For the first class, please read the attached two cases, *Smith v. Fraternal Order of Eagles* and *Brinkman v. Ross*. If you have any questions, please contact us at mmoeddel@kmklaw.com, mopitz@kmklaw.com and jmuething@kmklaw.com.

1 of 100 DOCUMENTS

Brinkman et al., Appellees, v. Ross et al., Appellants

No. 92-1909

Supreme Court of Ohio

68 Ohio St. 3d 82; 1993 Ohio 72; 623 N.E.2d 1175; 1993 Ohio LEXIS 2666

November 9, 1993, Submitted
December 29, 1993, Decided

SUBSEQUENT HISTORY: [***1] Counsel Amended.

PRIOR HISTORY: Appeal from the Court of Appeals for Franklin County, No. 91AP-1510.

Richard and Nadine Ross, appellants, invited Carol and Charles Brinkman, appellees, to visit them at their home as social guests. The Brinkmans accepted the invitation for the evening of February 4, 1989. Before the Brinkmans were due to arrive, the private **sidewalk** situated between appellants' driveway and residence became hazardous to walk on due to a **natural accumulation** of **ice** and **snow.** Appellants knew of the hazardous condition, but they took no steps to alleviate the condition or to warn the Brinkmans of its existence.

The Brinkmans and their daughter arrived at appellants' residence on the evening of February 4, 1989, and parked in appellants' driveway. While walking on the **sidewalk** between the driveway and appellants' home, Carol Brinkman slipped on the **snow**-covered **ice** and fell, sustaining serious injuries. The fall was caused solely by the **natural accumulation** of **ice** on the **sidewalk,** which **ice** had been concealed from view by a **natural accumulation** of **snow.** Immediately prior to the fall, Carol Brinkman had warned her daughter of the slippery condition of the **sidewalk.**

[***2] The Brinkmans filed suit against appellants in the Court of Common Pleas of Franklin County, alleging that appellants were negligent in maintaining "an **ice**-covered **sidewalk** concealed by a blanket of **snow** leading to the entranceway of [appellants'] residence." Appellants responded to the complaint and eventually moved for summary judgment. The trial court granted appellants' motion, finding that under "long-standing Ohio law there is no liability for failure to remove **natural accumulations** of **ice** and **snow** from **sidewalks.**"

The court of appeals, in a divided vote, reversed the judgment of the trial court. The court of appeals' majority held that when a homeowner knows of a hazardous condition on the homeowner's premises caused by a **natural accumulation** of **ice** and **snow,** and the homeowner expressly invites a social guest to visit the premises at an appointed time, the homeowner owes a duty to the guest to take reasonable steps to remove the hazard and to warn the guest of the dangerous condition.

The cause is now before this court pursuant to the allowance of a motion to certify the record.

DISPOSITION: *Judgment reversed.*

HEADNOTES

*Negligence -- **Natural accumulations** of **ice** and **snow** on **sidewalks** -- Homeowner has no common-law duty to remove or make less hazardous -- Homeowner has no duty to warn those who enter upon premises of the inherent dangers presented by the **accumulations**.*

SYLLABUS

A homeowner has no common-law duty to remove or make [***3] less hazardous a **natural accumulation** of **ice** and **snow** on private **sidewalks** or walkways on the homeowner's premises, or to warn those who enter upon the premises of the inherent dangers presented by **natural accumulations** of **ice** and **snow.**

COUNSEL: *John S. Kuhn*, for appellees.

John C. Nemeth and *David A. Caborn*, for appellants.

Murray & Murray, L.P.A., John T. Murray and *Alicia Wolph*, urging affirmance for *amicus curiae*, Ohio Academy of Trial Lawyers.

Isaac, Brant, Ledman & Teetor, Charles E. Brant, Steven G. LaForce and *Barbara L. Kozar*, urging reversal for *amicus curiae*, Ohio Association of Civil Trial Attorneys.

JUDGES: Douglas, J. Moyer, C.J., A.W. Sweeney, Wright, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

OPINION BY: DOUGLAS

OPINION

[*83] **[**1176]** In Ohio, it is well established that an owner or occupier of land ordinarily owes no duty to business invitees to remove **natural accumulations** of **ice** and **snow** from the private **sidewalks** on the premises, or to warn the invitee of the dangers associated with such **natural accumulations** of **ice** and **snow**. In *Debie v.* **[**1177]** *Cochran Pharmacy-Berwick, Inc. (1967), 11 Ohio St.2d 38, 40 O.O.2d* **[***4]** *52, 227 N.E.2d 603*, paragraphs one and two of the syllabus, this court held that:

"1. When the owner or occupier of business premises is not shown to have notice, actual or implied, that the **natural accumulation** of **snow** and **ice** on his premises has created there a condition substantially more dangerous to his business invitees than they should have anticipated by reason of their knowledge of conditions prevailing generally in the area, there is a failure of proof of actionable negligence.

"2. The mere fact standing alone that the owner or occupier has failed to remove **natural accumulations** of **snow** and **ice** from private walks on his business premises for an unreasonable time does not give rise to an action by a business invitee who claims damages for injuries occasioned by a fall thereon."

[*84] In *Sidle v. Humphrey (1968), 13 Ohio St.2d 45, 42 O.O.2d 96, 233 N.E.2d 589*, paragraphs one, two and three of the syllabus, we held that:

"1. An occupier of premises is under no duty to protect a business invitee against dangers which are known to such invitee or are so obvious and apparent to such invitee that he may reasonably be expected to discover them and protect himself against **[***5]** them.

"2. The dangers from **natural accumulations** of **ice** and **snow** are ordinarily so obvious and apparent that an occupier of premises may reasonably expect that a business invitee on his premises will discover those dangers and protect himself against them. * * *

"3. Ordinarily, an owner and occupier has no duty to his business invitee to remove **natural accumulations** of **snow** and **ice** from private walks and steps on his premises. * * *"

The underlying rationale in both *Debie* and *Sidle, supra*, is that everyone is assumed to appreciate the risks associated with **natural accumulations** of **ice** and **snow** and, therefore, everyone is responsible to protect himself or herself against the inherent risks presented by **natural accumulations** of **ice** and **snow**.

The case at bar involves the duty of a homeowner to a social guest with regard to **natural accumulations** of **ice** and **snow** on private **sidewalks** or walkways on the homeowner's premises. [1] In our judgment, there is no reason why we should now hold that a homeowner owes a duty to his or her social guest to remove **natural accumulations** of **ice** and **snow** from **sidewalks** and walkways, or that the homeowner must warn the guest of the **natural** hazard, **[***6]** when a similar duty has not been imposed upon owners or occupiers of land with respect to business invitees. Furthermore, we agree with Judge McCormac's dissenting opinion in the court of appeals wherein he stated, "the issue is not which party has the better appreciation of the snowy or icy condition of the **sidewalk** which was caused by the **natural accumulation** of **snow** and **ice**. As a matter of law, the guest is charged with sufficient knowledge of the hazards to be required to protect herself against falls." In other words, although appellants knew of the hazardous condition created by the **natural accumulation** of **ice** and **snow**, so, too, as a matter of law, did their guests.

1 This case involves the very narrow issue of a homeowner's liability to a social guest with respect to injuries occasioned by a slip and fall incident on a private **sidewalk** or walkway on the homeowner's premises resulting from a **natural accumulation** of **ice** and **snow**. This case does not involve any other type of hazard or any other set of circumstances. Therefore, while we take note that the court of appeals created an exception to the general rule of homeowner liability, which the court of appeals held to be applicable in all cases regardless of the hazard involved, we make no comment thereon.

[*7]** **[*85]** Living in Ohio during the winter has its inherent dangers. Recognizing this, we have previously rejected the notion that a landowner owes a duty to the general public to remove **natural accumulations** of **ice** and **snow** from public **sidewalks** which abut the landowner's premises, even where a city ordinance re-

quires the landowner to keep the **sidewalks** free of **ice** and **snow**. **[**1178]** See *Lopatkovich v. Tiffin (1986), 28 Ohio St.3d 204, 206-207, 28 OBR 290, 292-293, 503 N.E.2d 154, 156-157.* It is unfortunate that Carol Brinkman slipped and fell on appellants' **sidewalk**. Perhaps appellants should have shoveled and salted the **sidewalk** as a matter of courtesy to their guests. However, we find that Ohio law imposed no such obligation upon appellants, and we are unwilling to extend homeowner liability to cover slip-and-fall occurrences caused entirely by **natural accumulations** of **ice** and **snow**. To hold otherwise would subject Ohio homeowners to the perpetual threat of (seasonal) civil liability any time a visitor sets foot on the premises, whether the visitor is a friend, a door-to-door salesman or politician, or even the local "welcome wagon."

We recognize that the court **[***8]** of appeals held that the duty to remove the **ice** and **snow** and to warn of the hazard applies only to a homeowner who is aware of the hazard presented by the **natural accumulation** of these elements, and who further expects an expressly invited guest to visit the premises at an appointed time. However, even under these circumstances, questions of fact would arise necessitating trial in most cases involving the slip and fall of a social guest on **natural accumulations** of **ice** and **snow**. Moreover, the effect of such a holding on the cost of insurance coverage alone weighs heavily in favor of our rejecting a radical extension of homeowner liability with regard to **natural accumulations** of **ice** and **snow**.

Accordingly, we hold that a homeowner has no common-law duty to remove or make less hazardous a **natural accumulation** of **ice** and **snow** on private **sidewalks** or walkways on the homeowner's premises, or to warn those who enter upon the premises of the inherent dangers presented by **natural accumulations** of **ice** and **snow**. Therefore, appellants were entitled to judgment as a matter of law since their failure to remove the **ice** and **snow**, or to warn the Brinkmans of the **natural** hazard, does not give rise **[***9]** to a claim for negligence.

Amicus Ohio Academy of Trial Lawyers has invited us to abolish any and all distinctions that may currently exist in Ohio regarding the duties owed by landowners to those classified in the law as "social guests," as opposed to those classified as "business invitees." However tempting that choice may be, we determine there is no distinction between the duties of a homeowner to a social guest on the one hand and to a business invitee on the other hand concerning **natural accumulations** of **ice** and **snow** on **sidewalks** or walkways on the homeowner's premises. Whatever the classification of the entrant upon the premises, **[*86]** there exists no duty for the homeowner to remove or make less hazardous **natural accumulations** of **ice** and **snow**. Thus, this particular case is not the appropriate vehicle to consider the position urged by *amicus*.

For the foregoing reasons, the judgment of the court of appeals is reversed.

Judgment reversed.

Moyer, C.J., A.W. Sweeney, Wright, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.

Caution
As of: Sep 15, 2010

SMITH, APPELLANT, v. FRATERNAL ORDER OF EAGLES, APPELLEE

No. 13156

COURT OF APPEALS OF OHIO

39 Ohio App. 3d 97*; *529 N.E.2d 477*; *1987 Ohio App. LEXIS 10682

December 23, 1987, Decided

SUBSEQUENT HISTORY: [***1] Reporter's Note: A motion to certify the record to the Supreme Court of Ohio was overruled on April 13, 1988 (case No. 88-266).

DISPOSITION: *Judgment reversed and cause remanded.*

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff injured party appealed a judgment from a trial court (Ohio), which granted defendant premise owner's motion for a directed verdict in a slip and fall personal injury action.

OVERVIEW: The trial court granted the premise owner's motion for a directed verdict in a slip and fall personal injury action. The trial court's judgment was reversed and remanded. The court held that the landowner was not protected by the general rule that a landowner had no duty to remove a natural accumulation of ice and snow because he had attempted to remove a natural accumulation of ice and snow and caused a condition more dangerous than before the attempted removal. Simply put, the court held that the general rule was that a landowner or occupier had no duty to a business invitee to remove natural accumulations of ice and snow, unless he caused a condition more dangerous than before he attempted removal. It was the jury's duty to determine if the plowing of the snow created a more treacherous condition than before, and the trial court erred in directing a verdict for the premise owners.

OUTCOME: The court reversed and remanded the trial court's judgment that granted the premise owner's motion for a directed verdict.

CORE TERMS: snow, parking lot, landowner, ice, plaintiff-appellant, accumulation, defendant-appellee, removal, incline, assignment of error, directed verdict, occupier, club members, reversible error, jury question, granting judgment, evidence submitted, sidewalk, plowed, patrons, general rule, treacherous, plowing, invitee, hazard, side door, nuisance

LexisNexis(R) Headnotes

Torts > Negligence > Duty > Affirmative Duty to Act > Creators of Foreseeable Peril

Torts > Premises Liability & Property > General Premises Liability > Duties of Care > Duty on Premises > Invitees > Business Invitees

[HN1] The general rule in Ohio, with certain exceptions not pertinent here, is that a landowner or occupier has no duty to a business invitee to remove natural accumulations of ice and snow. However, having undertaken to remove ice and snow, the landowner or occupier has a duty to use ordinary care not to create a hazard or to aggravate an existing hazard.

HEADNOTES

Negligence -- Snow removal -- Landowner may be liable when removal of snow causes more dangerous condition than before removal.

SYLLABUS

A landowner who attempts to remove a natural accumulation of ice and snow and thereby causes a condition more dangerous than before the attempted removal is not protected by the general rule that a landowner has no duty to remove a natural accumulation of ice and snow.

COUNSEL: *Ted Chuparkoff,* for appellant. *Edward H. Corbett,* for appellee.

JUDGES: QUILLIN, P.J. GEORGE, J., concurs. BAIRD, J., dissents.

OPINION BY: QUILLIN

OPINION

[*97] **[**478]** The question presented by this appeal is whether a landowner who attempts to remove a natural accumulation of ice and snow and thereby causes a condition more dangerous than before the attempted removal is protected by the general rule that a landowner has no duty to remove a natural accumulation of ice and snow. We hold the landowner is not so protected and therefore reverse the judgment of the trial court which granted **[***2]** a directed verdict for the landowner at the close of the plaintiff's case.

At just after noon on December 24, 1985, plaintiff, Linda Smith, and Donald Edman entered the parking lot of the Fraternal Order of Eagles ("Eagles Club"), a private club located on Arlington Road in Akron. Because of a snow fall, the lot had been plowed. Smith and Edman walked up an incline to reach the sidewalk which passed directly in front of the building. After spending about an hour in the club, Smith and Edman took the same route back to their car. On her way down the incline, Smith slipped and fell and was injured. **[**479]** Smith brought suit alleging that the Eagles Club was negligent in not providing a safe means of egress from the parking lot, and in maintaining a nuisance (the incline). After Smith presented her case, the trial court granted the Eagles Club's motion for a directed verdict. Smith appeals.

Assignment of Error I

"The trial court committed reversible error in taking the plaintiff-appellant's case away from the jury and granting judgment to defendant-appellee when the evidence submitted by plaintiff-appellant established a jury question whether or not the defendant-appellee **[***3]** had been negligent in creating a dangerous condition when it altered the natural accumulation of snow and ice, by plowing, in its parking lot maintained for the benefit of its private club members, making said parking lot more treacherous for its members and invitees."

[HN1] The general rule in Ohio, with certain exceptions not pertinent here, is that a landowner or occupier has no duty to a business invitee to remove natural accumulations of ice and snow. *LaCourse v.. Fleitz (1986), 28 Ohio St. 3d 209, 28 OBR 294, 503 N.E. 2d 159*; *Lopatkovich v.. Tiffin (1986), 28 Ohio St. 3d 204, 28 OBR 290, 503 N.E. 2d 154*; *Jeswald v.. Hutt (1968), 15 Ohio St. 2d 224,* **[*98]** *44 O.O. 2d 196, 239 N.E. 2d 37*; *Sidle v.. Humphrey (1968), 13 Ohio St. 2d 45, 42 O.O. 2d 96, 233 N.E. 2d 589*; *Debie v.. Cochran Pharmacy-Berwick, Inc. (1967), 11 Ohio St. 2d 38, 40 O.O. 2d 52, 227 N.E. 2d 603.* However, having undertaken to remove ice and snow, the landowner or occupier has a duty to use ordinary care not to create a hazard or to aggravate an existing hazard. *Porter v.. Miller (1983), 13 Ohio App. 3d 93, 13 OBR 110, 468 N.E. 2d 134*; *Kinkey v.. Jewish Hospital* **[***4]** *Assn. (1968), 16 Ohio App. 2d 93, 45 O.O. 2d 267, 242 N.E. 2d 352.* The Supreme Court in *Lopatkovich, supra,* while applying the general no-duty rule, said "a different matter arises when an abutting owner or occupier is actively negligent in permitting and/or creating a dangerous or unnatural accumulation of snow and ice." *Id. at 207, 28*

OBR at 293, 503 N.E. 2d at 157.

Because we are reviewing a directed verdict judgment, the evidence must be construed most strongly in favor of plaintiff, against whom the judgment was granted. *Civ. R. 50(A)(4)*. There was uncontroverted evidence before the jury that the plowing of the snow created a more treacherous condition than before. It was for the jury to determine if this was true and, if so, did it result from the negligence of the defendant. Therefore, the trial court erred in directing a verdict for the Eagles Club.

The assignment of error is sustained.

Assignments of Error

"II. The trial court committed reversible error in taking the plaintiff-appellant's case away from the jury and granting judgment to defendant-appellee when the evidence submitted by plaintiff-appellant established a jury question whether or not the **[***5]** defendant-appellee had allowed a nuisance to exist in its parking lot when it permitted a dangerous incline leading from the sidewalk to the flat area of the parking lot to exist when it knew, or should have known, that it created a danger to its club members and patrons.

"III. The trial court committed reversible error in taking the plaintiff-appellant's case away from the jury and granting judgment to defendant-appellee when the evidence submitted by plaintiff-appellant established a jury question whether or not the defendant had been negligent in failing to provide club members and patrons the use of a side door which exits to the parking lot, which would eliminate members and patrons from exposing themselves to the danger caused by the incline from the sidewalk to the parking lot, when said side door was, in fact, available for use."

Smith refers this court to no authority which would support her theories of recovery under either of these assignments of error. The assignments of error are overruled.

[480]** Because of our disposition of Smith's first assignment of error, we reverse and remand for further proceedings.

Judgment reversed and cause remanded.

DISSENT BY: **[***6]** BAIRD

DISSENT

BAIRD, J., dissenting.

There is no evidence that the material on the surface where plaintiff fell was anything other than something nature had caused to be there. There is no evidence regarding who removed the snow, when it was removed, or what the condition of the area was immediately upon its removal. Though there was ample evidence that plaintiff knew of the condition of the area at the time she fell, there is no evidence that **[*99]** the defendant knew of such condition.

The evidence that the plowed area was, at the time plaintiff fell, more slippery than the unplowed area is, in my opinion, insufficient to establish that the owner negligently plowed. A rule of law which has the effect of encouraging doing nothing in response to snow is, I believe, in furtherance of undesirable public policy.