Circuit Court for Montgomery County
Case No.: 479691V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 249

September Term, 2021

NANCY THORNTON

v.

MONTGOMERY GENERAL HOSPITAL, INC.

Reed,
Beachley,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: December 7, 2021

Nancy Thornton appeals the Circuit Court for Montgomery County's grant of Montgomery General Hospital, Inc.'s ("the hospital") motion for summary judgment. Thornton presents two questions for our review, which we consolidate and rephrase as follows:

> Did the trial court err in holding that the hospital did not breach its duty to Thornton, and that there was insufficient evidence to find that the retaining wall posed an unreasonable risk of harm?[1]

For the reasons set forth below, we shall affirm the judgment.

BACKGROUND

On February 25, 2017, Thornton was leaving the hospital's emergency department when she fell and injured her ankle. Thornton's injury occurred after she stepped off the hospital's sidewalk and took a shortcut across a grassy area to access the parking lot where her mother's car was parked. When Thornton reached the parking lot, she stepped down

[1] Thornton articulated her questions presented as follows:

> I. Did the trial court err in holding as a matter of law that MGH was free of negligence because it owed no duty to Ms. Thornton to make her safe from the hazardous condition created by the step down from the grassy area to the parking area, and because it owed no duty to Ms. Thornton to warn her that the step down from the grassy area to the parking area was from a short retaining wall, and not from a standard curb, and thereby granting MGH's motion for summary judgment and denying Ms. Thornton's cross motion for summary judgment?
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> II. Did the trial court err in holding as a matter of law that the retaining wall between the parking and grassy areas at Montgomery General Hospital did not pose an unreasonable risk of harm because it did not violate any code or statute?

from what she thought was a standard curb, but was in fact a short retaining wall approximately 13 inches high. Thornton suffered a severe fracture of her ankle and underwent surgery the following day.

On February 21, 2020, Thornton filed a complaint against the hospital. Both the hospital and Thornton filed motions for summary judgment. The circuit court held a hearing on the parties' respective requests for summary judgment and made the following findings:

> There is no dispute that the parking lot was in compliance with county and state regulations. The area was properly illuminated, and a staircase, had she elected to use it, was properly configured. There had been no prior injuries, or safety issues reported regarding the retaining wall, curb, and everyone agrees that … the plaintiff was an invitee, and that a duty of care was owed to her as an invitee… Here while the plaintiff's expert, an architect, claims that a retaining wall presented a hazardous condition, I don't find that there was sufficient evidence to support that.

The court granted the hospital's motion for summary judgment and denied Thornton's cross-motion for summary judgment. Thornton appeals the court's ruling.

STANDARD OF REVIEW

When ruling on a motion for summary judgment, a trial court must first determine whether there is a genuine dispute of material fact. *Rivas v. Oxon Hill Joint Venture*, 130 Md. App. 101, 106-07 (2000). If there is no dispute of material fact, the trial court must decide whether the moving party is, as a matter of law, entitled to judgment. *Id*. On appeal, a circuit court's grant of summary judgment will be reviewed by this Court without deference. *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 312 (2019). As we have previously stated, "[w]e apply a *de novo* standard of review in determining whether the

trial court correctly entered summary judgment." *Torbit v. Baltimore City Police Dep't*, 231 Md. App. 573, 586 (2017) (citation omitted). In short, we must determine whether the circuit court's entry of summary judgment was "legally correct." *Piney Orchard Cmty. Ass'n, Inc. v. Piney Pad A, LLC*, 221 Md. App. 196, 206 (2015) (quotation marks and citation omitted).

DISCUSSION

Thornton contends that the court erred by holding that the retaining wall did not present an unreasonable risk of harm. She further maintains that the retaining wall posed a dangerous condition that the hospital had knowledge of and failed to provide warnings of, and that the hospital thus breached its duty to her, a business invitee.

The hospital responds that no material facts were in dispute and that summary judgment was properly granted. It agrees that Thornton was a business invitee, but asserts that there had been no other falls or injuries on the retaining wall prior to Thornton's fall, and that it had no knowledge of any dangerous condition, making summary judgment in its favor proper.

A party must demonstrate that there is a genuine dispute as to a material fact to defeat a motion for summary judgment. *Davis v. Regency Lane, LLC*, 249 Md. App. 187, 203-04 (2021). As stated by the Court of Appeals, however, "where the plaintiff has not shown by any evidence that the injuries sustained by him were a direct consequence of negligence on the part of the defendant, and there is no rational ground upon which a verdict for the plaintiff could be based, the trial judge should direct a verdict in favor of the defendant." *Moulden v. Greenbelt Consumer Servs., Inc.*, 239 Md. 229, 232 (1965).

Here, neither Thornton nor the hospital assert that there are any material facts in dispute. Thornton instead maintains that the circuit court erred by ruling that the hospital was not negligent as a matter of law, and asks this Court to reverse and "find that [she] is entitled to summary judgment[.]" Given the fact that there are no material facts in dispute, the circuit court correctly entered summary judgment. We now turn to whether the court was legally correct in determining that Thornton had not established a prima facie case of negligence.

We have long held that "the duty that an owner or occupier of land owes to persons entering onto the land varies according to the visitor's status as an invitee (i.e. a business invitee), a licensee by invitation (i.e., a social guest), a bare licensee, or a trespasser." *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 387-88 (1997) (citation omitted). An invitee is "owed a duty of ordinary care to keep the property safe." *Rivas*, 130 Md. App. at 109. Specifically, this Court has held that "[t]he duties of a business invitor thus include the obligation to warn invitees of known hidden dangers, a duty to inspect, and a duty to take reasonable precautions against foreseeable dangers." *Tennant*, 115 Md. App. at 388.

Nonetheless, "[s]torekeepers are not insurers of their customers' safety, and no presumption of negligence arises merely because an injury was sustained on a storekeeper's premises." *Giant Food, Inc. v. Mitchell*, 334 Md. 633, 636 (1994). Moreover, in *Tennant* we explained that, "[l]ike the owner, 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." 115 Md. App. at 389. The burden is on the invitee to demonstrate that the landowner or occupier created or had knowledge of the dangerous condition. *Id.*

Notice of the dangerous condition – either actual or constructive – is required to find an owner or occupier liable for injury resulting from the hazard. *Macias*, 243 Md. App. at 336. We have consistently held that where there is no evidence that the property owner had notice of the dangerous condition, summary judgment in favor of the owner is proper. *See id.* at 338-39 (affirming summary judgment where plaintiff failed to show that the landowner "could have, or did, perceive a risk"); *Hansberger v. Smith*, 229 Md. App. 1, 23 (2016) (affirming summary judgment where there was no evidence landowner had prior knowledge of similar criminal activity on the premises); and *Richardson v. Nwadiuko*, 184 Md. App. 481, 497 (2009) (affirming summary judgment where there was "nothing before the court to show that anyone brought the wet floor to [landowner]'s attention").

Here, both parties agree that Thornton was a business invitee when she fell. Thornton relies on *Anne Arundel Cnty. v. Fratantuono*, 239 Md. App. 126 (2018) to support her position that the hospital beached its duty of care. There, this Court affirmed a jury award for injuries suffered after Fratantuono's left leg fell into a water meter hole while walking over a grassy area. *Id.* at 132. The evidence there, however, demonstrated that "Ms. Fratantuono … had walked that path at least 50 times and had observed others walking it as well[.]" *Id.* at 140. Moreover, the grassy area in that case "fell between two paved sidewalk segments that were not otherwise connected" and because of the break in paved sidewalk at the area in question, we specifically noted that "the injured party was traversing the unpaved area to get from one paved area to another." *Id.* at 140-41.

Unlike *Fratantuono*, the grassy area here required Thornton's departure from a sidewalk directly connected to the parking area to which she was walking. It was not between two walkways "not otherwise connected[,]" but parallel to one of the two paved sidewalks that led to the area where Thornton's mother's car was parked. Moreover, while the evidence in *Fratantuono* demonstrated that the path had been walked by Fratantuono and others over "50 times" prior to the accident, no such evidence is reflected in the record before us. Instead, the hospital asserted that it was not aware of any pedestrians walking over the area in question, and that there were no signs of foot traffic in the area.

The hospital points to *Macias* for support that summary judgment was properly granted. In *Macias*, a child fell when playing on a condominium sign. 243 Md. App. at 305. The sign then fell onto the child, causing injuries. *Id.* A negligence action was brought against the condominium management company (the "condominium"), and the circuit court granted summary judgment in favor of the condominium, holding that "there was no evidence in the record to support a finding that [the condominium] had knowledge or reason to know of 'an unsafe condition or [that] anybody might get hurt there.'" *Id*. at 312. The circuit court in that case found significant that "[t]here was no reported history of anybody else getting hurt" and "no indication [in] the record that there was any reason to believe that it was a dangerous situation." *Id*.

On appeal, this Court affirmed, holding that the plaintiff "had adduced no evidence that [the condominium] had any actual or constructive notice of any dangerous condition." *Id*. at 339. We noted that "[t]here was no evidence that anyone had ever been harmed by the community sign, or that there were any visible defects that might have put [the

condominium] on notice that someone could be injured." *Id*. at 338. We concluded that summary judgment was properly entered because "a jury would not have been able to infer that [the] accident could have been prevented through [the condominium's] use of reasonable care." *Id*. We explained that "there [was] no basis in the record here for concluding that [the condominium] should have known" of the dangerous condition, "or that they could have discovered such a defect through the use of reasonable care[.]" *Id*.

We agree with the hospital that the facts before us bear resemblance to those in *Macias*. Thornton has adduced no evidence that the hospital had actual or constructive notice of any dangerous condition. Instead, the record demonstrates that there were no prior falls or accidents in the area where Thornton fell. There were no visible defects with the wall, and the trial court found that "the parking lot was in compliance with county and state regulations." Here, as in *Macias*, because there is no basis in the record to conclude that the hospital knew or should have known that the retaining wall presented a dangerous condition, a jury would not have been able to infer that Thornton's accident could have been prevented through the hospital's use of reasonable care.

Lastly, Thornton asserts that the court erred by ruling that the retaining wall did not pose an unreasonable risk of harm to Thornton "because it did not violate any code or statute[.]" Thornton makes too much of the circuit court's finding that the retaining wall complied with county and state regulations. The circuit court did not rule that the retaining wall was not dangerous merely because it did not violate any code or statute. Instead, the court's finding that the retaining wall complied with applicable regulations was just one of multiple findings that led to the court's decision – including that "[t]he area was properly

illuminated," that the "staircase, had she elected to use it, was properly configured[,]" and that "[t]here had been no prior injuries[] or safety issues reported regarding the retaining wall[.]" In sum, the court did not err in considering the retaining wall's compliance with county and state regulations as one of several factors in granting summary judgment in favor of the hospital.

As the hospital's invitee, Thornton had a duty to exercise due care for her own safety. *Tennant*, 115 Md. App. at 389. As we stated in *Macias*, "[w]ithout some showing by [plaintiff] that [the condominium] could have, or did, perceive a risk … there can be no liability based in negligence." 243 Md. App. at 339. Here, Thornton did not satisfy her burden of demonstrating that the hospital could have or did perceive a risk posed by the retaining wall. Thornton has done little more than point to the fact that she was injured to show that the hospital breached its duty of ordinary care to keep the property safe. The law, however, is clear that "no presumption of negligence arises merely because an injury was sustained" on the hospital's premises. *Giant Food*, 334 Md. at 636. Accordingly, because Thornton did not demonstrate that the hospital had any actual or constructive notice of any dangerous condition, we hold that the record supported summary judgment in favor of the hospital.[2]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[2] In her reply brief, Thornton argues that the hospital's arguments are tantamount to the assertion of an assumption of the risk defense. Assumption of the risk is not an issue in this appeal.