

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FOURTH DIVISION
February 2, 2012

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KRISTOPHER McCARTHY,)	
)	Appeal from the
Plaintiff-Appellant,)	Circuit Court of
)	Cook County.
v.)	
)	09 L 000512
R&M HOLDINGS & QUALITY, a Colorado)	
limited liability company and QUALITY)	
CONTROL CORP., an Illinois Corporation,)	The Honorable
)	Drella C. Savage,
Defendants-Appellees.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

ORDER

HELD: A claim alleged in a second amended complaint in an action for negligence for violations of sections PM-301.3, PM-302.1 and 302.6 of the BOCA National Property Maintenance Code (BOCA National Property Maintenance Code § PM-301.3, PM-302.1 and PM302.6 (1990)), as adopted in section 15.24.010(A) of the Municipal Code of the Village of Harwood Heights (Harwood Heights Village, Ill., Municipal Code ¶ 15.24.010(A) (1995)), was improperly dismissed pursuant to section 2-619(a)(4) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(4) (West 2010)), where a prior summary judgment was granted only on other claims in the first amended complaint for ordinary negligence and violations of section 15.24.100 of the Municipal Code of the Village of Harwood Heights (Harwood Heights Village, Ill., Municipal Code ¶ 15.24.100

(1995)).

¶1 BACKGROUND

¶2 The instant cause of action was brought by plaintiff, Kristopher McCarthy, for injuries he suffered in a slip and fall accident on ice in a parking lot owned and operated by defendants. Defendant Quality Control Corporation operated Cosco from the premises. Plaintiff was employed by Cosco. Cosco is an office supply company, specializing in rubber stamps and signs. Defendant R&M Holdings, LLC, owned the commercial building located at the site of the accident, 7315 West Wilson Avenue in Harwood Heights, Illinois.

¶3 On December 5, 2007, close to 6:00 p.m., plaintiff was leaving Cosco at the end of the work day when plaintiff fell near the back of Cosco's parking lot. Cosco's parking lot was adjacent to the Cosco building. That day plaintiff parked in the parking lot behind Harwood Heights Auto Body because the Cosco employees were instructed to use that lot as an auxiliary lot when Cosco's lot was full. Whenever Cosco's main lot was full, plaintiff would park in the other lot, and at the end of the work day would walk through Cosco's lot to get to his car in the other lot. The Cosco building had a downspout to drain water from the roof, which was affixed to the building but pointed in the direction of Cosco's parking lot, thereby directing any overflow from the roof directly onto the Cosco lot.

¶4 On this date, as plaintiff walked through Cosco's lot on the way to his car, he walked on the side closer to Harwood Heights Auto Body. Plaintiff had a coat on and was wearing contact lenses. It was cold and there was snow on the ground. It snowed throughout the day. Plaintiff saw snow all over the lot in the morning. Plaintiff could not recall whether there was any more snow on the lot, or whether the lot had been plowed at the end of the day. Plaintiff was just

1-10-2778

walking when he slipped and fell. Plaintiff did not see ice at first because snow was covering the ice, but realized after he had fallen that it was the ice that caused him to fall. From what plaintiff could tell upon inspection, it looked like the area where he had fallen was "all ice." Plaintiff does not know how the ice formed on the parking lot. Plaintiff was unaware of any prior complaints of anyone falling in the parking lot. Plaintiff's right shoulder was dislocated, but he "popped" it back in, and his right kneecap was also dislocated but plaintiff put in back in place while he was still on the ground. Plaintiff drove himself home and then went to the emergency room at Illinois Masonic Hospital.

¶5 Plaintiff sustained injuries to his right shoulder and his right knee. Plaintiff could not work the following day, December 6, 2007, and worked from home for two weeks after the incident, from December 7, 2007, through December 21, 2007. On April 15, 2008, plaintiff had surgery. Plaintiff was released from the care of Dr. Padromas in January 2009. Plaintiff filed the instant action against defendants.

¶6 The maintenance manager for defendant Quality Control Corporation, Charles Nelson, was responsible for the maintenance of the building facilities. Nelson testified at a deposition that the drain pipe was connected to the roof drains, and "its purposes [sic] to, when it rains, to direct the water into the parking lot." The water drains through the parking lot and then to the back of the building where there is a drainage ditch.

¶7 Plaintiff's retained expert, John L. Van Ostrand, executed an affidavit and wrote a report dated April 1, 2010. Van Ostrand opined in his report that the discharge from the roof drain ran across the pavement to the location where plaintiff fell, which "caused a localized unnatural

1-10-2778

accumulation of ice." According to his report, Van Ostrand visited and examined the site and took the photographs that are in the record. Van Ostrand documented that he observed the plastic drainage pipe mounted to the side of the building leading from the roof drain to a point where the roofwater then runs diagonally across the driveway . The drainage pattern from the end of the drain pipe followed the slope of the asphalt in the parking lot. Van Ostrand further observed:

"There was something different about the location where [plaintiff] slipped and fell, and that difference is the discharge from a roof drain which drops its effluent beside the building where it runs across the pavement to the location where he fell. This would have caused a localized unnatural accumulation of ice which was more hazardous than the snow which had fallen naturally in the driveway and parking lot."

¶8 Van Ostrand opined that:

"The roofwater should have been discharged into a trench drain or otherwise discharged so the roofwater would not spread across the walking and driving surface. Being discharged as it is where the roofwater must run across part of the parking lot where people can reasonably be expected to walk creates hazardous condition[s] and a public nuisance."

¶9 Van Ostrand reviewed weather reports for the date of the incident, which indicated that there was substantial snowfall on that date and that the air temperature had fallen below freezing. Van Ostrand opined that the design defect of the direction of the drain pipe proximately caused the formation of ice and the dangerous condition resulting in plaintiff's injuries:

"Heat loss [from defendant's building] would have melted some of the snow from the roof

1-10-2778

and discharged it onto the pavement by means of a drainage pipe located on the east side of the building. Since the air temperature was below freezing, this roofwater would have spread across the pavement and froze creating a hazardous condition."

¶10 Van Ostrand also opined that the slope for drainage was excessive. According to Van Ostrand's report, design standards indicate a slope of 2 percent is proper to provide positive drainage of parking lots and walkways, but on defendants' parking lot the slope was greater than 2 percent, resulting in the drainage of water in a southeasterly direction from the drain across the driveway.

¶11 In his report, Van Ostrand further opined that defendants violated the Village of Harwood Heights Municipal Code (Harwood Heights Village, Ill., Municipal Code ¶ 15.24.100 (1995)) and provisions of the BOCA National Property Maintenance Code (BOCA National Property Maintenance Code § PM-100.0 *et seq.* (1990)), as adopted by the Village of Harwood Heights. According to Van Ostrand, defendants violated section 302.1 of the BOCA National Property Maintenance Code because:

"[t]he roof water was being discharged onto the pavement posing a hazardous condition to pedestrians. At the time of the Subject Incident the driveway was in violation of this provision since the roof water was being discharged in such a manner that it was virtually certain to result in ice spreading across the combined driveway and parking lot causing a safety hazard to pedestrians."

¶12 Van Ostrand opined that defendants violated section 302.6 of the BOCA National Property Maintenance Code regarding drainage because at the time of plaintiff's injury, "the roof

1-10-2778

water was being discharged in such a manner that it was virtually certain to result in ice spreading across the combined driveway and parking lot causing a safety hazard to pedestrians." Van Ostrand further opined that defendants violated the provision regarding safe egress, section 701.1, because, in part, "[t]he area where the incident occurred was covered with an unnatural accumulation of ice."

¶13 First Amended Complaint

¶14 In plaintiff's first amended complaint, he alleged a claim for ordinary negligence based on defendants' negligence in the design of the drainage system which caused an unnatural accumulation of ice in the parking lot. Specifically, plaintiff alleged that the defendants:

"caused a draining system designed to remove water, including melted snow from the roof of the premises that directed water from the roof into the parking lot where it was further designed to flow and to drain into the center of the pathway * * * through the parking lot."

Plaintiff's first amended complaint alleged that defendants were liable for negligence because it was the duty of defendants "to use ordinary care and diligence to design, build, keep, and maintain the parking lot and the building in a reasonably safe condition."

¶15 Plaintiff also alleged a claim for violations of section 15.24.100 of the Municipal Code of the Village of Harwood Heights regarding exterior premises conditions (Harwood Heights Village, Ill., Municipal Code ¶ 15.24.100 (1995)). Specifically, in paragraph 11(e) of the first amended complaint plaintiff alleged that defendants violated section 15.24.100 by "failing to maintain the premises in a safe and secure condition so as not to cause blight or adversely affect

1-10-2778

the public health, safety and welfare." Plaintiff further alleged in paragraph 11(f) that defendants violated section 15.24.100 by "failing to grade and maintain the premises so as to prevent the accumulation of ice thereon." Plaintiff also alleged in paragraph 11(g) that defendants violated section 15.24.100 by "failing to maintain the driveways and parking spaces and similar paved area for public use in a proper state of repair and free of all debris such as ice and snow." The only provision of the Municipal Code of the Village of Harwood Heights relied upon by plaintiff was section 15.24.100 (Harwood Heights Village, Ill., Municipal Code ¶ 15.24.100 (1995)).

¶16 Plaintiff did not allege any claim based on the BOCA National Property Maintenance Code as adopted by the Village of Harwood Heights in the first amended complaint. Defendants filed a motion for summary judgment on plaintiff's first amended complaint. The circuit court granted summary judgment to defendants on June 8, 2010, on both the common law negligence claim and the claim for violations of section 15.24.100 of the Municipal Code of the Village of Harwood Heights (Harwood Heights Village, Ill., Municipal Code ¶ 15.24.100 (1995)). Plaintiff sought leave to file a second amended complaint, which the court granted.

¶17 Second Amended Complaint

¶18 In his second amended complaint, plaintiff realleged the same claims for ordinary negligence and violations of section 15.24.100 of the Municipal Code of the Village of Harwood Heights. However, in his second amended complaint plaintiff added a new claim based on an entirely separate provision of the Municipal Code of the Village of Harwood Heights – section 15.24.010(A) – which adopted and incorporated by reference the BOCA National Property Maintenance Code ((BOCA National Property Maintenance Code § PM-100.0 *et seq.* (1990)).

1-10-2778

See Harwood Heights Village, Ill., Municipal Code ¶ 15.24.010(A) (1995). Section 15.24.010(A) of the Municipal Code of the Village of Harwood Heights provides that it is "unlawful for any person to violate any of the provisions" of the BOCA National Property Maintenance Code as adopted by reference. Specifically, plaintiff alleged for the first time that defendants violated sections PM-301.3, PM-302.1 and 302.6 of the BOCA National Property Maintenance Code (BOCA National Property Maintenance Code § PM-301.3, PM-302.1 and PM302.6 (1990)). This claim was not alleged previously in the first amended complaint.

¶19 Defendants moved to dismiss the second amended complaint pursuant to section 2-619(a)(4) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(4) (West 2010)). Despite the added allegations concerning the violations of the BOCA National Property Maintenance Code as adopted by Harwood Heights, the circuit court found that the second amended complaint did not provide any new factual basis for plaintiff's claims and granted defendants' section 2-619(a)(4) motion to dismiss. Plaintiff appealed.

¶20 ANALYSIS

¶21 I. Jurisdiction

¶22 We first consider our jurisdiction to review the prior grant of summary judgment to defendants in addition to the dismissal order. Plaintiff's notice of appeal specifically included only the dismissal order of August 24, 2010, and not the prior summary judgment order of June 8, 2010. Plaintiff did not appeal the prior grant of summary judgment within 30 days. Defendants maintain that the summary judgment was a final order which necessitated appeal within 30 days, and since plaintiff did not timely appeal that order, there is no jurisdiction to

1-10-2778

review it. Plaintiff contends that jurisdiction to review the summary judgment order was preserved because he amended the complaint and realleged the same claims, which were the subject of the dismissal order which was timely appealed.

¶23 A grant of summary judgment is a final order which necessitates appeal within 30 days in order to confer jurisdiction for review. Jurisdiction is conferred upon the appellate court only through the timely filing of a notice of appeal. *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 538 (1984). See also 155 Ill. 2d R. 301 (eff. Feb. 1, 1994). Under Supreme Court Rule 303(a) (155 Ill. 2d R. 303(a)), a notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from, or, if a timely post-trial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending post-judgment motion." Ill. S. Ct. R. 303(a) (eff. June 4, 2008). "An 'order is "final" if it disposes of the rights of the parties, either on [an] entire case or on some definite and separate part of the controversy.'" *Curtis v. Lofy*, 394 Ill. App. 3d 170, 183 (2009) (quoting *Dubina v. Mesirow Realty Development, Inc.*, 178 Ill. 2d 496, 502 (1997)). "An order granting summary judgment is a final order." *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 80 (2006) (quoting *Diggs v. Suburban Medical Center*, 191 Ill. App. 3d 828, 836 (1989)). Thus, the grant of summary judgment was indeed a final order, and pursuant to Supreme Court Rule 303(a), plaintiff was required to appeal this order within 30 days.

¶24 Defendants cite to *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485 (2009), wherein we held that a prior summary judgment order was a final appealable order which was not timely appealed and therefore there is no jurisdiction to review that order. We agree with the

1-10-2778

applicability of the reasoning of *Kiefer*, but *Kiefer* addressed the issue of the *res judicata* effect of prior dismissed claims in a refiled second action, whereas here the prior summary judgment occurred in the same action. See *Kiefer*, 394 Ill. App. 3d at 495.

¶25 We find *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186 (2000), to be more akin to the facts of the instant case. In *Berg*, our supreme court held that a motion for leave to amend a complaint after a grant of summary judgment in the same action is not a motion directed against the judgment as required under Supreme Court Rule 303 (a) and therefore does not extend the time for appeal. *Berg*, 193 Ill. 2d at 189 (citing *Andersen v. Resource Economics Corp.*, 133 Ill. 2d 342, 347 (1990); *Fultz v. Haugan*, 49 Ill. 2d 131, 135-36 (1971); *Sears v. Sears*, 85 Ill. 2d 253, 258 (1981)). The court held that under Supreme Court Rule 303(a), the plaintiff was required to file a notice of appeal within 30 days after the entry of the judgment or within 30 days after an order disposing of a timely posttrial motion directed against the judgment. *Berg*, 193 Ill. 2d at 189. The plaintiff in *Berg* requested leave to file a second amended complaint, but did not appeal the summary judgment order within 30 days, instead filing her notice of appeal 42 days later. Therefore, the appeal of the summary judgment was untimely, and the appellate court did not possess jurisdiction to hear her appeal. *Berg*, 193 Ill. 2d at 189.

¶26 Similarly here, although the court granted plaintiff's oral motion for leave to file a second amended complaint, plaintiff did not appeal the summary judgment order within 30 days. Therefore, we have no jurisdiction to review the summary judgment order. The summary judgment adjudicated both of the claims in plaintiff's first amended complaint. Plaintiff's first amended complaint alleged a claim for ordinary negligence and a claim for violations of section

1-10-2778

15.24.100 of the Municipal Code of the Village of Harwood Heights regarding exterior premises conditions (Harwood Heights Village, Ill., Municipal Code § 15.24.100 (1995)). To the extent plaintiff's second amended complaint realleged the claims for ordinary negligence and violations of section 15.24.100 of the Harwood Heights municipal code, we are without jurisdiction to review those claims as they were already adjudicated in the grant of summary judgment.

¶27 The court's ruling granting summary judgment also makes it clear that the summary judgment operated as a final judgment and adjudication upon the merits of the claims for ordinary negligence and for violations of section 15.24.100 of the Municipal Code of the Village of Harwood Heights. In granting defendants summary judgment, the circuit court specifically found that plaintiff could not state any cause of action based on ordinary negligence due to the natural accumulation rule. The court also found that the provisions of section 15.24.100 of the Municipal Code of the Village of Harwood Heights "may be applicable to this case, but the sections that were relied upon by the plaintiff are not provisions and violations that pertain to the prevention of an accumulation of natural snow and ice ***. They don't address the snow or ice issues." The court also specifically stated the following at the hearing on the motion for summary judgment after it made its ruling:

"[A]s it relates to the motion for summary judgment, there could be any one or multiple causes for ruling by the Court. And it is not I believe improper to allow you to file an amended complaint to allege the new counts. But as it relates to these particular ones, I've made the ruling."

Thus, it is clear the circuit court granted plaintiff leave to amend only to allege new claims other

1-10-2778

than the claims for negligence and violations of section 15.24.100 of the Harwood Heights code.

¶28 Nevertheless, despite this ruling, in his second amended complaint plaintiff realleged the same claims for ordinary negligence and violations of section 15.24.100 of the Municipal Code of the Village of Harwood Heights. However, plaintiff also added a new claim based on an entirely separate provision of the Municipal Code of the Village of Harwood Heights – section 15.24.010(A) – which adopted the BOCA National Property Maintenance Code ((BOCA National Property Maintenance Code § PM-100.0 *et seq.* (1990)). See Harwood Heights Village, Ill., Municipal Code ¶ 15.24.010(A) (1995). Section 15.24.010(A) of the Municipal Code of the Village of Harwood Heights provides that it is "unlawful for any person to violate any of the provisions" of the BOCA National Property Maintenance Code as adopted. Thus, this claim has a separate and distinct statutory basis that was not alleged previously in the first amended complaint. Therefore, the issue which is properly before us, and which we have jurisdiction to review, is the dismissal of the new claim in the second amended complaint for statutory violations of the BOCA National Property Maintenance Code, as adopted by Harwood Heights in its municipal code under section 15.24.01(A).

¶29 II. Review of Dismissal of Claim Based on the BOCA National Property Maintenance Code

¶30 A. Dismissal Under Section 2-619(a)(4) Was Improper

¶31 Defendants filed their motion to dismiss pursuant to section 2-619(a)(4) of the Illinois Code of Civil Procedure (735 ILCS 5/2-619(a)(4) (West 2010)), and the court granted the dismissal on this basis. Section 2-619(a)(4) allows for dismissal of an action based on the affirmative defense that it is "barred by a prior judgment." 735 ILCS 5/2-619(a)(4) (West 2010).

1-10-2778

However, plaintiff's second amended complaint added a new claim for violations of the BOCA National Property Maintenance Code (BOCA National Property Maintenance Code § PM-301.3, PM-302.1 and PM302.6 (1990), as adopted by section 15.24.010(A) of the Municipal Code of the Village of Harwood Heights (Harwood Heights Village, Ill., Municipal Code ¶ 15.24.010(A) (1995)), which was not subject to the prior grant of summary judgment. Plaintiff alleged a different claim based on statutory violations of sections PM-301.3, PM-302.1 and 302.6 of the BOCA National Property Maintenance Code (BOCA National Property Maintenance Code § PM-301.3, PM-302.1 and PM302.6 (1990)), as adopted by Harwood Heights.

¶32 Section 2-619(a)(4) "allows a party to raise the affirmative defense of *res judicata*." *Morris B. Chapman & Associates v. Kitzman*, 193 Ill. 2d 560, 565 (2000). "[A] summary judgment motion is the procedural equivalent of a trial and constitutes an adjudication of the claim on the merits." (Citations omitted.) *Peterson v. Randhava*, 313 Ill. App. 3d 1, 9-10 (2000). Section 2-619 motions present a question of law, and we review rulings thereon *de novo*. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). Specifically, the standard of review from a dismissal pursuant to section 2-619(a)(4) based upon the doctrine of *res judicata* is *de novo*. *Kiefer*, 394 Ill. App. 3d at 489 (citing *Kitzman*, 193 Ill. 2d at 565). Our supreme court has held that "[f]or the doctrine of *res judicata* to apply, three requirements must be met: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there was an identity of causes of action; and (3) there was an identity of parties or their privies." *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 335 (1996).

¶33 Here, *res judicata* does not apply to the claim based on violations of the BOCA National

1-10-2778

Property Maintenance Code as adopted in section 15.24.010(A) of the Municipal Code of the Village of Harwood Heights, as the first element that there was a final judgment on the claim can not be established. The prior summary judgment adjudicated only the claims in the first amended complaint for ordinary negligence and violations of section 15.24.100 of the Municipal Code of the Village of Harwood Heights. However, the first amended complaint did not allege any claim for violations of the BOCA National Property Maintenance Code, as incorporated in section 15.24.010(A) of Harwood Heights' municipal code. There was no final judgment on the merits of the claim for violations of the BOCA National Property Maintenance Code as this claim was not present in the first amended complaint and was not subject to the summary judgment. Thus, the first element of *res judicata* is not satisfied. Because this claim was not adjudicated in the prior grant of summary judgment, dismissing the claim for violations of the BOCA National Property Maintenance Code under section 2-619(a)(4) was improper. Therefore, dismissal of this claim must be reversed.

¶34 B. The Allegations of a Violation of the BOCA National Property Maintenance Code
as Adopted by Harwood Heights Are Sufficient to State a Claim

¶35 The circuit court also found that plaintiff's second amended complaint did "not cure any defective pleadings." To the extent the circuit court also ruled that the added claim for violations of the BOCA National Property Maintenance Code was defective in failing to allege a cause of action, under our *de novo* review we address the issue and find that the pleading was sufficient to state a claim.

¶36 A motion to dismiss will be granted only if the plaintiff can prove no set of facts that

1-10-2778

would support a cause of action. *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 189 (1997). A violation of a statute or ordinance designed to protect human life is *prima facie* evidence of negligence. *Price v. Hickory Point Bank & Trust*, 362 Ill. App. 3d 1211, 1216 (2006) (citing *Kalata v. Anheuser-Busch Cos.*, 144 Ill. 2d 425, 434 (1991); *Magna Trust Co. v. Illinois Central R.R. Co.*, 313 Ill. App. 3d 375, 383 (2000)).

¶37 Section PM-100.2 of the BOCA National Property Maintenance Code sets forth its scope as follows:

"PM-100.2 Scope: This code is to protect the public health, safety and welfare in all existing *structures*, residential and nonresidential, and on all existing *premises* by establishing minimum requirements and standards for *premises, structures*, buildings, equipment, and facilities for light, *ventilation*, space, heating, sanitation, protection from the elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; fixing the responsibility of *owners, operators*, and *occupants*; regulating the occupancy and use of existing *structures* and *premises* and providing for administration, enforcement and penalties." (Emphasis in original.) BOCA National Property Maintenance Code § PM-100.2 (1990).

¶38 Article 3 of the BOCA National Property Maintenance Code governs the "minimum conditions and standards for maintenance of structures and exterior property." BOCA National Property Maintenance Code § PM-300.1 (1990). Section PM-301.2 provides:

"PM-301.2. Grading and drainage: All premises shall be graded and maintained to prevent the accumulation of stagnant water thereon, or within any structure located

1-10-2778

thereon." BOCA National Property Maintenance Code § PM-301.2 (1990).

¶39 Section 301.3, in pertinent part, provides:

"PM-301.3. Sidewalks and driveways: All sidewalks, walkways, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free of hazardous conditions." BOCA National Property Maintenance Code § PM-301.3 (1990).

¶40 Section 302.6 provides the following regarding drainage:

"PM-302.6. Roofs and drainage: The roof and flashing shall be sound, tight, and not have defects which might admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the building. Roof water shall not be discharged in a manner that creates a *public nuisance*." (Emphasis in original.) BOCA National Property Maintenance Code § PM-302.6 (1990).

¶41 Finally, section PM-701.1 provides that "[a] safe, continuous and unobstructed means of egress shall be provided from the interior of a structure to a public way." BOCA National Property Maintenance Code § PM-701.1 (1990).

¶42 Under section PM-100.2 the BOCA National Property Maintenance Code applies to this case, as the second amended complaint alleges conditions on defendants' premises and conditions related to structures on the premises, and also alleges that the defendants were the owners, operators, and occupants. Specifically, plaintiff alleged in the second amended complaint that defendants violated the BOCA National Property Maintenance Code by: "failing to keep the driveway in a proper state of repair and maintain free of hazardous conditions [sic];" "failing to

1-10-2778

maintain the parking lot in a way as not to pose a threat to the public health, safety and welfare;" and "failing to prevent roof water from being discharged in a manner that created a public nuisance."

¶43 We find that the allegations in the second amended complaint state a claim for negligence based on violations of the BOCA National Property Maintenance Code. "Statutes and ordinances designed to protect human life establish the standard of conduct required of a reasonable person and thus 'fix the measure of legal duty.'" *Price v. Hickory Point Bank & Trust*, 362 Ill. App. 3d 1211, 1216 (2006) (quoting *Noyola v. Board of Education of the City of Chicago*, 179 Ill. 2d 121, 130 (1997)). "A violation of a statute or ordinance designed to protect human life is *prima facie* evidence of negligence." *Price*, 362 Ill. App. 3d at 1216 (citing *Kalata v. Anheuser-Busch Cos.*, 144 Ill. 2d 425, 434 (1991); *Magna Trust Co. v. Illinois Central R.R. Co.*, 313 Ill. App. 3d 375, 383 (2000)). "To prevail on a claim of negligence based on a violation of a statute or an ordinance designed to protect human life, the plaintiff must show that (1) the plaintiff is a member of the class of persons the statute or ordinance was designed to protect, (2) the injury is the type of injury that the ordinance was intended to protect against, and (3) the defendant's violation of the statute or ordinance was the proximate cause of the plaintiff's injury." *Price*, 362 Ill. App. 3d at 1216 (citing *Kalata*, 144 Ill. 2d at 434-35).

¶44 In his second amended complaint, plaintiff alleged that he was a member of the class of persons the BOCA National Property Maintenance Code was designed to protect, his injury was the type of injury the ordinances were intended to protect against, and the defendants' violations of the ordinances were the proximate cause of his injury. Plaintiff thus sufficiently stated a cause

1-10-2778

of action and the claim for violations of the BOCA National Property Maintenance Code in the second amended complaint should not have been dismissed. It was error for the circuit court to dismiss plaintiff's second amended complaint alleging these statutory violations.

¶45 CONCLUSION

¶46 Plaintiff's claims for ordinary negligence and violations of the Municipal Code of the Village of Harwood Heights were adjudicated in a grant of summary judgment in favor of defendants, which was a final order. Since plaintiff did not appeal within 30 days as required by Supreme Court Rule 303(a) (Ill. S. Ct. Rule 303(a) (eff. June 4, 2008)), we are without jurisdiction to review the grant of summary judgment and the claims decided in the judgment are *res judicata*. However, plaintiff alleged a claim for violations of the BOCA National Property Maintenance Code in his second amended complaint which was not adjudicated. Thus, dismissal of this claim on the basis of section 2-619(a)(4) of the Illinois Code of Civil Procedure was improper. In addition, to the extent the court ruled the second amended complaint failed to state such a claim we disagree and find the allegations sufficient to state such a claim. Therefore, we reverse the dismissal and remand for further proceedings.

¶47 Reversed and remanded.