**AFFIRM and Opinion Filed March 10, 2026**

**In The**
**Court of Appeals**
**Fifth District of Texas at Dallas**

**No. 05-25-00572-CV**

**MIGUEL ANGEL MUNOZ SANCHEZ, Appellant**
**V.**
**LA HACIENDA, L.L.C., Appellee**

**On Appeal from the 191st Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DC-24-02339**

# MEMORANDUM OPINION

Before Justices Goldstein, Barbare, and Lee
Opinion by Justice Lee

The Texas Supreme Court has repeatedly described a premises owner's duty as one to make safe or warn against any concealed conditions posing an unreasonable risk of harm of which the premises possessor is, or reasonably should be, aware but the invitee is not.[1] Naturally accumulating ice does not create a condition posing an unreasonable risk of harm.[2] And when a condition is known to the invitee, the

[1] *Austin v. Kroger Tex., L.P.*, 465 S.W.3d 193, 203 (Tex. 2015).

[2] *Scott and White Memorial Hosp. v. Fair*, 310, S.W.3d 411, 412 (Tex. 2010).

premises owner is not in a better position to discover it. Therefore, the condition no longer poses an unreasonable risk of harm.[3]

Miguel Angel Munoz Sanchez alleges injuries resulting from a fall while descending outdoor stairs from his second-floor apartment during, or in the immediate aftermath of, an ice and freezing-rain storm. Appellee La Hacienda, LLC was Sanchez's landlord and owner of the apartment complex. Sanchez presents authority from other jurisdictions rejecting or refining the natural accumulation rule and requests that we not "blindly" apply Texas Supreme Court precedent to his claims. We decline the invitation to do so. Consequently, we affirm the trial court's summary judgment for La Hacienda.

**Background**

Sanchez sued La Hacienda alleging that he slipped on an icy staircase at an apartment building owned and operated by La Hacienda and fell backwards, causing him to suffer severe injuries to his head, back, and neck. He asserted claims for premises liability and, alternatively, negligent activity.

La Hacienda filed a traditional and no-evidence motion for summary judgment, relying on Sanchez's petition and excerpts of Sanchez's deposition testimony for evidentiary support. The latter reflected that Sanchez testified that he was descending the apartment building staircase on February 24, 2022 and slipped because the "second step . . . was wet." He said he fell because the steps were

[3] *Austin*, 465 S.W.3d at 203.

slippery and acknowledged that all the steps were slippery on account of ice, which was present on the stairs due to a winter storm. When asked whether the ice on the stairs was due to the freezing rain that had been falling "or some other cause," Sanchez answered, "The - - the rain that was falling." He said there was no problem with the handrail and that, other than the ice, there were no defects or problems with the stairs.

Based on this evidence, La Hacienda argued that it was entitled to summary judgment based on Supreme Court precedent – *Scott and White Memorial Hospital v. Fair*[4] – providing that naturally occurring ice does not pose an unreasonable risk of harm as a matter of law. Further, it argued that Sanchez's negligent activity cause of action was precluded because there was no evidence he was injured by any contemporaneous activity by La Hacienda.

Sanchez filed a response to the summary judgment motion, arguing that *Fair* was distinguishable because he was injured "during the midst of a two day winter emergency," where La Hacienda made no effort to protect residents "during the ongoing and deteriorating weather emergency," while in *Fair* the defendant hospital "had limited advance notice of a storm of unknown severity." Sanchez also argued he had "a necessary use of the premises in question as it was his only means of ingress and egress to his second floor apartment."

[4] 310 S.W.3d 411 (Tex. 2010).

Following a hearing, the trial court granted La Hacienda's motion and rendered a summary judgment for La Hacienda. This appeal followed.

**Discussion**

In this appeal, Sanchez challenges the summary judgment in three[5] main issues: whether (1) limits should be fashioned on *Fair*'s natural accumulation rule to address circumstances not present in that case, (2) "necessary use" should be recognized as an exception to the natural accumulation rule, and (3) he has raised a genuine issue of material fact as to his claim for negligent activity.

*Summary judgment standard*

We review a summary judgment de novo. *Trial v. Dragon*, 593 S.W.3d 313, 316 (Tex. 2019). When a motion for summary judgment contains grounds for both a traditional summary judgment and no-evidence summary judgment, we generally consider the no-evidence ground first. *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004).

A party, after adequate time for discovery, may move for summary judgment without presenting evidence on the ground that there is no evidence of one or more essential elements of a claim or defense on which the adverse party has the burden of proof. TEX. R. CIV. P. 166a(i).[6] To defeat a no-evidence motion, the nonmovant

[5] Although Sanchez presents a somewhat different set of four issues in the "issues presented" section of his brief, we will respond to the issues as presented in the argument section of his brief.

[6] Here and throughout this opinion, we cite, discuss, and apply the former rule 166a (effective Sept. 1, 1997 to Feb. 28, 2026) because La Hacienda's summary judgment motion was filed prior to March 1, 2026.

must produce evidence raising a genuine issue of material fact on the essential elements of the claim or defense challenged. *Ridgway*, 135 S.W.3d at 600. A nonmovant raises a genuine issue of material fact if it produces more than a scintilla of evidence establishing the existence of the challenged element. *Id.* If the nonmovant fails to produce more than a scintilla of evidence, there is no need to determine whether the movant established it was entitled to summary judgment on those claims or defenses under traditional grounds. *Id.*

A traditional motion for summary judgment requires the moving party to show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Lujan v. Navistar, Inc.*, 555 S.W.3d 79, 84 (Tex. 2018). If the movant carries this burden, the burden shifts to the nonmovant to raise a genuine issue of material fact. *Lujan*, 555 S.W.3d at 84. We take evidence favorable to the nonmovant as true, and we indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Ortiz v. State Farm Lloyds*, 589 S.W.3d 127, 131 (Tex. 2019).

A defendant is entitled to summary judgment on a plaintiff's cause of action if the defendant conclusively negates at least one essential element of the plaintiff's cause of action or conclusively establishes all the elements of an affirmative defense as a matter of law. *KCM Fin. LLC v. Bradshaw*, 457 S.W.3d 70, 79 (Tex. 2015). We must affirm the summary judgment if any ground asserted in the motion, and

preserved for appellate review, is meritorious. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 157 (Tex. 2004).

Although we generally first review the trial court's judgment under the no-evidence standard, *see supra*, we will first address the traditional grounds "if the court is required to affirm the trial court's ruling on traditional grounds." *Gibson v. Stonebriar Mall, LLC*, No. 05-17-01242-CV, 2019 WL 494068, at *5 (Tex. App.—Dallas Feb. 8, 2019, no pet.) (mem. op.). The Supreme Court has held that whether a condition on a premises owner's property – like the natural accumulation of ice at issue here – poses an unreasonable risk of harm is a "matter of law" determination. *Id.* Accordingly, we will address the traditional motion first.

*Premises liability*

Premises liability is a special form of negligence in which the duty owed to the plaintiff depends on the plaintiff's status on the premises at the time of the incident. *Fair*, 310 S.W.3d at 412. The plaintiff is generally classified as an invitee, licensee, or trespasser. *Mellon Mortg. Co. v. Holder*, 5 S.W.3d 654, 655 (Tex. 1999). An invitee is one who enters on another's land with the owner's knowledge and for the mutual benefit of both. *Callahan v. Vitesse Aviation Services, LLC*, 397 S.W.3d 342, 351 (Tex. App.—Dallas 2013, no pet.). The parties agree that, as a tenant of La Hacienda, Sanchez was an invitee.

Premises owners and operators owe a duty to keep their premises safe for invitees against conditions on the property that pose unreasonable risks of harm.

*Brinson Ford, Inc. v. Alger*, 228 S.W.3d 161, 162 (Tex. 2007). This duty, however, does not render the premises owner or operator an insurer of the invitee's safety. *See Wal–Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934, 936 (Tex. 1998). The elements of a premises liability cause of action when the injured party is an invitee are: (1) actual or constructive knowledge by the owner or occupier of a condition on the premises; (2) that the condition posed an unreasonable risk of harm; (3) that the owner or occupier did not exercise reasonable care to reduce or eliminate the risk; and (4) that the owner's or occupier's failure to use such care proximately caused the plaintiff s injury. *See CMH Homes, Inc. v. Daenen*, 15 S.W.3d 97, 99–100 (Tex. 2000).

In *Fair*, the Supreme Court concluded that "naturally occurring ice that accumulates without the assistance or involvement of unnatural contact is not an unreasonably dangerous condition sufficient to support a premises liability claim." *Fair*, 310 S.W.3d at 414. A natural accumulation of ice is one that accumulates as a result of an act of nature, and an unnatural accumulation refers to causes and factors other than inclement weather conditions, that is, to causes other than the meteorological forces of nature. *Id.* at 415.

*Analysis*

Sanchez's deposition testimony was clear that the ice he slipped on resulted from "the rain that was falling." He said there was no issue with the handrail or any other defects on the stairs. The summary judgment record established that the ice

that caused Sanchez to slip and wall was in its natural state. Thus, the summary judgment evidence established that the ice in question was a naturally occurring accumulation that did not pose an unreasonable risk of harm, and La Hacienda therefore owed Sanchez no duty. *See Fair*, 310 S.W.3d at 419; *Gibson*, 2019 WL 494068, at *6. Accordingly, we conclude the trial court properly granted La Hacienda's traditional motion for summary judgment as to Sanchez's premises liability claim.

In reaching this conclusion, we necessarily reject Sanchez's arguments to the contrary. In his first issue, he contends that *Fair* does not apply because the ice in that case resulted from "an overnight ice storm in West Texas that the hospital had limited time to anticipate and the storm was of unknown severity," whereas Sanchez was injured "in the midst of a 48 hour weather emergency that was still unfolding when [he] was injured" and "[La Hacienda] knew the dangerous condition was actively forming and worsening as opposed to a condition which formed in advance."

We first observe that the summary judgment evidence does not support Sanchez's characterization of the facts in this case. Nothing before us indicates La Hacienda "knew the dangerous condition was actively forming and worsening as opposed to a condition which formed in advance." And the only evidence before us relating to the duration or severity of the storm was Sanchez's deposition testimony that freezing rain began falling at some unspecified point on February 23, the day

before he was injured. But regardless of the facts before us, nothing in *Fair* suggests the duration or severity of the storm was legally significant. Instead, the court reasoned that ice "results from precipitation beyond a premises owner's control" and that invitees "are at least as aware as landowners of the existence of [ice] that has accumulated naturally outdoors and will often be in a better position to take immediate precautions against injury." *Fair*, 310 S.W.3d at 414. And further, the court was concerned that "[r]equiring premises owners to guard against wintery conditions would inflict a heavy burden because of the limited resources landowners likely have on hand to combat occasional ice accumulations." *Id.*

Sanchez further attempts to distinguish *Fair* by relying on cases from other jurisdictions. We decline his invitation to depart from Texas Supreme Court precedent to follow these other jurisdictions. He cites *Goodwin v. Derryberry Co.*, 553 So. 2d 40, 43 (Miss. 1989), in arguing that a premises owner's knowledge of accumulated ice should create a jury question. Mississippi law draws a distinction between natural conditions immediately adjacent to a business's entrance/exit and those on remote areas of premises. *See Fulton v. Robinson Indus., Inc.*, 664 So.2d 170, 175 (Miss. 1995). Nothing in *Fair* or subsequent Texas cases entertains such a distinction. The plaintiff in *Fair* was not walking in a remote part of the hospital premises when he fell but was walking on the road that separated the parking lot from the hospital.

Similarly, Sanchez directs us to *Kuykendall v. Newgent*, 504 S.W.2d 344, 345 (Ark. 1974), where the plaintiff slipped on ice that had been present in an open restaurant's delivery entrance for 18 to 20 hours; he was aware of the ice but unaware the entrance had as much "slope" as it did. The Supreme Court of Arkansas concluded that "the landowner should have anticipated that the dangerous condition would cause physical harm to one required to use the entrance way notwithstanding the known or obvious danger." *Id.* at 346. Even supposing such an exception were cognizable under Texas law, the facts before us would not call for its application. Nothing before us indicates for how long the ice had been present on the stairs or that ice may have been obscuring an unusual "slope" or other similar condition. Further, an apartment building's staircase is not analogous to an open restaurant's entrance for purposes of weighing the burdens imposed by a tort duty or determining who might be in a better position to take immediate precautions against injury.[7]

Accordingly, we reject Sanchez's contentions that *Fair* does not apply under the circumstances present in this case and decline his invitation to follow other jurisdictions. We overrule his first issue.

In his second issue, Sanchez argues the necessary use exception applies in this case. That exception to the open-and-obvious doctrine applies when the facts

[7] We note that the Supreme Court of Arkansas came to a different conclusion on facts more like those before us. *See Kilbury v. McConnell*, 438 S.W.2d 692, 694 (Ark. 1969) (court stated it could not "say that a landlord owes the duty to remove such temporary hazards as a natural accumulation of ice and snow from a common stairway").

demonstrate that (1) it was necessary that the invitee use the unreasonably dangerous premises and (2) the landowner should have anticipated that the invitee was unable to avoid the unreasonable risks despite the invitee's awareness of them. *Austin*, 465 S.W.3d at 207; *see also SandRidge Energy, Inc. v. Barfield*, 642 S.W.3d 560, 568 (Tex. 2022). Sanchez's argument again relies on a mischaracterization of the summary judgment record. Nothing before us shows that the staircase in question was the sole means of ingress and egress from Sanchez's apartment as he asserts or that he otherwise needed to use the staircase. But regardless of the facts, again, "naturally occurring ice that accumulates without the assistance or involvement of unnatural contact is not an unreasonably dangerous condition sufficient to support a premises liability claim." *Fair*, 310 S.W.3d at 414 (emphasis added). Thus, the necessary use exception has no application here, where the natural accumulation of ice does not present an unreasonable risk of harm.

The Austin Court of Appeals dealt with a similar question in *Almazon v. Amli Residential Properties Ltd. P'ship*, No. 03-08-00297-CV, 2009 WL 4456141, at *--3 (Tex. App.—Austin Dec. 3, 2009, no pet.) (mem. op.), where a tenant slipped and fell on ice that had accumulated in a common area of her apartment complex due to frozen precipitation. The tenant invoked, among other things, *Parker v. Highland Park, Inc.*, 565 S.W.2d 512, 515 (Tex. 1978) (adopting a form of the necessary use exception in another context), in arguing that she "was a desperate tenant trying to return to her home on a treacherous night when she could safely go nowhere else."

The court of appeals rejected this argument, explaining that "the law remains that the condition about which Almazon complains—the natural accumulation of ice—is not unreasonably dangerous for purposes of premises liability." *Almazon*, 2009 WL 4456141, at *3. And "[t]o hold otherwise would be to subvert the well-established principle that the duty a premises owner owes to its invitees is not that of an insurer." *Id.* So too here.

As La Hacienda argues, natural winter conditions sometimes make it impossible to prevent all accidents. And "[t]he plaintiff is in a much better position to prevent injuries from ice or snow because the plaintiff can take precautions at the very moment the conditions are encountered." *Fair*, 310 S.W.3d at 414 (quoting *Eiselein v. K–Mart, Inc.*, 868 P.2d 893, 898 (Wyo. 1994)). La Hacienda did not cause the ice on the stairs, nor was it the insurer of Sanchez's safety. Sanchez knew about the ice and descended the stairs anyway. He was in the best position to take precautions for his own safety. We overrule Sanchez's second issue.

Finally, Sanchez contends he has raised more than a genuine issue of material fact as to his negligent activity claim. He argues La Hacienda's failure to take any remedial actions to improve the safety of the staircase may constitute negligence. We disagree. When a claim does not result from contemporaneous activity, the invitee has no claim for negligent activity – his claim sounds exclusively in premises liability. *Austin*, 465 S.W.3d at 215. Sanchez alleges no contemporaneous activity but complains only of a condition on the property: the icy stairs. Accordingly, we

conclude the trial court did not err in rendering summary judgment for La Hacienda on Sanchez's negligent activity claim. We overrule his final issue.

**Conclusion**

We affirm the trial court's judgment.

/Mike Lee/
MIKE LEE
JUSTICE