STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1438

Regina Gower,
Appellant,

vs.

City of Edina,
Respondent.

Filed May 12, 2025
Affirmed
Bond, Judge

Hennepin County District Court
File No. 27-CV-23-12254

Michael A. Bryant, Tucker L. Isaacson, Bradshaw & Bryant, PLLC, Waite Park, Minnesota (for appellant)

Paul A. Merwin, League of Minnesota Cities, St. Paul, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Bjorkman, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

BOND, Judge

Appellant challenges the summary-judgment dismissal of her negligence claim arising out her slip and fall on ice on a sidewalk maintained by respondent. Appellant argues that the district court erroneously granted summary judgment because there are

genuine issues of material fact regarding whether respondent breached its duty of care. We affirm.

FACTS

The relevant facts in this appeal are undisputed. On March 3, 2020, appellant Regina Gower visited Edinbourogh Park, a building owned and operated by respondent City of Edina. A cul-de-sac driveway and sidewalk leads to the main entrance of the building. There had been precipitation the night before, but no snow had accumulated and the roads were clear. Gower did not notice any snow, ice, or slipperiness in the parking lot of Edinbourogh Park or on the sidewalk.

As she walked on the sidewalk along the cul-de-sac approaching the building's main entrance, Gower slipped and fell.[1] After she fell, Gower saw a patch of bumpy ice that appeared to have been there awhile. She had not seen the ice before she fell. Gower returned to her car without entering the building or notifying city staff of her fall. Gower sustained two broken wrists and later required surgery and occupational therapy for her injuries.

The city hires a private contractor to plow and salt the driveway, but city employees are responsible for shoveling and salting the building's sidewalks. Edinbourogh Park keeps a "Snow and Ice Maintenance Log," in which staff document the date, time, snow depth, temperature, presence of ice, and whether staff salted, shoveled, or performed snowblowing on the sidewalk.

[1] In its brief, the city contends that Gower slipped at approximately 9:15 a.m. But the record on appeal is unclear as to the exact time of Gower's accident.

The morning of Gower's fall, staff were onsite preparing for visitors coming to vote in an election. Jeffrey Phillips, the maintenance operations coordinator for the city, testifed that, beginning at 5:30 a.m., he set out eight election signs from the main entry doors to the street. Phillips made two trips down each side of the sidewalk because he could only carry two signs at a time. He did not notice any ice on the sidewalk. Still, based on a discussion with his supervisor, Phillips planned to be "extra cautious" that day, making sure that the sidewalk would be "as clear as possible for the eldery folk that would be coming in to vote."

For that reason, while ice maintenance that winter was typically done just once per day, Phillips salted twice the morning of March 3. Using a salt-spreader machine, Phillips salted the entire sidewalk using a 50-pound bag of salt each time, finishing his first round at approximately 8:00 a.m. when it was 34 degrees outside, and the second round at approximately 10:15 a.m. when it was 36 degrees. Phillips testified that when he uses that much salt, it crunches underfoot and results in pedestrians depositing significant amounts of salt on the rugs inside the building when entering. Phillips made a notation on the maintenance log that there was a "little" ice each time he salted. He explained that, while on other days he wrote "Yes" or "No" as to the presence of ice, the amount of ice that morning was not enough to merit a "Yes." Phillips could not recall any specific patches of ice. He testified that there was no need to break any ice patches using an ice pick, and that there was no concern about water dripping from the gutters. Phillips testified that the city generally "oversalts," and that the salt that day was "mostly precautionary." After salting

at 8:00 a.m., Phillips observed what little ice was present appeared to be melting. He did not know where or when Gower fell.

Gower sued the city for negligence, asserting that the city failed to warn of potential danger and failed to remove the ice in a timely manner. The city moved for summary judgment, claiming that Gower could not establish the element of duty because the city had no notice of the dangerous condition. Alternatively, the city argued that its actions were reasonable, any dangerous condition was open and obvious, and Phillips's actions in maintaining the sidewalk were protected by statutory and vicarious common-law immunity.

The district court granted the city's summary-judgment motion. The district court rejected the city's claim that it was entitled to either statutory or common-law immunity. But the district court determined that there was no evidence that the city had knowledge of any dangerous condition that remained after twice salting the sidewalk, and therefore no evidence that the city breached its duty of care.

This appeal follows.[2]

DECISION

Gower challenges the district court's grant of summary judgment for the city. Summary judgment is appropriate if the moving party shows that "there is no genuine issue

[2] The city filed a notice of related appeal to request review of the district's court immunity determination. In a previous order, we determined that the city's notice did not create a cross-appeal because the district court granted the city's motion for summary judgment and dismissed Gower's complaint in its entirety. Given our conclusion that the city is not liable to Gower, we do not reach the issue of immunity.

as to any material fact" and that the moving party is "entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if, considering the record as a whole, a rational trier of fact could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc*., 751 N.W.2d 558, 564 (Minn. 2008). Speculation, without some "concrete evidence," will not give rise to a genuine issue of material fact sufficient to overcome summary judgment. *Osborne v. Twin Town Bowl, Inc*., 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). Appellate courts review a district court's decision on summary judgment de novo and view the evidence in the light most favorable to the nonmoving party. *Staub v. Mrytle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021).

"Negligence is the failure to exercise the level of care that a person of ordinary prudence would exercise under the same or similar circumstances." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). To succeed on her negligence claim, Gower must show "(1) [the] existence of a duty of care; (2) breach of that duty; (3) proximate causation; and (4) injury." *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). Gower primarily focuses her argument on the element of breach. However, "[t]he existence of a duty of care is a threshold question because a defendant cannot breach a nonexistent duty." *Doe 169*, 845 N.W.2d at 177; *see also Gilbertson v. Leininger*, 599 N.W.2d 127, 130 (Minn. 1999) ("In the absence of a legal duty, the negligence claim fails."). Generally, the existence of a legal duty is a question for the court to determine as a matter of law. *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001).

A property owner has a duty to use reasonable care for the safety of all entrants on the premises. *Olmanson v. LeSueur County*, 693 N.W.2d 876, 880 (Minn. 2005). This

includes a duty to conduct reasonable inspections and maintain the property to ensure that visitors are not exposed to unreasonable risks of harm. *Id*. at 881. But property owners are not "insurers of safety." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 364 (Minn. App. 2000). Unless the owner created the dangerous condition, it can only be held liable under a negligence theory if it had actual or constructive knowledge of the dangerous condition. *Id*. If a reasonable inspection does not reveal a dangerous condition, such that the owner had no actual or constructive knowledge of it, the owner cannot be held liable for any injuries caused by the dangerous condition. *Olmanson*, 693 N.W.2d at 881.

Viewing the evidence in the light most favorable to Gower, we conclude that the city is not liable to Gower because it conducted a reasonable inspection and had no actual or constructive knowledge of a dangerous condition due to ice on the sidewalk. *See id*. Beginning at 5:30 a.m., Phillips walked up and down the sidewalk multiple times. He did not notice any snow or ice on the sidewalks. At 8:00 a.m., Phillips walked the entire sidewalk while applying 50 pounds of salt. He noted on the maintenance log the presence of a "little" ice, which he described as so minimal that he could not definitely state "yes" on the log. Phillips completed another walkthrough of the entire sidewalk at 10:15 a.m. He did not notice any patches of ice during these inspections. The temperature was above freezing, the roads and parking lot appeared clear of ice, and snow had not accumulated. There was no evidence of water dripping onto the sidewalk that might freeze and cause a dangerous condition. There was no evidence that other visitors complained of icy conditions such that the city would have had actual or constructive knowledge about the

dangerous condition. And Gower herself testified she did not notice any snow or ice on the sidewalks until *after* she fell.

Gower does not appear to dispute the reasonableness of the city's inspection. Rather, Gower argues that, because Phillips noted in the maintenance log that there was a "little" ice and salted the sidewalk twice, the city was aware of the ice and negligently failed to remove it. Gower also argues that whether the city's actions were reasonable is a question of fact and she has the right to cross-examine Phillips and put his credibility to the jury. But to survive summary judgment, Gower must offer specific evidence that creates a genuine issue of material fact regarding the city's actual or constructive knowledge of a dangerous condition on the sidewalk. Gower cannot simply rely on conclusory statements and speculation about the inadequacy of the city's actions. *See Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002) (stating that summary judgment cannot be avoided by "unverified and conclusory allegations or by postulating evidence that might be developed at trial"); *Osborne*, 749 N.W.2d at 371 (stating that "[m]ere speculation, without some concrete evidence, is not enough to avoid summary judgment" (quotation omitted)). Because there is no evidence that, after conducting a reasonable inspection, the city had either actual or constructive knowledge of a dangerous condition on the sidewalk, summary judgment was appropriate. *See Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995) ("A defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim.").

We conclude that there are no genuine issues of material fact about whether the city conducted a reasonable investigation and whether it had actual or constructive knowledge of a dangerous condition before Gower fell. Therefore, the city cannot be held liable to Gower, and the district court properly granted summary judgment to the city.

Affirmed.