IN THE COURT OF APPEALS

LORENA MAE RICE and husband ALVIS MICHAEL RICE,	)	KNOX CIRCUIT
	)	C.A. NO. 03A01-9606-CV-00209
Plaintiffs-Appellants	)	
vs.	)	HON. WHEELER ROSENBALM
	)	JUDGE
KNOXVILLE UTILITIES BOARD and RONALD HANSEN,	)	AFFIRMED AND REMANDED
Defendants-Appellees	)	

JOHN R. ROSSON, JR., Knoxville, for Appellants.

DOUGLAS L. DUTTON, Hodges, Doughty and Carson, Knoxville, for Appellee, Knoxville Utilities Board.

JOHN O. THREADGILL, Knoxville, for Appellee, Ronald Hansen.

OPINION

McMurray, J.

This case arose from an accident wherein the plaintiff, Lorena Mae Rice, fell when she stepped on a water meter cover located on the property of the defendant, Ronald Hanson, and allegedly controlled by both Hanson and the Knoxville Utilities Board. The case was dismissed on defendants' motions for summary judgment. This appeal resulted. We affirm the judgment of the trial court.

The appellant has presented a rather verbose and argumentative issue for our consideration. Suffice it to state that the issue in its final analysis is simply a challenge to the action of the trial court in sustaining the motion for summary judgment.

The appellee, Knoxville Utilities Board has presented another issue for our review: "Did the plaintiffs present evidence as required by T.C.A. § 29-20-204 that the defendant KUB had constructive and/or actual notice of the allegedly dangerous condition." By this issue the KUB seeks to invoke the doctrine of governmental immunity as provided in The Governmental Tort Liability Act, T.C.A. §§ 29-20-101, et seq.

KUB is an arm of the City of Knoxville and is thus entitled to the protection of the GTLA if applicable. The defendant, Ronald Hanson is not. Since, however, this is a premises liability action, actual or constructive notice is required in any case. Liability in defective premises cases stems from superior knowledge

of the condition of the premises. McCormick v. Waters, 594 S.W.2d 385, 387 (Tenn. 1980). Accordingly, the plaintiff must prove that the defendant had either actual or constructive notice of the injury-causing condition. This proof may take one of two forms. First, the plaintiff may show that the defendant itself caused or created the condition and, therefore, had notice of it. Sanders v. State, 783 S.W.2d 948, 951 (Tenn. App. 1989); Benson v. H. G. Hills Stores, Inc., 699 S.W.2d 560, 563 (Tenn. App. 1985). Second, the plaintiff may show that the dangerous condition existed for so long that the defendant should have known about it. Chambliss v. Shoney's, Inc., 742 S.W.2d 271, 273 (Tenn. App. 1987); Jones v. Zayre, Inc., 600 S.W.2d 730, 732 (Tenn. 1980).

We must examine the trial court's grant of summary judgment under the standard set forth in Rule 56.03, Tennessee Rules of Civil Procedure. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A trial court faced with a motion for summary judgment is required to consider the motion in the same light as a motion for directed verdict made at the close of the plaintiff's proof, i.e., "the trial court must take the strongest legitimate view of the evidence in favor of the nonmoving party, allow all reasonable inferences in favor of that

party, and discard all countervailing evidence." Byrd v. Hall, 847 S.W.2d 208, 210-11 (Tenn. 1993). Since our review involves only a question of law, no presumption of correctness attaches to the trial court's judgment. Gonzales v. Alman Constr. Co., 857 S.W.2d 42, 44 (Tenn. App. 1993).

Now having established the standard under which we must review this case, we will look to the evidence in support of and against the defendants' motions for summary judgment.

In support of the motions for summary judgment, the defendants rely upon the deposition of the plaintiff, Lorena Mae Rice, the injured party. The record reflects that the plaintiffs' daughter lived on the premises in question and at the time the accident occurred, the plaintiff was leaving the premises after a visit with her daughter. The plaintiff was unable to shed any appreciable light on the issue of the condition of the water meter well or exactly how the accident took place. In her deposition she was asked the following questions and gave the following answers:

* * * *

Q. When you walked into the house, did you see the meter?

A. No, I didn't.

Q. When you came back out did you see it before you fell?

A. No.

Q. Was it raining the day of the accident?

A. I don't really know.

Q. Were there any leaves on the ground that day?

A. I don't know. I didn't pay attention.

Q. As you came out of the house, tell me what happened.

A. I was just telling them "bye", and the next thing I remember, I fell.

Q. Go ahead.

A. And I was down in this — you know, fell down in that hole. It took my shoe off and everything. And my daughter was trying to get to me, you know, to help me out, and then my — she hollered at her husband to come and help. Of course, he had saw when I fell. He come running out there. They both helped me, you know, go sit down, and I went back and sat down, and they tried to get me to go the hospital and I didn't go. I thought I'd be all right.

Q. Was the lid on crooked or was it on straight before you fell?

A. I don't know.

Q. Was the lid on the meter well before you fell?

A. I don't know. All I remember is just falling. I don't even — I don't know what — what happened.

Q. Do you know if you stepped on the meter cover?

A. Yeah, I know it flipped up with me because my foot went down in there. And my foot was on one side, and when I tried to move it knocked my shoe off. And then I'd hurt my leg, couldn't walk, and started hollering. That's when they come out and helped me. That's all I remember.

Q. When you stepped on it, do you know if it was crooked before you stepped on it ...?

A. No, I don't.

Q. Or whether it was on straight?

A. No. I don't know.

* * * *

Q. Do you know of anybody that claims they know anything about the condition of that meter well at any time before the day you fell?

A. No.

Q. Do you know of anybody that knows or claims to know when the meter well or the lid was damaged before the day you fell.

A. No.

In addition to the deposition testimony of Lorena Mae Rice, the movants presented the affidavit of Leonard Webster, claims investigator for KUB. Mr. Webster testified that the meter was read on September 8, 1993, October 7, 1993, and November 5, 1993 by Jack Ballew. The accident complained of occurred on November 4, 1993.

Plaintiffs responded with the affidavit of Judy Hoover and Sheldon Hoover. Their testimony is set out verbatim as follows:

1. That they are over eighteen years of age.

2. That they rented the house located 801 Watauga Avenue [sic], Knoxville, Tennessee [the address

where the accident occurred] from the defendant, Ronald Hansen.

3. That they rented the house from April 1993 through April 1994.

4. That they observed the defendant, Ronald Hansen, inspecting his premises on numerous (bi-weekly) occasions including the house and the yard.

5. Further affiants saith not.

Lastly, the deposition of Judy Hoover, plaintiff Lorena Mae Rice's daughter, was placed before the court. In her deposition, Ms. Hoover deposed in material part as follows:

* * * *

Q. Before the day your mother fell in the meter well there in front of the house at 801 Watauga, had you ever looked at that meter well or the lid?

A. No.

Q. So you have no opinion about the condition of the meter well or the lid before the day your mother fell; is that true?

A. I had no idea.

Q. All right. I take it, then, that you never reported any problem with that meter well to KUB during the time you lived there until after your mother fell, is that true?

A. That's true.

* * * *

Ms. Hoover further testified that after the accident had occurred, she noticed that a small portion of the concrete lip had broken off the meter well. She stated that she had no information as to when the break occurred in the concrete. Ms. Hoover was unable to shed further light relating to a defect either in the meter well or the meter well lid.

The plaintiffs in their brief have failed to make any references to the record which would direct our attention to evidence providing a basis for notice, actual or constructive, chargeable to either of the defendants. We have examined the record in its entirety and have found none.

The plaintiffs seem to base their case on the proposition that summary judgments are improper in negligence cases, citing Lynch v. City of Knoxville, an unreported opinion of this court by Judge Franks, opinion filed at Knoxville, May 22, 1995. We agree that summary judgments are not generally appropriate in negligence cases, however, they are and should be granted under proper circumstances.

> The Supreme Court initially expressed some reluctance concerning the use of summary judgments in negligence cases. Bowman v. Henard, 547 S.W.2d 527, 530 (Tenn. 1977). However, it has now held unequivocally that summary judgments are not disfavored procedural devices and that they may be used to conclude any case that can and should be resolved on legal issues alone. Byrd v. Hall, 847 S.W.2d 208, 210 (Tenn. 1993). Thus, our role on

> appeal is not to dwell on the nature of the cause of action but rather to determine whether the requirements of Tenn. R. Civ. P. 56 have been satisfied. Cowden v. Sovran Bank/Central South, 816 S.W.2d 741, 744 (Tenn. 1991); Hill v. City of Chattanooga, 533 S.W.2d 311, 312 (Tenn. App. 1975).

Mansfield v. Colonial Freight Sys., 862 S.W.2d 527 (Tenn. App. 1993).

The moving party is entitled to summary judgment when, after being given a reasonable opportunity to substantiate its claims, the nonmoving party cannot establish an essential element of its case. Byrd v. Hall, supra. Whether the land owner created a dangerous or defective condition or had either actual or constructive notice of a dangerous condition is an essential element of a premises liability action against the owner. Jones v. Zayre, Inc., 600 S.W.2d 730, 732 (Tenn. App. 1980). Here the plaintiffs have completely failed, after reasonable opportunity, to demonstrate either that the defendants caused or created the condition and, therefore, had notice of it [Sanders v. State, supra and Benson v. H. G. Hills Stores, Inc, supra], or to show that the dangerous condition existed for so long that the defendants should have known about it. Chambliss v. Shoney's, Inc., supra, and Jones v. Zayre, Inc., supra.

Since in this case, under the undisputed facts before the court, an essential element of the plaintiffs' case is absent, it may be appropriately stated "that there is no genuine issue as to

any material fact and that the moving party is entitled to a judgment as a matter of law."

We affirm the judgment of the trial court. Costs are taxed to the appellant and this case is remanded to the trial court for the collection below.

_____
Don T. McMurray, J.

CONCUR:

_____
Houston M. Goddard, Presiding Judge

_____
Charles D. Susano, Jr., Judge

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KNOXVILLE UTILITIES BOARD and RONALD HANSEN, Defendants-Appellees	)	AFFIRMED AND REMANDED

ORDER

This appeal came on to be heard upon the record from the Circuit Court of Knox County, briefs and argument of counsel. Upon consideration thereof, this Court is of the opinion that there was no reversible error in the trial court.

We affirm the judgment of the trial court. Costs are taxed to the appellant and this case is remanded to the trial court for the collection of costs below.

PER CURIAM