

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (3d) 120927-U

Order filed June 18, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

DENISE SANTORO,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	LaSalle County, Illinois,
)	
v.)	Appeal No. 3-12-0927
)	Circuit No. 09-L-173
)	
ROSALYN SANTORO,)	Honorable
)	R. J. Lannon, Jr.,
Defendant-Appellee.)	Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court properly granted summary judgment in favor of defendant because the green garden hose on an asphalt driveway constituted an open and obvious condition.
- ¶ 2 Plaintiff, Denise Santoro, appeals from the trial court's order granting summary judgment in favor of defendant, Rosalyn Santoro, Denise's mother. On appeal, Denise argues the garden hose she tripped over was not an open and obvious hazard that would relieve Rosalyn of her duty of care to Denise, her invitee. We affirm.

FACTS

¶ 3

¶ 4 On September 1, 2009, Denise filed a complaint alleging, in part, that on September 3, 2007, Rosalyn negligently placed a garden hose in an area of pedestrian travel when it was not reasonable or safe to do so.¹ As a result of Rosalyn's alleged negligence, Denise, a lawful invitee, tripped on the hose, causing her to fall to the ground and break her wrist.

¶ 5 Denise spent approximately the next year and a half attempting to serve Rosalyn with the lawsuit, with actual service occurring on March 7, 2011. After the trial court denied Rosalyn's motion to dismiss the complaint for failure to exercise due diligence in obtaining service, Rosalyn filed her answer and affirmative defense. The answer alleged, in part, that Denise's own negligence proximately caused her injuries after she encountered an open and obvious condition when walking across the driveway.

¶ 6 Rosalyn filed her motion for summary judgment on April 18, 2012, arguing Rosalyn did not owe any duty to Denise because the garden hose constituted an open and obvious condition. Rosalyn attached the transcripts of her own and Denise's deposition to the motion for summary judgment.

¶ 7 Rosalyn's deposition testimony indicated that on September 3, 2007, she was preparing to "close-up" her summer home by hosing down her deck with a green garden hose. She stated that the green hose ran along the black asphalt of the driveway. Rosalyn admitted she did not warn Denise about the presence of the green hose.

¶ 8 Denise stated in her deposition that she left the house at approximately 3:00 p.m. after

¹The complaint also named Dan Santoro, Denise's father, as a defendant, but he was later dismissed because he died in 2006.

staying overnight as a guest at Rosalyn’s summer home. According to Denise, she was carrying her overnight duffle bag and wearing flip-flops with a heel. The weather outside was warm and sunny. Denise admitted she had an unobstructed view of the dry driveway.

¶ 9 Denise stated she walked down the ramp of the property and then turned right. After walking approximately three feet, Denise “just fell” as she walked to her car. When Denise looked behind her, she saw the garden hose on the driveway. Denise admitted that, if she had looked down as she walked toward her vehicle, she would have seen the garden hose. As a result of her fall, Denise suffered a broken wrist.

¶ 10 The court granted summary judgment in favor of Rosalyn on October 3, 2012, stating, “I don’t see how laying a hose across a driveway is negligence.” Denise appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, Denise argues the court improperly granted summary judgment in Rosalyn’s favor because the hose did not constitute an open and obvious condition. Rosalyn argues summary judgment was proper since Denise admitted if she looked down while walking on the driveway, she would have seen the hose.

¶ 13 To prevail on a claim of negligence, plaintiff must prove, in part, that defendant owed a duty of care to plaintiff. *Kleiber v. Freeport Farm and Fleet, Inc.*, 406 Ill. App. 3d 249, 255 (2010). In determining whether a duty exists, the court should consider the following factors: (1) the reasonable foreseeability of an injury, (2) the reasonable likelihood of an injury, (3) defendant’s burden in guarding against that injury, and (4) the consequences of placing that burden on defendant. *Id.* at 256.

¶ 14 A property owner owes an invitee a legal duty if injury to another from a defective

condition on the property is reasonable foreseeable. *Id.* Illinois courts have adopted an exception to this rule, consistent with the Restatement (Second) of Torts, when the hazardous condition was open and obvious to the injured party. *Id.* at 256-57. The exception provides:

“A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.” Restatement (Second) of Torts §343A(1) (1965).

¶ 15 Summary judgment is proper when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2010). Since the decision to allow summary judgment involves a question of law, our review is *de novo*. *Richard W. McCarthy Trust v. Illinois Casualty Company*, 408 Ill. App. 3d 526, 533 (2011).

¶ 16 Relying heavily on *Buchaklian v. Lake County Family Young Men’s Christian Association*, 314 Ill. App. 3d 195 (2000), Denise contends the court’s ruling in favor of Rosalyn was improper. In *Buchaklian*, the plaintiff tripped on an uneven mat while she was walking to a swimming pool. *Id.* at 198. In that case, plaintiff admitted she would have seen the defective portion of the mat had she looked down. *Id.* The trial court granted summary judgment in favor of defendant based on this admission alone. *Id.* at 202. On appeal, the court held that it was improper to grant summary judgment based solely on this admission. *Id.* Instead, evidence in the record indicated that a question of fact existed as to whether the condition was open and obvious due to the size of the defect, the lack of color contrast in the mat, and the fact that the

plaintiff had a short amount of time to discover the defect after taking a few steps on the mat. *Id.* The court further indicated that the deposition testimony from two other witnesses established that the defect in the mat was not so open and obvious that it should, as a matter of law, relieve defendant of liability. *Id.*

¶ 17 *Buchaklian* is distinguishable because the complaint in this case alleges Denise tripped on a hose instead of some defect in the driveway. In addition, it is undisputed that the green hose was a contrasting color from the color of the driveway. Denise admitted she had an unobstructed view of both the driveway and the hose, as evidenced by her admission that she would have seen the hose had she looked down. See *Belluomini v. Stratford Green Condominium Association*, 346 Ill. App. 3d 687, 693-695 (2004) (affirming grant of summary judgment where there was no question as to visibility of hazardous condition). She was also able to walk approximately three feet before she fell. Although the basis of the trial court's ruling was unclear, we agree with Rosalyn that the green garden hose along the black asphalt constituted an open and obvious hazard, thereby excusing any potential liability for Denise's injury based on a theory of negligence. *Makowski v. City of Naperville*, 249 Ill. App. 3d 110, 115 (1993) (in reviewing grant of summary judgment, reviewing court can rely on any grounds for rendering judgment that appear in the record).

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, the judgment of the circuit court of LaSalle County is affirmed.

¶ 20 Affirmed.