STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1153

Kathleen Corte,
Appellant,

vs.

Matthew Jon Larson,
Respondent,

Kylie Rodgers Special Needs Trust,
Respondent.

Filed May 3, 2021
Affirmed
Worke, Judge

Stearns County District Court
File No. 73-CV-19-3948

Brian D. Stofferahn, Halunen Law, Minneapolis, Minnesota (for appellant)

Brian W. Varland, Valerie Sims, Heley, Duncan & Melander, PLLP, Minneapolis, Minnesota (for respondent Larson)

Paul A. Rajkowski, Derek C. Harvieux, Rajkowski Hansmeier Ltd., St. Cloud, Minnesota (for respondent Trust)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court erred by granting summary judgment in favor of respondents, asserting that each owed her a duty of reasonable care to maintain a safe premises. We affirm.

FACTS[1]

Appellant Kathleen Corte is a registered nurse who provides in-home care to disabled patients. Corte cared for Kylie Rodgers, the daughter of respondent Matthew Jon Larson. Corte routinely worked the overnight shift at the Larson residence, which generally was scheduled from 6:00 p.m. to 6:00 a.m. The residence was owned by respondent Kylie Rodgers Special Needs Trust (the Trust) and leased to Larson.

Due to Rodgers's disability, a wheelchair ramp was constructed to transport Rodgers in and out of the house. A set of stairs also provides access to the house. Corte does not recall receiving an instruction from Larson that the ramp was to be used only when transporting Rodgers in her wheelchair. Corte regularly used the ramp to enter and exit the residence, which was a common practice among the nurses.

While Corte and other nurses believed that the ramp was unsafe due to its steepness, nobody relayed this concern to Larson because they thought that it was against policy to do so. Rather, the nurses expressed their concerns to their employer. At some unknown time, someone applied grip strips to every other slat of the ramp.

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[1] The facts are recited in the light most favorable to Corte, the non-moving party. *See STAR Ctrs. Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

On the morning of November 12, 2016, Corte exited the Larson residence via the ramp. As she descended the ramp, Corte realized that it was covered in hoarfrost, which had developed overnight. Despite the grip strips, Corte fell.

Corte filed suit against the Trust and Larson, alleging that they acted negligently by failing to remove snow and ice from the ramp and failing to warn individuals of the inherently dangerous condition of the ramp. Larson and the Trust each moved for summary judgment, arguing that Corte had not established that a duty was owed. The district court granted both motions. This appeal followed.

DECISION

Corte argues that the district court erred by granting summary judgment in favor of the Trust and Larson because landlords and possessors of land owe a duty to exercise reasonable care in maintaining their premises. On appeal from summary judgment, this court reviews de novo "whether there are any genuine issues of material fact and whether the district court erred in its application of the law." *STAR Ctrs. Inc.*, 644 N.W.2d at 76-77. This court "view[s] the evidence in the light most favorable to the party against whom summary judgment was granted." *Id.*

The Trust

Corte challenges the district court's determination that, because the Trust did not maintain sufficient control over the leased property, it did not owe Corte a duty. The Trust argues that we should not reach the merits of this argument because Corte failed to argue it before the district court, and failed to cite authority supporting this argument on appeal. While we do question whether the issue was properly raised in district court, it is

unnecessary to evaluate the merits of Corte's argument due to her failure to adequately brief the issue on appeal.

"An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is [forfeited] and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quotation omitted).

Corte fails to cite any authority that directly relates the requisite level of control that a landlord must possess over a leased property in order to establish a legal duty. Corte cites caselaw that relates to general principles of premises liability, but she fails to articulate how these authorities lead to her claim surviving summary judgment against the Trust. It also is not obvious that prejudicial error has occurred. Thus, Corte has forfeited her argument against the Trust because it was not properly briefed.

Larson

Corte argues that the district court erred when it determined that Larson did not owe a duty to Corte to fix the dangerous conditions of the ramp or to remove the hoarfrost from the ramp. Because Larson did not assert that Corte failed to preserve this argument for appeal or that it was inadequately briefed, we will address the merits of Corte's argument.

In a negligence action, the district court may grant summary judgment in favor of the defendant "when the record reflects a complete lack of proof on any one of these four elements: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of duty being the proximate cause of the injury." *Senogles v. Carlson*, 902 N.W.2d 38, 42 (Minn. 2017) (quotation omitted). The existence of a duty of care is a

question of law that the district court determines. *Zimmer v. Carlton Cty. Co-op. Power Ass'n*, 483 N.W.2d 511, 513 (Minn. App. 1992), *review denied* (Minn. June 10, 1992). Landowners possess a duty to use reasonable care in maintaining a safe premises for all entrants. *Senogles*, 902 N.W.2d at 42. "But even when landowners owe persons a duty to keep and maintain their premises in a reasonably safe condition, they are not insurers of safety." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 365 (Minn. App. 2000). Landowners are, however, expected to be aware of and remedy foreseeable harms. *See Foss v. Kincade*, 766 N.W.2d 317, 322 (Minn. 2009).

The district court determined that it was not foreseeable to Larson that Corte would slip and fall on the ramp on the morning of November 12, 2016. Foreseeability depends on "whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility." *Senogles*, 902 N.W.2d at 43 (quotation omitted).

We agree with the district court's conclusion. Larson was never notified by Corte or any other nurse that the ramp was slippery or dangerous. Corte also testified that she never had any issues with the ramp in the past and produced no evidence of anyone ever falling on the ramp. Lastly, Corte testified that the frost developed overnight while Larson was sleeping, leaving him no opportunity to become aware of or cure the slippery condition. *See Mattson v. St. Luke's Hosp. of St. Paul*, 89 N.W.2d 743, 745 (Minn. 1958) (allowing for reasonable time after icy conditions develop to rectify them). Because Corte's fall and injury were not foreseeable to Larson, the district court properly granted summary judgment in his favor.

Corte also argues that there is an issue of material fact as to whether Larson instructed the nurses to use the stairs instead of the ramp. Summary judgment is improper if a dispute of material fact exists. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). Although Corte did not recall receiving such instruction, she did not deny that Larson gave the instruction. And even if this fact is in dispute, it is not material. "A fact is material if its resolution will affect the outcome of a case." *Id.* Although the district court stated that Larson's supposed instruction was evidence that Corte's fall was not foreseeable, it relied on other, clearly undisputed evidence to determine that Larson lacked awareness of a dangerous condition. Therefore, because there are not genuine issues of material fact as to foreseeability, the district court properly granted summary judgment in favor of Larson.

Corte also places great emphasis on the grip strips that were on the ramp when she fell. She argues that one would only put such strips on an inherently dangerous ramp, and that the strips should have been placed on every slat to make the ramp safe. But Corte failed to identify any evidence in the summary-judgment record to support her argument that the ramp even required grip strips or that the strips were inadequately applied. And even if Corte did show that the strips were inadequate, she failed to show that Larson was or should have been aware of this inadequacy. Corte merely speculates as to why the grip strips were placed on the ramp and of their effectiveness, which is insufficient to survive summary judgment. *See Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993). The district court

correctly concluded that, on this record, Larson did not owe an additional duty to make the ramp safer.

Affirmed.