IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CHAD MITTENDORF,	:	APPEAL NO. C-170490 TRIAL NO. A-1604136
and	:	
BARBARA MIDDENDORF,	:	*JUDGMENT ENTRY.*
Plaintiffs-Appellants,	:	
vs.	:	
GALLENSTEIN INVESTMENTS, LLC,	:	
and	:	
GALLENSTEIN BROTHERS, INC.,	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In one assignment of error, plaintiffs-appellants Chad and Barbara Middendorf claim that the trial court erred when it granted the motion for summary judgment filed by defendants-appellees Gallenstein Investments, LLC, and Gallenstein Brother, Inc., ("Gallenstein defendants"). On February 23, 2015, Chad Middendorf arrived at Koorsen Fire & Security to begin his work day. Koorsen was located on property owned by Gallenstein Investments and maintained by Gallestein Brothers. It had snowed over the weekend and, while the parking lot had been cleared, there was a pile of snow around Middendorf's work vehicle. The parking lot was lit and Middendorf was able to see. As he approached his work vehicle, Middendorf stepped over a patch of ice and into the mound of snow, fell, and was injured.

On appeal, the Middendorfs claim that the trial court erred when it granted the motion for summary judgment filed by the Gallenstein defendants without considering the affidavit of an expert witness who opined that the Gallenstein defendants had breached a duty of care when clearing the lot. But even had the trial court considered the evidence, the outcome would have been the same.

When a danger is open and obvious, a property owner owes no duty of care to individuals lawfully on the premises. *Lattimore v. K & A Mkt., Inc.*, 1st Dist. Hamilton No. C-150753, 2016-Ohio-5295, ¶ 5, citing *Armstrong v. Best Buy Co.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, syllabus. "The rationale underlying this doctrine is 'that the open and obvious nature of the hazard itself serves as a warning. Thus, the owner or occupier may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves.' " *Armstrong* at ¶ 5, quoting *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 644, 597 N.E.2d 504 (1992). "The danger from ice and snow is an obvious danger and an occupier of premises should expect that an invitee on his premises will discover and realize that danger and protect himself against it." *Sidle v. Humphrey*, 13 Ohio St.2d 45, 49, 233 N.E.2d 589 (1968). Regardless of whether the accumulation was natural or unnatural, if the hazard is open and obvious, no duty of care exists. *Murphy v. McDonald's Restaurants of Ohio, Inc.*, 2d Dist. Clark No. 2010 CA 4, 2010-Ohio-4761, ¶ 18.

The trial court properly granted the motion for summary judgment filed by the Gallenstein defendants. The danger of stepping into the snow pile was open and obvious, regardless of how the snow pile was created. We overrule the Mittendorfs' sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and **MILLER, JJ.**

To the clerk:

Enter upon the journal of the court on June 29, 2018

per order of the court _____.

Presiding Judge