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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

EILEEN OAKES,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County
)	
v.)	No. 09 L 9911
)	
CHICAGO PARK DISTRICT,)	Honorable
)	Ronald S. Davis,
Defendant-Appellee.)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *HELD:* Summary judgment to defendant Chicago Park District on plaintiff's complaint against Chicago park district for injuries she sustained in an accident occurring on park district recreational property is affirmed. The park district is immune from liability pursuant to section 3-106 of the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-106 (West 2010)).

¶ 2 Plaintiff, Eileen Oakes, filed a complaint against defendant, the Chicago Park District (park district), seeking damages for injuries she sustained when she slipped and

fell in the Wildwood Park spray pool operated by the park district. The circuit court granted summary judgment to the park district. The court found that the record did not support or present a question of fact regarding Oakes' claim that the park district was willful and wanton in its operation of the spray pool and the park district was, therefore, immune from liability. On appeal, Oakes argues the court erred in granting summary judgment to the park district because (1) there was a question of fact regarding whether the park district acted willfully and wantonly where the record showed the park district employees knew of the dangerous pool condition and did not repair it; (2) the park district is not immune from liability because the condition of the pool was not created by the weather; (3) the slippery slime on the bottom of the pool was not a natural accumulation; and (4) the slime was an open and obvious danger. We affirm.

¶ 3 Background

¶ 4 On August 24, 2008, Oakes was injured when she slipped and fell in the spray pool at Wildwood Park, a park district facility. The spray pool is a shallow, circular concrete basin with two serpent-shaped sprinklers approximately 15-20 feet apart and a concave drain area in the middle.

¶ 5 Oakes filed a complaint against the park district for her injuries. In her amended complaint, she alleged that the park district owed her a duty to act in a manner free from willful and wanton conduct. She asserted that the park district breached that duty because it (a) allowed the spray pool to run continuously, thereby causing the accumulation of a slimy substance, which transformed the pool into a slip and fall

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hazard; (b) failed to remove the algae-like substance (a slip hazard) from its spray pool, even though the park district knew the pool's continuous spray caused the accumulation of that substance; (c) failed to warn park patrons (including Oakes) about the presence of an unreasonably dangerous slip and fall hazard in the spray pool; and (d) owned, operated, managed, maintained and controlled the park in a willful and wanton manner.

¶ 6 The park district filed for summary judgment. It asserted that it did not owe Oakes a duty of care because the risk of slipping on a wet spray pool surface is open and obvious and, if there was algae in the pool, it was a natural accumulation which it had no duty to protect against. The park district also asserted that it was immune from liability because (a) section 3-105 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/3-105 (West 2010)) shields public entities from liability for injuries caused by the effects of weather conditions on their property, such as a slip and fall resulting from the natural growth of algae in a park district spray pool; and (b) section 3-106 of the Tort Immunity Act (745 ILCS 10/3-106 (West 2010)) shields public entities from liability based on the condition of recreational property, such as the park district spray pool, where the entity is not guilty of willful and wanton conduct in proximately causing the injury.

¶ 7 In Oakes' deposition, she testified that she was visiting the playground at Wildwood Park when her one-year-old son ran toward the spray pool. Oakes "[ran] very quickly to try to catch him" and entered the pool. She testified, "I didn't have time

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to look at anything,” and “the next thing I knew . . . my feet just slipped on the surface and I landed on my head.” Oakes testified that children “were always . . . slipping and falling in that area,” and that the spray pool surface was slippery “wherever the area was wet.” Oakes stated that she never saw any irregularities on the surface of the spray pool, and that she slipped on a “clear slimy substance.” She testified that, as she lay in the pool after her fall, she could feel a “very slippery, very slimy” substance against her bare arms.

¶ 8 Oakes testified that she spoke with park supervisor, James Ziaja, a week after her accident. She stated “[h]e generally knew it was slippery, but nothing specific until later.” She also spoke to Ziaja at an event on July 3, 2009. Asked whether Ziaja indicated that he had been trying to solve the problem of a slippery substance in the spray pool, she testified that he told her he had been requesting access to the shutoff valve for the spray pool and he “felt *** if *** he could turn [the water] off occasionally and let the surface dry, then it wouldn’t have developed that slimy substance.”

¶ 9 In Ziaja’s deposition, he testified that he recalled speaking with Oakes at the July 3, 2009, event, but did not remember discussing spray pool issues during that conversation. Ziaja stated that he was not at Wildwood Park when Oakes’ accident occurred. He arrived at the park between one to two hours later. Upon his arrival at the park, Ziaja spoke to two witnesses to the accident, neither of whom reported to him that Oakes had slipped on a slippery substance, only that she had slipped and fallen. Ziaja stated he could not recall with certainty whether he inspected the spray pool upon

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arriving at the park on the day of Oakes' accident. He testified that he inspected the spray pool later that week, once the pool had been turned off, and that the surface of the pool was dry, "clear, clean, [and] fine." Ziaja stated that, less than one week after Oakes' accident, he had a conversation with Oakes, but he did "not remember her saying what she slipped on," only that "she just went into there and she slipped and fell."

¶ 10 Ziaja testified that, prior to Oakes' accident, two other incidents occurred in the spray pool that summer prior to Oakes' accident. In June 2008, a child slipped and fell in the spray pool. Ziaja stated that he inspected the pool after the child's accident and that "it was slippery." He testified that the child's father demanded Ziaja "do something" to alleviate the slipperiness, and Ziaja responded by pouring bleach in the pool. Ziaja stated that his actions were motivated by a desire to "allay the gentleman." In his deposition, Ziaja testified that he had "no idea why it was slippery," and that he "didn't see any substance." Ziaja stated that after the incident, he decided to "call it in," and reported the child's fall. He testified that he did not know whether his colleagues followed up on his telephone report.

¶ 11 Ziaja testified that he also filed a report and called in a complaint regarding the second spray pool accident that preceded Oakes' slip and fall. This incident also involved a child who slipped and fell in the spray pool. Ziaja testified, "I do not recall [the child's mother] saying that there was a substance [in the spray pool]. She did say that it was slippery." He did not pour bleach into the pool.

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¶ 12 Ziaja testified that, for approximately two months prior to Oakes' accident, the water in the spray pool had been running continuously – 24 hours a day, 7 days a week. Prior to Oakes' accident, several patrons complained to Ziaja about the pool's unremitting spray. Ziaja testified the patrons were concerned about water conservation, not safety. In response to these complaints, Ziaja sent two memos to Terrence Sweeney, the park district area manager, asking the park district to shut off the spray pool. Ziaja's June 16, 2008, email to Sweeney stated, "Terry, I cannot turn the spray pool off; it runs continuously. Thanks." When the water continued to run non-stop, he sent Sweeney a second email stating, "Terry, the spray pool still runs continuously. Thanks." Ziaja testified that he did not know what actions, if any, Sweeney took to correct the problem. Ziaja stated that he did not know whether leaving the spray pool on continuously could lead to the growth of a slippery substance.

¶ 13 Ziaja testified that one of his responsibilities is "to submit things to be fixed," and "anytime anyone has a complaint, I forward it." He stated he inspected the park at least once a week, when he walked around "to see if anything's broken." During these inspections, Ziaja would call in to Sweeney "anything . . . from tree branches to broken benches." Regarding the spray pool, Ziaja stated, "It was suggested to me [prior to August 2008] by Terry Sweeney, that he was going to see if they could power wash the spray pool."

¶ 14 In Sweeney's deposition, he testified that his responsibilities as area manager included "dealing with community groups [and] complaints" at 24 parks. Sweeney

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testified that when a park supervisor makes a request or a complaint, it is the area manager's role to alert the facilities manager. Sweeney testified that every time he receives a request, he forwards it to the facilities manager. Sweeney explained that the facilities manager's job is to contact the trades coordinators, who then send someone to fix the park defect. Sweeney testified that he received two memos from Ziaja regarding the spray pool running continuously. Sweeney stated that, after he received Ziaja's memos, he spoke with the facilities manager, Larry Moser, who decided not to authorize the cessation of the spray pool's continuous spray. He added that Ziaja would not have had access to the spray pool shutoff valve, so Ziaja would not have been able to shutdown the sprinklers on his own.

¶ 15 Sweeney stated that 80% - 90% of the park district spray pools are left to run continuously, and that park district staff clean the spray pool as needed. Sweeney testified that prior to Oakes' accident, he had not heard of anyone slipping in the spray pool or complaining that a slippery substance or algae covered the pool's surface. Sweeney stated that he had not heard about the two incidents in the spray pool that preceded Oakes' accident in the summer of 2008, and he asserted that he has never heard of anyone pouring bleach into a spray pool to remove debris or a contaminant. He testified that he did not consider the spray pool to be dangerous in 2008. Sweeney added that he had not encountered any problems with slippery substances or algae in the spray pools at any of the parks he oversaw.

¶ 16 Sweeney testified that he received a phone call from Ziaja about Oakes'

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accident. Sweeney stated that, a few days after the accident, he walked into the spray pool, inspected it, and did not notice anything unusual. Sweeney testified that the spray pool had been turned off prior to his inspection, presumably by the tradespeople because the season was coming to a close. He observed a three-to-four foot circle of discoloration around the spray pool drain. He speculated that the discoloration may have been a result of rust buildup. He added that there “wasn’t any residue,” “it was not slippery,” and he did not know if Oakes slipped on a slick substance.

¶ 17 Moser testified that, as facilities manager, he managed the 285-plus tradesmen that handled the “building trades for all of our facilities in the park district.” He testified that he was responsible for managing the facilities at Wildwood Park in the summer of 2008. Moser testified that 60% of the park district’s spray pools run continuously from Memorial Day to Labor Day. He stated that turning the water off at the Wildwood Park spray pool would require a plumber with a special wrench, and he was unaware of anyone complaining that they were unable to shut off the water at the spray pool that summer. Moser testified that the park supervisor, area manager, and tradesmen could all report complaints about a park, and that patrons could report complaints as well by calling 311.

¶ 18 Moser stated a continuously running spray pool is not hazardous. He testified that park supervisors sometimes used bleach to clean spray pools that had contaminants. He had never heard of any algae or other slippery substance at any of the 454 parks that he supervised, including Wildwood Park. Moser testified that in his

experience, stains on the surface of park district spray pools were not slippery, and that the surface of the Wildwood spray pool was made of “a very durable concrete” that is “water tight” and has a “broomed [grooved], rough surface so that people don’t slip on it.”

¶ 19 On May 11, 2011, the circuit court granted the park district’s motion for summary judgment. The court found that, “in viewing the facts in a light most favorable to the plaintiff,” the record did not support a claim of willful and wanton conduct on the part of the park district, and no issues of material fact existed. It dismissed the case with prejudice. On June 29, 2011, the court denied Oakes’ motion to reconsider. On July 26, 2011, Oakes timely appealed from the court’s denial of her motion to reconsider.

¶ 20 ANALYSIS

¶ 21 Oakes argues that the circuit court erred in granting the park district’s motion for summary judgment on her amended complaint. In appeals from an entry of summary judgment, we review the record *de novo*. *Axen v. Ockerlund Construction Co.*, 281 Ill. App. 3d 224, 229 (1996). A motion for summary judgment is granted only when pleadings, depositions, admissions on record, and affidavits, construed strictly against movant and liberally in favor of non-movant, show that there is no question of material fact and that movant is entitled to judgment as a matter of law. *Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986). In reviewing an order for summary judgment, we may draw reasonable inferences from undisputed facts but where reasonable minds could draw divergent inferences from the undisputed facts, summary judgment is improper and the

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case should be remanded to the circuit court. *Barker v. Eagle Food Centers, Inc.*, 261 Ill. App. 3d 1068, 1070 (1994).

¶ 22 WILLFUL AND WANTON CONDUCT

¶ 23 The circuit court granted summary judgment in favor of the park district, finding the record “does not support a claim of willful and wanton conduct,” and “no issue of material fact exists.” Section 3-106 of the Tort Immunity Act provides:

“Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury.” 745 ILCS 10/3-106 (West 2010).

It is undisputed that the park district is a public entity and that the spray pool constitutes recreational property. Accordingly, unless the park district’s conduct was willful and wanton, section 3-106 shields the park district from liability for Oakes’ injuries caused by a condition of the spray pool.

¶ 24 In tort immunity cases, to determine whether a public entity’s conduct is willful and wanton, courts look to the following definition in section 1-210 of the Tort Immunity Act:

“ ‘Willful and wanton conduct’ as used in this Act means a course of action which

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shows an actual or deliberate intention to cause harm or which, if not intentional, shows an *utter indifference to or conscious disregard for the safety of others or their property*. This definition shall apply in any case where a 'willful and wanton' exception is incorporated into any immunity under this Act." (Emphasis added).

745 ILCS 10/1-210 (West 2010)

"The term 'willful and wanton' includes a range of mental states, from actual or deliberate intent to cause harm, to conscious disregard for the safety of others or their property, to utter indifference for the safety or property of others." *Harris v. Thompson*, 2012 IL 112525 ¶41.

¶ 25 We agree with the circuit court that the record does not support a claim of willful and wanton conduct. Oakes alleged that the park district's conduct was willful and wanton where the park district demonstrated utter indifference to or conscious disregard for the safety of others because of (a) its decision to allow the spray pool to run continuously, which caused growth of a slippery substance in the pool; (b) its failure to remove the algae or slime-like substance from the pool; (c) its failure to warn park patrons of a potential slip hazard; or (d) its maintenance of the park premises. Although Oakes need not prove her case at the summary judgment stage, she must present sufficient evidence to create a genuine issue of material fact as to her claims.

Keating v. 68th and Paxton, L.L.C., 401 Ill. App. 3d 456, 470 (2010). She fails to do so. Assuming *arguendo* that there was a dangerous slippery condition at the bottom of the pool in the pool, whether caused by slime or algae or some other substance, we find no

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support for Oakes' claim that the park district was willful and wanton.

¶ 26 To support her claim that the park district's conduct was willful and wanton, Oakes asserts that the park district exercised conscious disregard for the safety of others by allowing the spray pool to run continuously. She contends that the park district, by refusing to turn the spray pool off, knowingly caused the development of a slippery substance on the spray pool floor. The evidence Oakes presents to substantiate this claim, a conversation she had with Ziaja in July 2009, does not support her allegation that the park district's conduct was willful and wanton or raise any questions of material fact.

¶ 27 In Oakes' deposition, she offered testimony regarding a conversation with Ziaja at a July 3 event in 2009, almost one year after her accident. Oakes stated that Ziaja "felt . . . if he could turn [the water] off occasionally and let the surface dry, then it wouldn't have developed that slimy substance." Ziaja, in his own deposition, testified that he did not remember making any statements to that effect during the conversation. In deciding a motion for summary judgment, we review all depositions liberally in favor of the non-moving party. *Purtill*, 111 Ill. 2d at 240-41. However, even assuming *arguendo* that Ziaja, in July 2009, did indeed feel that leaving the spray pool on caused the development of some slippery substance, Oakes testimony still fails to present a question of fact. Oakes' evidence, her own testimony, merely illustrates the reflections of one park district employee *after the accident*. Ziaja's reflections in July 2009 were retrospective. They demonstrate his reflections at the time of the conversation, almost

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a year after the accident. They do not raise a question of fact regarding the park district's awareness, through Ziaja, of the existence of a slippery hazard in the pool prior to the accident.

¶ 28 Oakes had also testified that she spoke with Ziaja about a week after the accident, and at that time, "he generally knew it was slippery, but nothing specific until later." Her testimony is not that Ziaja was aware, prior to the accident, that allowing the spray pool to run continuously would cause the development of a slippery substance on the spray pool floor or even that he knew there was a slippery substance in the pool prior to her accident. Rather, her testimony shows that, although Ziaja knew the pool was slippery shortly after her accident, he did not know why until later, if at all.

¶ 29 The testimony of Sweeney and Moser also presents no support for the assertion that the park district knew that running the water continuously in the spray pool would cause the accumulation of algae or a slippery substance. Sweeney testified that he had never heard of anyone complaining about or slipping on a slippery substance on the pool surface. Sweeney had never encountered any slippery substance/algae problems at any of the 24 pools he supervised. Moser testified he had never heard of any algae or other slippery substance at any of the 454 pools he supervised. There is nothing to support Oakes' assertion that the park district knew, prior to her accident, that running the water continuously would cause the accumulation of a slippery hazard in the pool. Accordingly, there is no question of material fact raised by her claim that the park district consciously disregarded the safety of its patrons by allowing the pool to

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run continuously. Oakes' wilful and wanton claim on this basis fails as a matter of law.

¶ 30 Oakes also argues that the park district was willful and wanton because it was aware of the presence of a slippery substance in the pool and failed to remove the dangerous substance. There is nothing in the record to support or raise a question of fact regarding Oakes' assertion that the park district knew that there was slime or algae or any other slippery substance on the bottom of the pool prior to Oakes' accident. No park district employee testified that they had received complaints about or were aware of the presence of a slippery substance or slime in the pool. Indeed, Sweeney and Moser both testified they did not know that two people had slipped in the pool in the summer of 2008 prior to Oakes' accident. They would, therefore, have no reason to suspect that something might be causing a slipperiness problem at the pool which needed to be addressed. Sweeney did receive two emails from Ziaja regarding the continuous running of the spray pool, but neither communication mentioned slipperiness of the pool.

¶ 31 Oakes asserts Ziaja became aware of a slippery substance on the pool floor after a child slipped and fell in the pool two months prior to her accident. As Oakes points out, Ziaja testified that, after he learned of the child's accident, he inspected the pool, found "it was slippery" and poured bleach over the concrete surface to placate the father of the child. But Ziaja also testified that he did not know what the cause of the slipperiness was, "if it was because it was half dry, half wet from the water." Asked whether he poured the bleach to remove a substance in the pool, he responded that he

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"didn't see any substance." Asked specifically whether he "felt something slippery at the bottom," Ziaja responded that "it felt slippery" and again stated that he had "no idea why it was slippery."

¶ 32 Ziaja never reported feeling *something* slippery at the bottom of the pool, let alone that he felt slime or algae or any slippery substance. Instead, he reported the pool "felt slippery" and that he did not know what caused the slipperiness, a statement from which we can neither infer the presence of a slippery substance on the bottom of the pool nor Ziaja's knowledge of the existence of such a substance. If he had felt "something" slippery, he would have said so in response to the very specific question. Without more, we cannot take Ziaja's statement to mean that he knew the slipperiness was caused by anything other than a slick of water over a shallow concrete surface. Overall, taking the pleadings, depositions and assorted other filings in the light most favorable to Oakes, we find nothing in the record that supports or raises a question of material fact regarding Oakes' assertion that the park district knew that there was a slippery substance on the floor of the spray pool prior to Oakes accident.

¶ 33 Necessarily, given that Oakes' allegation that the park district had knowledge of a slippery substance in the pool is unsupported by the record, the park district's failure to remove that slippery substance cannot demonstrate utter indifference to or conscious disregard for the safety of others. Without some showing that the park district knew of the existence of a slippery substance in the pool, Oakes cannot show that the park district knew that its usual maintenance procedures and inspections might be

inadequate. She cannot show that the park district knew that removal of that substance was necessary, let alone that its failure to remove the substance would naturally and probably result in injury. Accordingly, Oakes' unsupported assertion that the park district's failure to remove the slime or slippery substance was wilful and wanton misconduct does not raise a question of material fact.

¶ 34 Similarly, there is no genuine issue of material fact regarding Oakes' assertion that the park district's failure to warn patrons of the slippery substance was wilful and wanton misconduct. There is nothing to show the park district had knowledge that there was a slippery substance on the bottom of the pool. Therefore, there is also nothing to show that the park district had any reason to know that it needed to warn patrons about the substance and that its failure to do so showed utter indifference to or conscious disregard for the safety of others. The park district's failure to warn cannot be found to be wilful and wanton as a matter of law.

¶ 35 There being no question of material fact raised by Oakes' allegations that the park district was willful and wanton in its conduct with regard to the spray pool, the park district is immune from liability for Oakes' injuries pursuant to section 3-106 of the Tort Immunity Act. The circuit court correctly granted summary judgment to the park district on this basis. We need not address Oakes' other arguments.

¶ 36 Conclusion

¶ 37 For the reasons stated above, we affirm the circuit court's grant of summary judgment to the park district.

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¶ 38 Affirmed.