Pa. 1989). Here, Wegmans' Motion is not premised entirely upon oral testimony; rather, the Motion includes as an exhibit still photographs taken from footage recorded by a Wegmans security camera. At his deposition, Plaintiff confirmed that he was the person depicted in that footage, and commented on various aspects of what the footage depicts, including his fall and the weather conditions. The *Nanty-Glo* rule does not preclude the Court from considering Plaintiff's deposition testimony as it relates to other exhibits and facts of record.

breached its duty of care [and is thus] not entitled to a shroud of protection through the hills and ridges doctrine."

This argument is difficult to square with the Superior Court's decision in *Morin*, in which a motel manager's decision to "spread salt and sand around part, but not all, of the motel parking lot" did not prevent the hills and ridges doctrine from applying to the plaintiff's fall in an "area of the parking lot... [that] was not salted or sanded."[21] Plaintiff argues that *Morin* is distinguishable in that the fall in the motel parking lot "occurred before any action was undertaken to remove snow or ice," whereas here "the parking lot was plowed and the area [where Plaintiff fell] had been addressed, albeit insufficiently...." *Morin* is clear, however, that partial efforts to address slippery conditions will only create a duty if those efforts "increase[] the natural hazards of the ice [or snow]" or the plaintiff "relie[s] upon" the defendant's efforts.[22,23]

Plaintiff also argues that the hills and ridges doctrine does not apply to covered areas, citing *Harvey*.[24] *Harvey*, however, did not involve a covered area,

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[21] *Morin*, 704 A.2d at 1086-87.
[22] *Id.* at 1089.
[23] Plaintiff repeatedly notes that Wegmans attempted "to capitalize upon [the ongoing adverse weather] event to increase its sales," for instance by advertising shovels and displaying them in front of the store. Plaintiff testified at his deposition, however, that he was in the store for four minutes to buy a single item. Plaintiff's Brief in Opposition to Wegmans' Motion for Summary Judgment establishes that he went to Wegmans to purchase eggs. The Court does not see how Wegmans' decision to advertise snow shovels is relevant to the instant case, when Plaintiff does not contend that Wegmans' advertising of snow shovels had anything to do with his brief foray to the store that evening.
[24] *See Harvey*, 901 A.2d 523.

and the Court does not immediately see how it supports the particular proposition Plaintiff advances. Plaintiff does note that *Harvey* explains that when the condition of the land is "influenced by human intervention," the doctrine of hills and ridges does not apply.

Finally, Plaintiff appears to argue that the hills and ridges doctrine carries less force when the defendant is a business and the plaintiff is a business invitee, but does not cite any case that supports this proposition. The Court's review of numerous hills and ridges cases, however, suggests that the application of the hills and ridges doctrine is independent of the identity of the parties.[25]

For this reason, contrary to Plaintiff's argument, the Court finds that the doctrine of hills and ridges facially applies.

2. Summary Judgment

The law in Pennsylvania is clear: a plaintiff who "present[s] no evidence of either the size [or] the character of any ridge or other elevation of snow or ice" and "fail[s] to establish a causal connection between any improper accumulation of snow or ice and his fall" may not recover.[26] This is the case regardless of whether the

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[25] *Morin* explicitly rejected, as "previously addressed and settled," the plaintiff's argument that the hills and ridges doctrine was inapplicable to business invitees injured on a business owner's property. *Morin*, 704 A.2d at 1088. Plaintiff asserts that "[t]here is simply a greater duty of care for a business to its customers than there is to a complete stranger who happens to walk past your home on a public sidewalk," but does not explain how this contention might apply to the hills and ridges doctrine, which is a complete shield from liability.

[26] *Rinaldi*, 176 A.2d at 626.

evidence is viewed through the specific context of the hills and ridges doctrine, or against the general background principle that a plaintiff who falls on an ice or snow covered surface must show "that snow and ice had accumulated... in ridges or elevations of such size and character as to unreasonably obstruct travel and constitute a danger to pedestrians travelling thereon."[27] A landowner is simply not liable for generally slippery conditions that prevail during active precipitation when the landowner has neither caused nor exacerbated those conditions.

Here, there is no evidence of record to support a finding that Plaintiff's fall was caused by an unnatural accumulation of snow or ice, or that Wegmans allowed that snow or ice to accumulate or remain for an unreasonable time. At most, Plaintiff can show that Wegmans attempted at various times to mitigate the generally slippery conditions on its property, but – due to the ongoing nature of the weather event – those generally slippery conditions returned, causing Plaintiff's fall.

The record, viewed in a light most favorable to the Plaintiff, is insufficient as a matter of law to impose liability on Wegmans. Wegmans had no duty to immediately ameliorate any slipperiness caused by snow or sleet that was actively falling; that is to say, they had "no duty to correct or take reasonable measures with regard to storm-created snowy or icy conditions until a reasonable time after the storm [had] ceased."[28] Contrary to Plaintiff's assertions, the fact that Wegmans contracted for

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[27] *See id.* at 625-26.
[28] *See Collins*, 179 A.3d at 76.

snow and ice removal for their parking lot, and took some measures to address slippery conditions as best as possible, did not transform their duty to not allow or cause unreasonable conditions into the impossible duty of clearing all wintry precipitation from their sidewalks and parking lot instantaneously. The is no evidence of record suggesting Wegmans' actions created black ice or caused Plaintiff to take a different route, as in *Harvey* - that is, no evidence suggests that the particular danger here was "influenced by human intervention...."[29]

Plaintiff asserts that there are disputed issues of material fact, but the Court finds that these do not change the analysis. Plaintiff contends that the record before the Court is insufficient to establish the precise conditions at the time of Plaintiff's fall. However, Wegmans attached certified weather records to its Motion for Summary Judgment, demonstrating wintry precipitation throughout the day and continuing after Plaintiff's fall. Even in the absence of any such records, Plaintiff admits that there was active wintry precipitation at the time he entered Wegmans and subsequently fell when he exited four minutes later.

Plaintiff argues – without citation – that the hills and ridges doctrine does not apply to covered areas. He then raises a dispute over whether one of his feet was on the sidewalk underneath an overhang, as opposed to past the edge of the sidewalk and in the crosswalk. He does not dispute that the vast majority of his

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[29] *Harvey*, 901 A.2d 523.

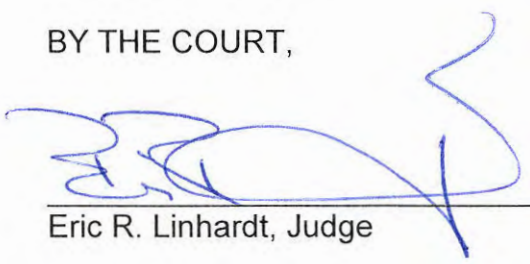
body, including the entirety of one foot, was in the crosswalk when he fell – nor could he, as this fact is clearly shown in the video footage in the record. Plaintiff does not develop any argument as to why the precise location of his heel in relation to the edge of the sidewalk would be significant. The evidence establishes that the slippery condition in the area where his lead foot was located when he fell was natural. Plaintiff presents no evidence that any slippery conditions at the edge of the sidewalk were *not* natural. Ultimately, whether Plaintiff's back heel was on the sidewalk or past the sidewalk may be a disputed issue of fact – but it is not a *material* one.

ORDER

For the foregoing reasons, the Court grants Wegmans' Motion for Summary Judgment. This case is DISMISSED with prejudice. The trial previously scheduled for May 25, 2023 shall be REMOVED from the calendar.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

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