Circuit Court for Baltimore County
Case No. 003C15007408

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1171

September Term, 2016

MARGARET MOORE

v.

UNIVERSITY OF MARYLAND,
COLLEGE PARK

Beachley,
Shaw Geter,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: November 21, 2017

On July 10, 2015, the appellant, Margaret Moore, filed a claim in the Circuit Court for Baltimore County against the appellee, the University of Maryland, College Park ("the University"), alleging negligence. She claimed that she had been injured on January 23, 2014 when she slipped[1] on a patch of black ice on a crosswalk on the University's College Park campus.

Because of a heavy winter storm, the University had closed its College Park campus for all day January 21, 2014 and part of January 22. The campus was open on January 23. At some time between 8:30 a.m. and 8:45 a.m. on January 23, the appellant slipped on a patch of black ice as she was proceeding toward Key Hall for the purpose of taking a final examination.

From the outset of this litigation, the precise nature of the appellant's negligence claim has been somewhat ambiguous. Initially, the claim was against not only the University for the condition of the walkways, but also against Jon Hoffman, a professor on the faculty of the University. The appellant claimed that because Professor Hoffman scheduled and then failed to cancel a mandatory examination at a time when it was unsafe for students to be on campus, he was thereby "negligent" for "forcing Plaintiff to be present on campus" notwithstanding "the dangerous weather conditions." The appellant subsequently dismissed the claim against Professor Hoffman on February 9, 2016.

On March 30, 2016, the University filed a Motion for Summary Judgment. The appellant filed her Response on April 12, 2016, and the University filed a Reply on April

[1] Although the appellant's initial complaint spoke of a slip "and fall," she later made it clear that she slipped but caught herself and did not actually fall to the ground.

30, 2016. Because the precise nature of the appellant's complaint was still unclear, Judge John F. Fader II requested clarification from the appellant.

> Specifically, I am attempting to get a handle on just what the Plaintiff is saying by way of summary argument. Is the Plaintiff's argument that because of the weather conditions and the report of icy conditions all over the campus on the day of the slip and fall that it was negligence on the part of the Defendant to have anyone use the University campus that day? Or, if not, just what is the Plaintiff saying?

(Emphasis supplied).

The appellant's Response of May 6, 2016, made the contingent claim that **IF** the University chose not to close down the entire campus, **THEN** it was obligated to see that all of its roads and walkways were safe to walk upon.

Judge Michael J. Finifter conducted a full hearing on the Motion for Summary Judgment on July 28, 2016. On the following day, July 29, he granted summary judgment in favor of the University. He ruled that "Plaintiff has failed to produce evidence that Defendant, UMCP, had actual or constructive notice of a hazardous condition at the site of the Plaintiff's slip and fall." Judge Finifter cited Weisner v. Mayor and City Council of Rockville, 245 Md. 225, 233 (1967), and Deering Woods Condominium Assoc. v. Spoon, 377 Md. 250, 267–68 (2003). This appeal followed.

We hold that Judge Finifter was not in error in granting summary judgment. Judge Finifter had before him the affidavit of William Monan, the Associate Director of Landscape Services for the College Park campus. It pointed out that the campus embraces 1,339 acres, 127 parking lots, 180 buildings, and several miles of roads and sidewalks, including a multitude of crosswalks. During the winter storm of January 2014, Mr. Monan

was "responsible for overseeing all snow removal operations on the College Park campus." During the period of January 21 through January 23, the campus was under a "Snow Emergency" alarm. The affidavit recited:

> Essential snow personnel remain directed toward snow duties until released by my e-mail and phone messages stating the "Emergency" is ended.
>
> 5. As the emails attached to this affidavit as Exhibit 3A demonstrate, my staff was clearing snow and ice starting on January 21st (6 p.m. night shift) through 23rd, and checking sites thorugh the 25th. Outside contractors worked overnight throughout the January 21st and 22nd. In addition to my staff, who were on campus 24/7 on 12 hour shifts from the night of the 21st through the 23rd, all the Facilities Management shops (HVAC, electricians, plumbers, area maintenance, and housekeepers) reported on the morning of the 22nd and 23rd to treat and check areas.

(Emphasis supplied).

With respect to the general area where the appellant's slip allegedly occurred, the affidavit further explained:

> 6. Historically, there have not been any complaints of ice or water ponding at the site where Plaintiff alleges her accident took place. The site is pitched to a degree that would limit ponding. The site is so located that when trucks enter lot W1 it will be plowed and salted and again as the truck leaves. Then, the truck or tractor must reenter the small service lot next to Francis Scott Key where the site is again covered. The sidewalk treatments – both plowing and ice melt also cross this spot from a number of different aspects, therefore, this spot in particular, is receiving up to 4 or 5 plowings or treatments during each snow clearing rotation which could be up to 4 or 5 rotations each 24 hours.

(Emphasis supplied).

In an effort to establish that the University had been placed on notice that the crosswalk where the appellant slipped was dangerous, the appellant relies on the fact that on the afternoon before (January 22), a student had a fall in front of Taliaferro Hall ("the

Taliaferro fall"). At the hearing before Judge Finifter on July 28, 2016, both parties belabored the distance (or the proximity) between the Taliaferro fall and the appellant's slip. Everyone, including Judge Finifter, ultimately settled on a distance of roughly 750 feet. To the appellant it was "a couple of feet"; to the appellee, it was "a couple of football fields."

In any event, the appellant now takes issue with Judge Finifter's factfinding. The appellant's brief recites:

> This is a relatively straightforward case that was erroneously disposed of at the trial level because the judge inadvertently misinterpreted a few hundred feet on a campus map. This is easily remedied by referring to the campus map, which speaks for itself.

(Emphasis supplied).

Based on a different map that was not produced before Judge Finifter, the appellant now claims that the distance involved was not 750 feet but was only 160 feet. The appellant, moreover, argues that that factfinding error was the effective cause of Judge Finifter's grant of summary judgment.

> An enlarged map of the pathway in front of Taliaferro Hall shows that there are approximately one hundred and sixty (160) feet from the location where Ms. Moore slipped and the entrance to Taliaferro Hall. The map, which was created by the Appellee and made available on its website, depicts a key in the lower right hand corner indicating that one inch on the map represents forty (40) feet in real life. Appellant slipped on the pathway outside of Taliaferro (between Taliaferro and Skinner, but considerably closer to Taliaferro), and the map reflects that there are four inches between the accident site and the front courtyard of Taliaferro. Four inches translates to 160 feet, or 53 yards. Respectfully, neither the trial judge nor Appellee's counsel grasped the distances indicated on the map, or the location of Appellant's slip and fall, directly leading to an erroneous summary judgment award.

(Emphasis supplied).

Without for a moment agreeing that this finding as to the difference in distance between the Taliaferro fall and the appellant's slip was critical to Judge Finifter's ultimate decision, we decline to indulge in the appellant's reasoning. Even as to this bit of factfinding, Judge Finifter will be adjudged to have been right or wrong based exclusively on the evidence that was before him. The new map on which the appellant relies was never presented to the circuit court. It was not attached to the appellant's response to the Motion for Summary Judgment. It bears the date of "12/6/2016," well after the hearing was over and the case was finally decided. It was not authenticated and its alleged scale was not verified by any sworn statement. On this piece of new evidence, moreover, appellant's counsel has, with an arrow, indicated the precise location of the appellant's slip. The case before the circuit court has been embellished before us.

It is not our job as an appellate court to engage in de novo factfinding on the basis of new evidence that was not before the trial court. We affirm the decision of Judge Finifter.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED;

COSTS TO BE PAID BY THE APPELLANT.