Circuit Court for Prince George's County
Case No. CAL18-46651

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0043

September Term, 2020

MARY BONURA

v.

UNIVERSITY OF MARYLAND COLLEGE PARK

Leahy,
Zic,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: March 26, 2021

Appellant Mary Bonura ("Bonura") claims that the Circuit Court for Prince George's County erred in granting summary judgment in favor of appellee University of Maryland College Park ("the University"). Specifically, she claims that there is a genuine dispute of material fact as to whether an unpainted rollover curb constituted an unreasonable risk which the University had the duty to protect her from or warn her against. Because we conclude there was no material fact in dispute, and because the University had no duty to warn Bonura about the presence of rollover curbs, we hold that the circuit court properly granted summary judgment in favor of the University. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Bonura was injured when she tripped on an unpainted rollover curb in Parking Lot 4-B at the University of Maryland's Xfinity Center. Some of the curbs on the perimeter of Parking Lot 4-B are painted yellow. The yellow curbs delineate fire lanes, areas in which parking is prohibited to allow access for fire trucks in the event of an emergency. A rollover curb consists of a gradual rise in incline from street level up to the sidewalk. The University's designated representative stated in his deposition that these types of curbs are "a common construction process to avoid the sharp incline that a normal curb line would produce, and it's used in various applications to primarily facilitate rolling over the curb."

We note at the outset that Bonura does not know precisely which curb or section of curb she tripped over. Her recollections indicate that she tripped over an unpainted section of a rollover curb near or adjoining a yellow-painted curb. There are multiple sections of curb in Parking Lot 4-B matching that description.

The events leading up to Bonura's injuries are as follows. In November 2018, Bonura visited her grandson at University of Maryland, College Park. Bonura and her family planned to attend the Maryland vs. Michigan football game. At approximately 9:30 a.m. on the day of the game, the group met in Parking Lot 4-B, north of Capital One Field, for a tailgate party. According to Bonura, the group grilled food and consumed alcoholic beverages on a "beautiful, clear, crisp day."

Over the course of approximately four hours, Bonura consumed three alcoholic drinks and was "perfectly fine" by the time the group had left for the game. At approximately 2 p.m., Bonura and her family concluded the tailgate party and made their way toward Capital One Field for the football game. Bonura and her family left together, with ten of her family members walking approximately four feet in front of her and her husband. Bonura asserts that while leaving Parking Lot 4-B, she was "going at a normal pace," and "was aware of [her] surroundings."

The group came across an unpainted rollover curb in the parking lot. Bonura indicated she did not notice her family ascend the curb, but recalled she was "looking at the pavement, and everything just kind of blended in the same color." As Bonura crossed the curb, she fell forward, landing on her right knee. Three knee surgeries, two reductions, five weeks of bed rest, and several weeks of physical therapy followed.

Bonura filed a negligence action against the University, claiming that it breached a duty owed to business invitees to protect against latent, unreasonable risks.[1] The University filed a Motion for Summary Judgment claiming it did not breach a duty of care. At the hearing on its motion, the University claimed that it "only has a duty to warn pedestrians of an unreasonable risk that an invitee exercising ordinary care would not discover on their own." The University further argued that the construction of the unpainted curb did not constitute an unreasonable risk, but even if it did, the University had no additional duty to warn an invitee of a curb in good condition visible in daylight on a clear day. Bonura countered that whether the unpainted curb constituted an unreasonable risk and whether it was discoverable with ordinary diligence are questions of material fact that should be presented to the factfinder.

At the conclusion of the hearing, the court found that in this case, it could decide as a matter of law that the condition does not pose an unreasonable risk given there was no genuine dispute about the curb. The court, viewing the facts in a light most favorable to Bonura, found there was no genuine dispute of material fact and as a matter of law she could not establish a claim for negligence. Therefore, the court granted the University's Motion for Summary Judgment. Bonura subsequently filed this timely appeal. Additional facts are provided as relevant.

[1] Bonura's complaint alleged that the University was directly negligent or vicariously liable for its employees' negligence. Because all counts depend upon the duty owed to pedestrians on campus, we address them together.

ISSUE PRESENTED FOR REVIEW

On appeal, Bonura asks us to review a single issue that we rephrase as follows: Did the circuit court err in finding that there was no material dispute of fact and granting the University's Motion for Summary Judgment?[2] For the reasons discussed below, we hold that the circuit court did not err.

DISCUSSION

Bonura contends that the circuit court erred in granting the University's Summary Judgment Motion and not submitting the case to the finder of fact. She argues that whether the curb constituted an unreasonable risk giving rise to a duty to warn was an issue of material fact in dispute. The University does not dispute that it owed business invitees a duty; rather, it maintains that there is no breach of duty because as a matter of law the curb was neither an unreasonable risk nor undiscoverable. The University argues there are no disputes of material fact, and therefore, the circuit court properly granted summary judgment. We agree. We conclude that the curb did not pose an unreasonable risk, but even if it did, the risk was discoverable.

This Court reviews de novo the granting of summary judgment. *Koste v. Town of Oxford*, 431 Md. 14, 25 (2013). Our analysis is a two-step process. *Id*. at 24–25. First, we determine whether a genuine dispute of material fact exists. *Id*. at 25. Second, in the absence of such a dispute, we determine "whether the Circuit Court correctly entered

[2] Bonura phrases the issue as "Did the lower court err by ignoring existing caselaw and substantial factual evidence to rule on a question of material fact which should have been left for the jury?"

summary judgment as a matter of law." *Id*. (quoting *Anderson v. Council of Unit Owners of the Gables on Tuckerman Condo.*, 404 Md. 560, 571 (2008)). "Additionally, if the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party." *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 153 (2008).

I. There is No Genuine Dispute of Material Fact

In order to successfully defeat a motion for summary judgment, "the party opposing the motion must present admissible evidence to show the existence of a dispute of material fact." *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 386 (1997). This evidence must be "sufficiently detailed and precise to enable the trial court to make its ruling as to the materiality of the proffered fact." *Id*. at 387. A fact is material if it "will alter the outcome of the case depending upon how the factfinder resolves the dispute over it." *Id*.

In a case for negligence, the plaintiff must present facts sufficient to support a finding, among other elements, that the defendant was under a duty to protect the plaintiff. *Six Flags America, LP v. Gonzales-Perdomo*, 248 Md. App. 569, 581 (2020). "The existence of a legal duty is a question of law, to be decided by the court." *Doe v. Pharmacia*, 388 Md. 407, 414 (2005). In general, landowners are under a duty to warn invitees about conditions that pose an unreasonable risk of harm that an invitee may not be expected to discover on their own. *Deering Woods Condo Ass'n v. Spoon*, 377 Md. 250, 263 (2003). As a matter of law, there is no duty to warn where there is no fact that could support a

finding that a condition poses an unreasonable risk of harm. *Six Flags America*, 248 Md. App. at 582–83.

Here, the parties generally agree on the material facts. Neither party disputes that Bonura was an invitee, she was walking, it was a clear and bright day, she tripped over a portion of the curb that was unpainted, unmarked, and not at a 90-degree angle, and she suffered injuries as a result. Although neither Bonura nor the University could identify the exact section of curb over which Bonura fell, neither party attaches significance to the issue. Rather, the sole dispute alleged by Bonura is whether the section of unpainted rollover curb posed an unreasonable risk, and accordingly, whether the University owed her a duty to warn about the presence of the curb.

The only testimony Bonura relies upon in attempting to show the hazardous nature of the curb is the description from the University's representative. Bonura never submitted her own expert testimony or code provisions that require yellow paint, and in fact concedes that she was not aware of any statute or regulation that requires curbs to be painted to alert the public. Apart from designations of fire lanes,[3] both sides agree no such statute exists.

Although Bonura alleges the curb is "hazardous," she fails to provide "sufficiently detailed and precise" evidence demonstrating facts or inferences that could indicate the curb was anything other than an ordinary sidewalk feature. She does not provide specific measurements as to the height of the curb which caused it to be an unreasonable risk, nor

[3] "The curbs of the approved fire lane shall be painted with yellow traffic paint which shall meet the requirements of Federal Specification TT-P-1952D, Type II." Prince George's County Code § 11-277(b) (2015).

does she give examples of instances where this curb or similar style curbs created unreasonable risks. Instead, Bonura's label of the curb as "hazardous" derives from the curb's gradual incline and lack of paint in contrast to surrounding yellow-painted curbs—facts which are not in dispute.

Accordingly, we hold no genuine issue of material fact exists. As the disputed issues are not factual but legal, we move to the second prong of our analysis.

II. The Circuit Court Correctly Entered Summary Judgment in Favor of the University

To hold a landowner liable for negligence a business invitee must prove, among other elements, that the landowner breached its duty of care. *Six Flags America, LP*, 248 Md. App. at 581. The duty of care owed to business invitees by landowners is "the duty of ordinary care and caution . . . to see that that portion of its premises . . . was in such a condition as to not imperil [an invitee], so long as she, herself, exercised ordinary care." *Evans v. Hot Shoppes, Inc*., 223 Md. 235, 239 (1960). A landowner breaches this duty of care and is liable for an invitee's injury only if the landowner knows of a condition that poses an unreasonable risk of harm, knows or should expect that an invitee would not discover the danger, and fails to warn or prevent such danger. *Deering Woods Condo Ass'n*, 377 Md. at 263.

Bonura's argument against summary judgment as to the presence of a condition posing an unreasonable risk rests on two contentions. First, she contends the downward slant and gradual incline of the curb in comparison to surrounding sharp-inclined curbs posed an unreasonable risk. Second, she contends the risk was undiscoverable due to either

the absence of yellow paint which caused the sidewalk and the curb to "blend together," or the presence of yellow paint elsewhere distracting her from noticing the rollover curb.[4] We address each contention in turn.

A. The Rollover Curb Did Not Pose an Unreasonable Risk

Unreasonable risks are those that are latent, concealed, or extraordinary conditions of the landowner's premises. *Evans*, 223 Md. at 241. Conversely, a condition does not constitute an unreasonable risk where it is commonly incident to business and is conspicuously located and easily discovered. *Id.* at 240–41. Easily discoverable conditions include those created by placement of commonplace equipment used in many businesses in well-lit and observable positions. *Id*. at 242. In determining if a condition is easily discoverable, the landowner is entitled to assume that the invitee will act as a reasonable person would act. *Morrison v. Suburban Trust Co.*, 213 Md. 64, 69 (1957). Notably, "pedestrians are bound to protect themselves from ordinary uses, obstructions, and comparative roughness of the ground." *Leatherwood Motor Coach Tours Corp. v. Nathan*, 84 Md. App. 370, 383 (1990).

Maryland law addressing whether a condition poses an unreasonable risk is well-settled. In *Manor Country Club*, the Court of Appeals found that a country club was entitled to a directed verdict where an invitee was injured by a large fireplace on the property

[4] Bonura contended for the first time at oral argument that the yellow paint on either side of the curb drew her eye away from the unpainted "rollover" portion. Her counsel pointed to a portion of her deposition where she stated that she "saw the curbs that were painted yellow," but the single reference does little more than indicate she was aware that some curbs were painted. Nowhere in the record does Bonura allege that the yellow paint distracted her and caused her to fall nor was that argument raised in the trial court.

because "it is not unusual for a country club to have fireplaces," and the fireplace was clearly visible and easily discoverable. *Manor Country Club, Inc. v. Richardson*, 253 Md. 319, 322 (1969). Similarly, this Court held that obvious conditions created by ordinary objects do not create an unreasonable risk to invitees, even if injury results. *Hagan v. Washington Suburban Sanitary Comm'n*, 20 Md. App. 192, 196 (1974). In *Hagan*, we concluded that an "innocuous object"—a fire hydrant—located "in the middle of the sidewalk, highly illuminated, and visible seven or more feet from an all glass exit is not so perilously placed as suddenly to confront a reasonably prudent pedestrian" *Id*. at 196–97.

The section of curb that Bonura tripped over was ordinary and easily discoverable. The rollover-style curb is a common feature in commercial parking lots. In addition, Bonura does not allege that the curb was damaged in any way. It was visible from a distance, and Bonura came across the curb on a clear, bright day. The curb was conspicuous, and there is no evidence that the University did anything to conceal the curb either intentionally or unintentionally. Hence, the rollover curb was nothing more than an ordinary obstruction from which Bonura was bound to protect herself. It did not pose an unreasonable risk.

B. Any Risk That Did Exist Was Discoverable to Bonura

To hold a landowner liable for negligence, an invitee must also prove that the risk complained of was unlikely to be discovered by invitees. *Deering Woods Condo Ass'n*, 377 Md. at 263. "[T]he owner or occupier of land ordinarily has no duty to warn an invitee of an open, obvious, and present danger," but has a duty to warn of latent dangers. *Tennant*, 115 Md. App. at 389. These latent risks encompass unusual or abnormal conditions on the

premises, as opposed to ordinary or obvious conditions. *Evans*, 223 Md. at 240. Although overlapping with the "unreasonable risk" analysis, the "undiscoverable" analysis focuses on an invitee's appreciation of the risk. *Six Flags America, LP*, 248 Md. App. at 583.

Bonura correctly argues that *Six Flags* supports the proposition that a visible condition can still present an undiscoverable risk of harm. However, *Six Flags* is distinguishable from her case on that issue. In *Six Flags*, an invitee slipped on a bridge covered with water. *Id.* at 585. Notably, although the water was visible, this Court found significant the fact that non-skid coating was present on other bridges and walkways in the park, but not on the particular bridge on which the invitee slipped. *Id.* at 583. This Court concluded that although there was overwhelming evidence the water was discoverable, these additional facts *could* indicate an invitee was unable to appreciate the danger associated with the risk. *Id*. at 583. Unlike *Six Flags*, Bonura has not presented additional facts to support the argument that a reasonable invitee would have failed to appreciate the risk associated with the unpainted rollover curb. As mentioned previously, the curb was clearly visible and intact—there is nothing to indicate that this curb was anything but an ordinary curb.

Bonura also argues that despite the visibility of the curb, the construction and "blending" effect caused it to be undiscoverable. The University counters that the analysis in *Lloyd v. Bowles*—that the blending of materials does not make a condition undiscoverable, and thus dangerous—applies to this case. We agree. In *Lloyd*, a customer left a beauty parlor and tripped coming down from the steps leading to the sidewalk because the materials "blended together." *Lloyd v. Bowles*, 260 Md. 568, 571 (1971). The *Lloyd*

court rejected the customer's blending argument and found "there was nothing inherently dangerous about the instrumentality complained of. . . ." *Id*. at 574. Similarly, Bonura's contention that the color of the curb and color of the parking lot "blended together" does not make the risk undiscoverable. In fact, there is nothing to indicate that Bonura was unable to discover the curb, given that the entirety of her group walking a few feet in front of her traversed the curb, and she was scanning the area as she was walking in broad daylight on, by her standards, a clear, crisp day. In addition, Bonura confirmed in deposition that she frequents other locations with unpainted curbs. An invitee exercising reasonable care would discover the curb in Parking Lot 4-B.

Last, we briefly examine the analysis in *Gellerman v. Shawan Road Hotel Ltd*., 5 F. Supp. 2d 351 (D. Md. 1998). Although the federal court's analysis is not binding, as this Court noted in *Six Flags*, it nonetheless holds value as the facts are analogous and the reasoning is persuasive. *Six Flags America, LP*, 248 Md. App. at 585. In *Gellerman*, a woman tripped over an uneven, raised curb in a parking lot, and subsequently filed a negligence action claiming the curb posed an unreasonable risk and that the defect was undiscoverable. 5 F. Supp. 2d at 351. The court, examining law from other jurisdictions, held that when there is nothing to distract an invitee from seeing a defect apart from those that are expected on the premises, the condition cannot be undiscoverable. *Id.* at 353. The curb was open and obvious as a matter of law because the distractions complained of—moving cars in a parking lot—were not unexpected or not "substantially beyond the miscellany of activity normally found" in a parking lot. *Id.* at 354. Maryland law does not allow for recovery for such open and obvious conditions. *Id.*

Similarly, any condition that Bonura suggests distracted her from the presence of the curb was not unexpected. Whether she was misled by the blending of the sidewalk and the unpainted curb, or distracted by some surrounding yellow curb, is irrelevant. Both conditions are expected and normally found within parking lots, and Bonura's proposition that either condition makes the rollover curb anything other than open and obvious fails.

As the rollover curb did not pose an unreasonable risk and any risk was discoverable to invitees exercising ordinary care, we hold that the University did not have a duty to warn Bonura of its presence.

CONCLUSION

In sum, we conclude that Bonura did not put forth sufficient facts to raise a material dispute of fact and that she fails to state a negligence claim as a matter of law. The University breached no duty, the curb posed no unreasonable risk, and no evidence exists to indicate an invitee would not have discovered the curb with reasonable care. Hence, the circuit court did not err in granting the Motion for Summary Judgment in favor of the University.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.