

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AIKATERINI ROUSAKI,

Plaintiff-Appellant,

v

LOLA SOULIOTIS,

Defendant-Appellee.

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UNPUBLISHED

March 5, 2013

No. 308139

Washtenaw Circuit Court

LC No. 10-001393-NO

Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

PER CURIAM.

Plaintiff, Aikaterini Rousaki, appeals the trial court's order that granted summary disposition to defendant, Lola Souliotis. For the reasons set forth below, we affirm.

**I. FACTS AND PROCEEDINGS**

Souliotis owns a house at 326 Thompson Street in Ann Arbor. The house is divided into several apartments and Souliotis has rented the apartments to college students for 30 years. In 2009, Rousaki lived in one of the apartments in Souliotis's house. On January 21, 2009, at approximately 9:00 or 10:00 p.m., Rousaki walked along the driveway at the side of the house to take out her garbage. It is undisputed that there was snow on ground at the time and that Souliotis periodically hired outside contractors to remove ice and snow. According to Rousaki, she saw snow and ice on the driveway and she was careful not to slip as she approached the trash cans near the rear of the house. Rousaki placed her garbage bag into the trash can and, as she stepped backward to return to the house, she slipped and fell on a patch of ice.

Rousaki filed this action against Souliotis on December 20, 2010. Her complaint alleged that Souliotis was negligent for failing to properly maintain the premises and that, as a result, she fell and sustained serious injuries. On November 21, 2011, Souliotis filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Specifically, Souliotis argued that there is no genuine issue of material fact that the snow and ice was open and obvious and that Souliotis did not breach a statutory duty pursuant to MCL 554.139. In response, Rousaki argued that Souliotis had a statutory duty to remove ice and snow from common areas of the apartment property and she is liable for failing to do so.

Following oral argument, the trial court ruled that the danger of slipping on ice or snow was open and obvious and the condition of the driveway did not create an unreasonable risk of

harm. The court further ruled that Souliotis breached no duty under MCL 554.139 because the driveway was fit for its intended use and plaintiff, along with various other tenants, were able to use the driveway for its intended purpose and to access the garbage cans. Accordingly, the trial court granted summary disposition to Souliotis.

## II. DISCUSSION

The trial court granted summary disposition to Souliotis pursuant to MCR 2.116(C)(10). As this Court explained in *Wheeler v Central Michigan Inns, Inc*, 292 Mich App 300, 304; 807 NW2d 909 (2011):

This Court reviews a trial court's grant or denial of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. [*Id.* At 120.] When reviewing a motion under MCR 2.116(C)(10), the Court considers all the evidence submitted by the parties in the light most favorable to the nonmoving party. [*Id.*] Summary disposition will be granted only where the evidence fails to establish a genuine issue regarding any material fact. *Id.*

“Under common-law negligence principles, a premises owner has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the premises, but not when the condition is ‘open and obvious.’” *Allison v AEW Capital Management, LLP*, 481 Mich 419, 426; 751 NW2d 8 (2008), citing *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). As this Court further explained in *Hoffner v Lanctoe*, 492 Mich 450, 460-461; 821 NW2d 88 (2012):

The possessor of land “owes no duty to protect or warn” of dangers that are open and obvious because such dangers, by their nature, apprise an invitee of the potential hazard, which the invitee may then take reasonable measures to avoid. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection. This is an *objective standard*, calling for an examination of “the objective nature of the condition of the premises at issue.” [Emphasis in original.]

Here, the hazard at issue, the accumulated ice and snow on the driveway, constituted an open and obvious danger. As the photographs clearly demonstrate, the ice and snow was readily observable to an average person with ordinary intelligence. Also, Rousaki has not demonstrated that any aspects of the condition made it unreasonably dangerous. *Lugo*, 464 Mich at 517. Accordingly, Rousaki's claim that Souliotis was negligent for failing to remove the ice and snow fails as a matter of law.

Rousaki asserts that that open and obvious danger doctrine does not apply to shield Souliotis from liability because she claims the driveway on which she fell was unfit for its intended use pursuant to MCL 554.139. “If [Souliotis] had a duty under MCL 554.139(1)(a) or (b) to remove snow and ice from the parking lot, then [Rousaki] could proceed on [her] claim even if [Rousaki's] negligence claim was barred by the ‘open and obvious’ danger doctrine.”

*Allison*, 481 Mich at 425. In other words, liability is not precluded for even an open and obvious danger if the lessor breaches a duty arising under MCL 554.139.

The statute, MCL 554.139, provides, in relevant part:

(1) In every lease or license of residential premises, the lessor or licensor covenants:

(a) That the premises and all common areas are fit for the use intended by the parties.

(b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants wilful or irresponsible conduct or lack of conduct.

“When interpreting a statute, we must ‘ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute.’” *Douglas v Allstate Ins Co*, 492 Mich 241, 256; 821 NW2d 472 (2012), quoting *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002).

Souliotis concedes that the driveway where Rousaki fell was a “common area.” Rousaki maintains that the trial court erred when it ruled that the driveway was fit for its intended use. According to Rousaki, because tenants used the driveway as a walking path to reach the garbage cans, and because the area was covered with ice and snow, it was not fit for its intended use.

In *Allison*, the plaintiff slipped and fell on one to two inches of ice and snow in the parking lot of the apartment complex where he lived. *Allison*, 481 Mich at 423. This Court observed that the intended use of a parking lot is to park vehicles and to walk across to access the vehicles. *Id.* at 424, 429. This Court ruled that a parking lot covered in ice and snow is not fit to walk across and is, therefore, not fit for its intended use under MCL 554.139(1)(a). *Id.*

Our Supreme Court reversed the Court of Appeals’ decision. The Supreme Court specifically considered whether the duty to keep common areas fit for their intended purpose “encompasses the duty to keep the lot free from the natural accumulation of snow and ice.” *Allison*, 481 Mich at 429. With regard to an apartment parking lot, the Court opined:

We agree that the intended use of a parking lot includes the parking of vehicles. A parking lot is constructed for the primary purpose of storing vehicles on the lot. “Fit” is defined as “adapted or suited; appropriate [.]” *Random House Webster’s College Dictionary* (1997). Therefore, a lessor has a duty to keep a parking lot adapted or suited for the parking of vehicles. A parking lot is generally considered suitable for the parking of vehicles as long as the tenants are able to park their vehicles in the lot and have reasonable access to their vehicles. A lessor’s obligation under MCL 554.139(1)(a) with regard to the accumulation of snow and ice concomitantly would commonly be to ensure that the entrance to, and the exit from, the lot is clear, that vehicles can access parking spaces, and that

tenants have reasonable access to their parked vehicles. Fulfilling this obligation would allow the lot to be used as the parties intended it to be used. [*Id.* at 429-430.]

Thus, the Court in *Allison* ruled that a parking lot is intended for parking vehicles and that its intended use includes a tenant's ability to park his or her vehicle and to access the parked vehicle. *Id.*

However, the Court ruled that, even if a lessor's parking lot is covered with ice and snow, it is fit for its intended use if the facts establish that tenants are able to use the lot for that purpose. *Id.* at 430. The Court further explained:

While a lessor may have some duty under MCL 554.139(1)(a) with regard to the accumulation of snow and ice in a parking lot, it would be triggered only under much more exigent circumstances than those obtaining in this case. The statute does not require a lessor to maintain a lot in an ideal condition or in the most accessible condition possible, but merely requires the lessor to maintain it in a condition that renders it fit for use as a parking lot. Mere inconvenience of access, or the need to remove snow and ice from parked cars, will not defeat the characterization of a lot as being fit for its intended purposes.

We recognize that tenants must walk across a parking lot in order to access their vehicles. However, plaintiff did not show that the condition of the parking lot in this case precluded access to his vehicle. The Court of Appeals erred in concluding that, under the facts presented, the parking lot in this case was unfit simply because it was covered in snow and ice. [*Allison*, 481 Mich at 430-431.]

We hold that our Supreme Court's decision in *Allison* is controlling and that the trial court correctly ruled that the reasoning in *Allison* precludes Rousaki's claim under MCL 554.139(1)(a). Here, rather than a parking lot, the area on which plaintiff fell was a driveway, which is generally intended for the ingress, egress and parking of vehicles. We further recognize that a driveway is used to access vehicles and, here, to access the common garbage cans used by the tenants. Similar to *Allison*, it is undisputed that, here, the driveway had at least patches of ice and snow on it when Rousaki fell. However, undisputed facts also showed that the driveway remained fit for its intended purpose despite the natural accumulation of ice and snow. Rousaki herself was able to walk to and deposit her refuse into the garbage can before she fell. There were numerous foot prints around the cans, which demonstrates that other tenants also accessed the garbage cans by traversing the driveway. Further, evidence showed that no tenant, including Rousaki, ever complained or notified Souliotis that they could not use the driveway to access the garbage cans. In light of this evidence, there is no genuine issue of material fact that the driveway was fit, and was indeed used, for its intended purpose.

Again, MCL 554.139(1)(a) does not require a lessor to maintain a common area in the most accessible or ideal condition. *Allison*, 481 Mich at 430. Particularly in places like Michigan, which are prone to the accumulation of ice and snow, the Legislature did not intend to hold a lessor to a standard that would require common outdoor areas to be free of such

accumulations at all times. *Allison* instructs that this is simply not required by the statute and that a lessor is not liable for slip and fall claims arising out of these kinds of commonplace weather-related conditions.<sup>1</sup> For these reasons, the trial court correctly granted summary disposition to Souliotis.<sup>2</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

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<sup>1</sup> In response to our dissenting colleague, we respectfully note that our holding does no more, nor less than our Supreme Court holds in *Allison*. As in *Allison*, here, while ice and snow accumulated in a common area, Rousaki failed to present evidence that tenants were unable to use the driveway for its intended purpose and, therefore, there cannot “be reasonable differences of opinion regarding [this] fact . . . .” *Allison*, 481 Mich at 430. Therefore, just as the Supreme Court ruled in *Allison*, Rousaki’s claim fails as a matter of law. *Id.*

<sup>2</sup> We further observe that, to the extent Rousaki asserts a claim pursuant to MCL 554.139(1)(b), it is misplaced. As our Supreme Court also ruled in *Allison*, subsection (1)(b) does not apply to common areas like the one at issue here. *Allison*, 481 Mich at 432. We further hold that, while Rousaki cites MCL 125.536 for the claim that Souliotis left unabated an unsafe condition on the property, the statute clearly refers to the dwelling itself.

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Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

SHAPIRO, J. (*dissenting*).

I dissent from the majority's conclusion that *Allison v AEW Capital Mgt, LLP*, 481 Mich 419; 751 NW2d 8 (2008) mandates dismissal of plaintiff's claim brought under MCL 554.139(1)(a). The statute provides:

(1) In every lease or license of residential premises, the lessor or licensor covenants:

(a) That the premises and all common areas are fit for the use intended by the parties.

This duty is not to be seen narrowly. Indeed, the Legislature saw fit to include language to the contrary in the statute, stating: "[t]he provisions of this section shall be liberally construed." MCL 554.139(3).

In *Allison*, the plaintiff tenant fell while walking through the parking lot of the building. The Supreme Court concluded that a parking lot is fit for its intended use where "the tenants are able to park their vehicles and have reasonable access to their vehicles." 481 Mich at 429. The *Allison* court was careful to note that whether or not the lot was fit pursuant to that standard constituted a *factual* determination. It considered the factual record and found that plaintiff had failed to submit sufficient evidence to create a question on that issue of fact. The Court noted that the only evidence to suggest a lack of fitness was that the lot had an inch or two of snow on it and stated that "under the facts presented in this record we believe that there could not be reasonable differences of opinion regarding the fact that the tenants were able to enter and exit the parking lot, to park their vehicles therein, and to access those vehicles." *Id.* at 430.

The majority errs by ignoring this analysis in *Allison*. The *Allison* Court could have concluded as a matter of law that snow and ice on residential parking lots or walkways cannot interfere with the areas intended use. However, it did not do so. Instead, it considered whether the record before it created a question of fact on the issue. The majority, however, suggests by implication, if not explicitly, that the Supreme Court in *Allison* simply decided to insert the words “except for snow and ice” into the text of the statute written and passed by the Legislature which did not include any such limitation and which by its own terms is to be “liberally construed.”<sup>1</sup> While our Supreme Court has demonstrated a clear unwillingness to impose such *common law* duties, I decline to conclude, as the majority does, that the Supreme Court would engage in such a usurpation of *legislative* power.

We must therefore, in keeping with *Allison*, determine whether there is sufficient evidence to establish a question of fact in this case regarding the “fitness” of the relevant area for its “intended use.” We are not privy to the record in *Allison*, but the description provided by the Supreme Court demonstrates that it bears no resemblance to the evidence submitted in this case that demonstrates conditions and uses well beyond the ones in that case.

In this case, it is uncontested that the area where plaintiff fell was not a parking lot nor merely a “driveway” as the majority suggests. According to the defendant-landlord’s sworn testimony, it serves as the only path provided for tenants to walk from the single door of the building to the large outdoor garbage can. The photographs in the record reveal that the path is ice-covered and runs from the front of the building to the garbage can placed near the back of the building. They also reveal that the condition substantially worsens as one approaches the garbage can itself which is surrounded by several inches of uneven frozen snow and ice. This worsened condition around the garbage can was explained by the landlord’s testimony that when the driveway was shoveled, the snow would be piled up around the garbage can.

Thus, having traversed an icy path with garbage bag in hand, a tenant must then negotiate several inches of uneven frozen snow and ice precisely at the area where a person would stand as they shift their weight, lift the can’s lid, raise a garbage bag to a height above the can, drop it in the can and replace the lid while readjusting their weight. Indeed, this is precisely the scenario described by plaintiff in her testimony as she described why she fell:

“The problem is when you lift a big bag with trash and put it in a can, then your balance is not so good or as good as it was when you walk and you are stable and you don’t have any weight on you, and when you have a weight high, when you are not that stable, so , and when you just put [the bag] in the can and you lift your hand back and try to re-stabilize and walk away – and that was the time that I fell because I did not re-stabilize well when I [put] the garbage in.”

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<sup>1</sup> The majority’s holding is also contrary to a published opinion of this Court. In *Hadden v McDermitt Apartments*, 287 Mich App 124, 182; 782 NW2d 800 (2010) we concluded that “*Allison* made it clear that an accumulation of snow and ice could implicate a landlord’s duty to keep the premises and all common areas fit for the use intended.”

The “intended use” of this path was for people to carry garbage bags and the “intended use” of the area immediately adjacent to the garbage can was for tenants to carry out the series of actions involving substantial shifts of weight by which someone puts a bag of garbage in a trash can. The question is whether a reasonable jury could conclude that a common-area used for such actions is not fit for its intended purpose where the path is ice-covered and where the area directly around the garbage can is surrounded by uneven piles of snow and ice.

I conclude that it is quite within the realm of reasonableness for a jury upon consideration of the evidence, to conclude that the pathway to the garbage can and the area immediately around it were not fit for their intended use.

Reaching this conclusion does not mean that that plaintiff is entitled to a judgment against the defendant; only that under the law established by the legislature she is entitled to her day in court and to have this factual question determined by a fact-finder.

/s/ Douglas B. Shapiro