Circuit Court for Baltimore City
Case No.: 24-C-22-002644

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2076

September Term, 2023

SHARON LEGORE

v.

LIFEBRIDGE HEALTH, INC., ET AL.

Wells, C.J.,
Tang,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: December 2, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In the Circuit Court for Baltimore City, Sharon Legore, the appellant, filed suit against Sinai Hospital of Baltimore, Inc. ("Sinai"), the appellee,[1] for negligence after she tripped and fell on the hospital's exterior premises. She appeals from the grant of summary judgment in Sinai's favor, asking one question:

> Were there genuine issues of material fact in dispute to preclude the granting of summary judgment to [Sinai]?

For the following reasons, we answer that question, "No," and shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On June 14, 2019, around 6:30 in the evening, Ms. Legore attended a medical appointment at the Morton Mower, MD Medical Office Building at Sinai ("Morton Mower Building") in follow-up to surgery performed on her tear duct.[2] The entrance to that building faces an access road that branches off of West Belvedere Avenue, which is the main road leading to the hospital, and is directly across from a surface parking lot. A painted crosswalk leading to the surface parking lot is located at the sidewalk on the southeast corner of the building, not far from the building entrance. Two pedestrian crossing bollards mark the crosswalk.

Ms. Legore's son, Shawn Smith, dropped her off directly in front of the entrance to the Morton Mower Building and then parked across the access road on the surface parking

[1] Ms. Legore also named Lifebridge Health, Inc. as a defendant. Two months later, she stipulated to its dismissal.

[2] According to Ms. Legore, the surgery did not affect her eyesight on the day of the accident.

lot. When Ms. Legore left her appointment around 7 p.m., it was still light outside.[3] She walked down the steps of the Morton Mower Building, "looked for traffic, and then . . . proceeded to walk across the street." She did not look down or at the roadway as she crossed the street. She thought that because she was at a hospital, "the street would be fine"; therefore, she was only concerned about "traffic." As she was walking across the access road, she stepped in a pothole and fell face first into the roadway.

Ms. Legore called her son from her cell phone, and he ran to help her. Her face was "bloodied up, busted up." In Mr. Smith's estimation, at the location where Ms. Legore fell, there was about a one-half inch difference in height between the depression in the asphalt and the surface of the road. Mr. Smith called for a security guard to help them. Ms. Legore was taken by wheelchair to Sinai's emergency department for treatment of her injuries.

Almost three years later, Ms. Legore filed suit against Sinai. She alleged that she fell "suddenly and unexpectedly . . . as a result of a pothole which was unmarked and negligently left in a defective and an unsafe condition." She claimed that as a direct and proximate result of Sinai's negligence, she suffered injuries necessitating medical care and incurred significant medical expenses and other costs.

Following discovery, Sinai moved for summary judgment, arguing that 1) the pothole was "an open and obvious condition" for which it had no duty to warn Ms. Legore;

[3] This Court can take judicial notice that, according to the Astronomical Applications Department of the U.S. Naval Observatory, which officially records sunrise and sunset times, sunset that day in Baltimore was 8:34 p.m. daylight savings time. *See* https://aa.usno.navy.mil/calculated/rstt/year?ID=AA&year=2019&task=0&lat=39.31&lon=-76.62&label=Baltimore%2C+MD&tz=5&tz_sign=-1&submit=Get+Data (last visited Nov. 21, 2024).

2) Ms. Legore was contributorily negligent as a matter of law both because she did not cross the roadway at a marked crosswalk and because she did not pay attention to the surface of the roadway as she was walking on it; and 3) Ms. Legore assumed the risk of her injury when she crossed in the middle of the roadway, "which she had reason to know contained potholes." Sinai attached to its motion excerpts of deposition testimony given by Ms. Legore; Mr. Smith; Ms. Legore's designated engineering expert, Gregory Harrison, Ph.D.; and George Hamlin, a security officer employed by Sinai when Ms. Legore fell. It also attached four Google maps photographs depicting the layout of the Morton Mower Building in relation to the surface parking lot and the crosswalk and three photographs taken by Mr. Hamlin's supervisor on the evening of the fall, depicting the condition of the access road in the area where Ms. Legore fell.

The photographs of the roadway show "concrete patches" over a large area of damaged concrete, with an appreciable difference in color between the patches and the original surface. Dr. Harrison testified at his deposition that the area was "deteriorated and [had] undergone repair attempts" but that the roadway remained in "a gross condition of disrepair" with "trip-and-fall hazards . . . throughout the area of disrepair." He added that it would "only take a second or two to look and see that this [was] not a safe walkway surface."

Ms. Legore opposed Sinai's motion, arguing that there were genuine disputes of material fact precluding the grant of summary judgment. She attached to her opposition excerpts from Dr. Harrison's deposition and her own deposition. In those excerpts, Dr. Harrison opined that the access road was part of the "means of egress" and was required to

be maintained in a safe condition. He further opined that Ms. Legore fell because of a change in elevation, i.e., the pothole, within that means of egress. Ms. Legore testified that she did not recall seeing the crosswalk.

On October 30, 2023, the court heard argument on the motion. A little over a week later, it issued a memorandum opinion and order granting summary judgment in favor of Sinai. It set out the undisputed facts as described above. It ruled that the dangerous condition of the pavement was open and obvious as a matter of law, emphasizing Dr. Harrison's deposition testimony that the area was plainly unsafe for walking based upon the photographs taken by Sinai staff on the day of the accident. Based on this testimony and the court's review of the photographs, it concluded that no reasonable juror could conclude that Sinai owed Ms. Legore a duty to warn "of the open and obvious condition of the surface where she fell."

Alternatively, the court ruled that Ms. Legore was contributorily negligent as a matter of law because she failed to exercise reasonable care for her own safety by crossing the roadway outside of the marked crosswalk and by not looking down to observe the surface of the roadway before walking across it. Having concluded that Sinai was entitled to summary judgment on either of those bases, the court declined to address assumption of the risk.

This timely appeal followed.

STANDARD OF REVIEW

"Whether summary judgment was granted properly is a question of law." *Lightolier, A Div. of Genlyte Thomas Grp., LLC v. Hoon*, 387 Md. 539, 551 (2005). "The standard of

review is *de novo* and we are concerned with whether the trial court was legally correct." *Id.* (quotation marks and citation omitted). "We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Haas v. Lockheed Martin Corp*., 396 Md. 469, 479 (2007) (quotation marks and citations omitted).

DISCUSSION

Premises liability is a variety of negligence. It follows that in order to prevail, a plaintiff must establish the four traditional elements: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the defendant's breach of the duty proximately caused the loss or injury suffered by the plaintiff, and (4) that the plaintiff suffered actual loss or injury." *Troxel v. Iguana Cantina, LLC*, 201 Md. App. 476, 495 (2011) (citing *Corinaldi v. Columbia Courtyard, Inc*., 162 Md. App. 207, 218 (2005)).

It is undisputed that Sinai owed a duty of care to Ms. Legore, a person "invited or permitted to enter or remain on another's property for purposes connected with or related to the owner's business." *Mitchell v. Rite Aid of Md., Inc*., 257 Md. App. 273, 316 (2023) (cleaned up).

> Nevertheless, an owner or occupier of land only has a duty to exercise reasonable care to "protect the invitee from injury caused by an unreasonable risk" that the invitee would be unlikely to perceive in the exercise of ordinary care for his or her own safety, and about which the owner knows or could have discovered in the exercise of reasonable care.

Tennant v. Shoppers Food Warehouse Md. Corp., 115 Md. App. 381, 388 (1997) (quoting *Casper v. Charles F. Smith & Son, Inc*., 316 Md. 573, 582 (1989)). Thus, the invitee "has

a duty to exercise due care for his or her own safety. This includes the duty to look and see what is around the invitee. Accordingly, the owner or occupier of land ordinarily has no duty to warn an invitee of an open, obvious, and present danger." *Id.* at 389 (citing *Casper*, 316 Md. at 582).

Further, a plaintiff in a negligence action is completely barred from "recovery against a defendant who causes an injury where such injury is [the] result of the plaintiff's own failure to exercise due care." *Kiriakos v. Phillips*, 448 Md. 440, 474 n.38 (2016). "Contributory negligence, if present, defeats recovery because it is a proximate cause of the accident[.]" *Batten v. Michel*, 15 Md. App. 646, 652 (1972).

a.

We begin with the circuit court's ruling that the defect in the pavement was open and obvious as a matter of law and, consequently, Sinai did not owe Ms. Legore a duty to warn her of that danger. Ms. Legore contends that a rational juror could find that a reasonable person, particularly a person unfamiliar with Sinai's premises, would not perceive "discoloration" of the pavement with the naked eye and understand that it was indicative of a pothole.[4] Sinai responds that, viewing the facts in the light most favorable to Ms. Legore, the circuit court correctly determined that it did not owe Ms. Legore a duty to warn her "of the large pothole in the middle of the street."

[4] Ms. Legore also asserts, based on Dr. Harrison's testimony, that the pothole was not within a public road and was part of the "means of egress" that Sinai had a duty to maintain in a safe condition. There was no dispute that generally, Sinai, not a municipality or other public entity, had a duty to maintain the roadway.

Six Flags America, L.P., v. Gonzalez-Perdomo, 248 Md. App. 569 (2020) is instructive on the issue of open and obvious danger. In that case, a ten-year-old boy fell at the Six Flags amusement park while crossing a wooden pedestrian bridge near a water ride. His mother, as next friend, sued Six Flags alleging that it acted negligently by allowing water from the nearby ride to accumulate and splash on the bridge, creating a dangerous condition for pedestrians. Six Flags moved for summary judgment on the basis that the "wet and slippery condition of the bridge was 'open and obvious[.]'" *Id.* at 576. The court denied the motion. After a jury found Six Flags liable for the child's injuries, it appealed, arguing, as pertinent, that the court erred by denying the motion for summary judgment and/or its motions for judgment made at trial because the wet condition of the bridge was open and obvious.

This Court recognized that, although the question whether a condition is open and obvious often is one of fact, it can become a question of law "when the material facts and reasonable inferences are not in genuine dispute." *Id.* at 582. We reasoned that although the evidence "overwhelmingly established that the bridge was openly and obviously wet," Six Flags was not entitled to judgment as a matter of law because a rational juror could find that the slippery condition of the bridge was not obvious. *Id.* at 583-84. Rather, it was "reasonably conceivable that a visitor to the amusement park may have perceived the water on the wooden walkway without appreciating the danger created by the wet surface." *Id.* at 583. This was especially so given that there was evidence that other walkways at the amusement park were coated in an anti-skid material and the walkway in question was not.

Three federal court decisions applying Maryland law also are instructive. In *Gellerman v. Shawan Road Hotel Limited Partnership*, 5 F. Supp. 2d 351 (D. Md. 1998), the district court granted summary judgment, in favor of a hotel, in a negligence suit brought by a guest who fell when she tripped on a curb while crossing a raised concrete median in the parking lot. The court reasoned that it was "'common knowledge that small cracks, holes and uneven spots often develop in pavement'" and that if nothing obstructs the view of such a defect, a property owner is "justified in assuming that a visitor will see it and realize the risk involved.'" *Id.* at 353 (quoting *Crenshaw v. Hogan*, 416 S.E.2d 147, 148 (Ga. Ct. App. 1992)). Because the condition of the "curb/sidewalk joint" on the concrete median was unobstructed, open, and obvious, the court held that the plaintiff's "failure to see what was there" was a failure to exercise reasonable care for her own safety as a matter of law. *Id.* at 354.

In *Locklear v. Walmart, Inc*., Civ. No. DKC 19-0659, 2020 WL 4286830 (D. Md. Jul. 27, 2020), a plaintiff sued Walmart for negligence after she stepped in a pothole on its parking lot while loading groceries into her car, causing her to trip and fall. A store employee took photographs of the "depression . . . in the pavement next to [p]laintiff's car[,]" which was "less than 1" deep and contained visible loose gravel." *Id.* at *1. The court observed that the pothole "spann[ed]" and "obliterat[ed]" the painted lane marking, that it was daylight when the plaintiff was returning to her car, and that nothing obstructed her view of the pothole. *Id.* at *3. It reasoned that such "defects in sidewalks, walkways, and certainly parking lots are among the types of conditions of which pedestrians ought to

take notice" and granted summary judgment in favor of Walmart on the ground that the condition was open and obvious. *Id.* at *3-4 (citing *Gellerman*, 5 F. Supp. 2d at 353).

In *Duncan-Bogley v. United States*, 356 F. Supp. 3d 529, 532-33 (D. Md. 2018), a customer leaving a U.S. Post Office tripped and fell when she stepped on an "uneven intersection of two concrete slabs" on the walkway. The district court ruled that the defect in the sidewalk was open and obvious as a matter of law, opining that "a reasonable person in [p]laintiff's position exercising ordinary perception and care would have recognized the condition and the risks of the uneven intersection between the concrete slabs." *Id.* at 541.

Returning to our case, we agree with the circuit court that the dangerous condition of the portion of the access roadway where Ms. Legore crossed was open and obvious as a matter of law. Unlike in *Six Flags*, in this case it was undisputed that the condition of the access road and the danger created by that condition were one and the same. In other words, a reasonable person viewing the damaged area of the access road would understand that stepping into the pothole was a tripping hazard, as was confirmed by Dr. Harrison's deposition testimony.

The three federal district court decisions are persuasive authority that a paved surface, particularly a roadway, is an area where a pedestrian should anticipate the presence of cracks, uneven planes, and defects. The evidence adduced on summary judgment, viewed in a light most favorable to Ms. Legore, established that the part of the access roadway directly in front of the entrance to the Morton Mower Building was in a state of gross disrepair and that potholes were visible and unobstructed. Ms. Legore's own expert

opined, upon viewing the photographs,[5] that it would "only take a second or two to look and see that this [was] not a safe walkway surface." On this record, the risk was open and obvious to a person exercising reasonable care, and therefore Sinai did not owe Ms. Legore a duty to warn.

b.

The circuit court also granted summary judgment on the alternative ground that Ms. Legore was contributorily negligent as a matter of law, for either of two reasons: (1) she admittedly did not look down before stepping into and walking across the roadway, and (2) she did not use a nearby marked crosswalk to cross the roadway. "Contributory negligence is that degree of reasonable and ordinary care that a plaintiff fails to undertake in the face of an appreciable risk which cooperates with the defendant's negligence in bringing about the plaintiff's harm." *Bd. of Cnty. Comm'rs of Garrett Cnty. v. Bell Atlantic-Md., Inc*., 346 Md. 160, 180 (1997). Although whether a plaintiff was contributorily negligent ordinarily is a decision for the trier of fact, a circuit court should rule on this defense "as a matter of law . . . when reasonable jurors would not differ" as to it. *S & S Oil, Inc. v. Jackson*, 428 Md. 621, 633 (2012). "Contributory negligence as a matter of law requires a finding that the negligent act of the plaintiff . . . must be prominent, decisive and

[5] In her brief, Ms. Legore states that the photographs taken by Sinai employees on the day of the accident were "enlarged" to make the potholes appear more obvious. Her attorney likewise made this argument in opposition to summary judgment. Sinai responded in the circuit court that there was no factual support in the record for this argument. We agree and decline to consider it.

one about which ordinary minds would not differ in declaring it to be negligence." *McSlarrow v. Walker*, 56 Md. App. 151, 161 (1983).

It was undisputed that Ms. Legore stepped onto the access road after looking left and right for traffic but without looking down at the pavement in front of her as she walked on it. Per her deposition testimony, she "just figured hey, this is a hospital. It would be safe crossing the street[.]" However, as explained above, a person exercising reasonable care for his or her own safety would expect that a roadway used by cars could have damage and defects to the asphalt. It is patently unreasonable to step into a roadway and walk without looking down at the pavement. *See, e.g.*, *Hynes v. Hutzler Bros., Co*., 261 Md. 345, 348 (1971) (holding that a shopper who tripped after allegedly colliding with an employee was contributorily negligent as a matter of law because the failure to observe the employee was unreasonable). The photographic evidence coupled with Dr. Harrison's deposition testimony established that a brief glance at the roadway surface would have alerted Ms. Legore to the dangerous condition of the road.[6] *McQuiggan v. Boy Scouts of Am*., 73 Md. App. 705, 713 (1988) ("It is a fundamental principle of negligence that a person must use his Providence-given senses to avoid injury to himself. This tenet has been recognized since time immemorial." (cleaned up)).

The undisputed evidence also established that Ms. Legore crossed the access roadway directly in front of the Morton Mower Building, rather than walking a very short

[6] Ms. Legore contends that "pedestrians are not supposed to look down at their feet when they walk[.]" The evidence overwhelmingly established that a brief glance at the pavement is all that would have been necessary for her to take reasonable and ordinary care for her own safety.

distance to the marked crosswalk. She testified at her deposition that she did not recall seeing the crosswalk. Dr. Harrison acknowledged in his deposition that if Ms. Legore had used the crosswalk, she would not have "encountered the hazard" that caused her to trip and fall.

Sinai provided a painted and marked crosswalk for pedestrians to use when traveling from the Morton Mower Building to the surface parking lot. The photographic evidence in the record makes clear that the crosswalk was located very near the steps Ms. Legore used to leave the building.

Ms. Legore's choice to cross the access road directly in front of the building, outside a crosswalk, and to do so without looking at the pavement were distinct and decisive acts reflecting a lack of ordinary care for her own safety as a matter of law. Consequently, on both bases, the circuit court did not err by ruling that Ms. Legore was contributorily negligent as a matter of law, barring recovery.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.