STATE OF MINNESOTA

COUNTY OF SCOTT

DISTRICT COURT

FIRST JUDICIAL DISTRICT

File No. **70-CV-16-8424**

Tara Charon,
Plaintiff,

v.

Savage School District ISD #719,

Defendant.

ORDER AND MEMORANDUM

The above-entitled matter came before the Honorable Rex D. Stacey, Judge of District Court, on December 20, 2016, at Scott County Justice Center, Shakopee, Minnesota.

Adriel B. Villarreal appeared on behalf of the Plaintiff.

Mark A. Fredrickson appeared on behalf of the Defendant.

Based upon the proceedings, this Court makes the following:

1. Defendant's motion for summary judgment is **GRANTED**.
2. The attached memorandum is incorporated herein.

Dated: March 13, 2017

BY THE COURT:

Rex D. Stacey
Judge of District Court

JUDGMENT

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE March 16th, 2017
VICKY L. CARLSON
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY

FILED
MAR 16 2017

MEMORANDUM

Plaintiff slipped and fell on—by her own admission—glare ice outside an entrance to Jeffers Pond Elementary School. Defendant moves for summary judgment, arguing that the mere-slipperiness rule, among other theories, precludes Plaintiff's claims.

A motion for summary judgment shall be granted when "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 either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. The moving party has the burden to show that summary judgment is proper. *Valspar Refinish Inc., v. Gaylord's Inc.*, 764 N.W.2d 359, 364 (Minn. 2009). A party "may not rest upon the mere averments or denials of the adverse of party's pleading but must present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05. "Mere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Bob Useldinger & Sons, Inc. v. Hangsleben,* 505 N.W.2d 323, 328 (Minn. 1993).

Generally, negligence is defined as the failure "to exercise such care as persons of ordinary prudence usually exercise under such circumstances." *Flom v. Flom*, 291 N.W.2d 914, 916 (Minn. 1980). "The essential elements of a negligence claim are: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury was sustained; and (4) breach of the duty was the proximate cause of the injury." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995). If the record contains no facts giving rise to an issue for trial on any of these essential elements, summary judgment is proper. *Id.*

Under the mere-slipperiness rule, a plaintiff does not establish a cause of action against a governmental entity for injuries sustained in a fall on newly formed glare ice if "nothing but the slipperiness" causes the accident. *Henkes v. City of Minneapolis*, 44 N.W.1026, 1027 (1890). The rule does not grant immunity, but limits the duty of care. *Rodenwald v. State Dep't of Natural Res.*, 777 N.W.2d 535, 538 (Minn. Ct. App. 2010). "[T]here is neglect of duty only if the governmental entity permits an accumulation of snow and ice for such a time that dangerous ridges, irregularities, or other obstructions to travel develop." *Id.*

As a school district, the mere-slipperiness rule applies to Defendant. But there are exceptions to the rule; of issue here is the "for-profit" exception. If a municipality operates a building for profit, the mere-slipperiness rule is inapplicable. *Bufkin v. City of Duluth*, 291 N.W.2d 225, 227 (Minn. 1980). If, however, a fee is charged only to defray operational costs, "there is no basis for departing from the mere-slipperiness rule." *Doyle v. City of Roseville*, 524 N.W.2d 461, 464 (Minn. 1994).

In *Doyle*, the plaintiff slipped and fell in a school parking lot when leaving a hockey game. *Id.* The supreme court found that "there is no evidence—nor even an allegation—that the city operated the ice arena for profit or that the admission fee was anything other than a user fee designed to defray part of the cost of operation." *Id.* at 463-64. Finding that the mere-slipperiness rule applied, the Court upheld summary judgment in favor of the school. *Id.* at 464.

While Plaintiff alleges Defendant operates Kids' Company for a profit, no evidence has been presented tending to prove that Defendant endeavored to derive a profit from Kids' Company. Plaintiff points only to the fees charged by Defendant for the

service. But this says nothing about profit—Plaintiff has not provided evidence regarding total operations costs, revenue, etc. The school district is not renting out facilities to Kids' Company for a profit, but is instead offering a statutorily authorized "school-age care program for children," as part of its community education program. Minn. Stat. § 124D.19.

Plaintiff requests a continuance under Minn. R. Civ. P. 56.06 to allow for more discovery on the school's operation of Kids' Company. "An affidavit filed pursuant to rule 56.06 must be specific about the evidence expected, the source of discovery necessary to obtain evidence, and the reasons for the failure to complete discovery to date." *Molde v. CitiMortgage, Inc.*, 781 N.W.2d 36, 45, (Minn. Ct. App. 2010) (internal quotation omitted). A district court considers two factors on a rule 56.06 motion: 1) whether the party is "seeking further discovery in the good faith belief that material facts will be uncovered" and 2) whether "the party has been diligent in obtaining or seeking discovery." *Id.* "[T]here is a presumption in favor of granting continuances to allow sufficient time for discovery prior to rule on a motion for summary judgment." *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226 (Minn. 2006).

Plaintiff failed to submit an affidavit pursuant to rule 56.06. "Failure to submit an affidavit, by itself, justifies the district court's decision to rule on the motion without granting relief under rule 56.06." *Molde*, 781 N.W.2d at 45. The issue of further discovery is raised only in plaintiff's memorandum. And even in the memorandum, there is no discussion of Plaintiff's reasons for failing to complete discovery on this matter—considering the century-long history of the mere-slipperiness rule, and that Defendant is a school, it is apparent that the rule would be at issue. Notably, at the motion hearing,

Plaintiff stated she was aware of the mere-slipperiness rule at the outset of the case. Failure to comply with rule 56.06 alone justifies denying the continuance request, but it appears Plaintiff did not diligently seek discovery during the discovery period. The request for relief under rule 56.06 must be denied.

Plaintiff has failed to show a genuine issue of material fact regarding Defendant's constricted duty under the mere-slipperiness rule. Summary judgment is appropriate.