

2016 IL App (2d) 150902-U  
No. 2-15-0902  
Order filed May 2, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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MARIA ESPARZA,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-L-34
	)	
LAKEVIEW PLACE CONDOMINIUM	)	
ASSOCIATION, INC., and VANGUARD	)	
COMMUNITY MANAGEMENT, INC.,	)	Honorable
	)	William I. Ferguson,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE BIRKETT delivered the judgment of the court.  
Justices Burke and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* We affirmed the trial court's summary judgment for defendants, as plaintiff challenged only one of three grounds that could have supported the judgment.

¶ 2 Plaintiff, Maria Esparza, sued defendants, Lakeview Place Condominium Association, Inc., and Vanguard Community Management, Inc., for injuries she sustained when she slipped and fell on premises managed and maintained by defendants. The trial court granted summary judgment for defendants. Plaintiff timely appealed, arguing that the trial court erred in granting

summary judgment, because there are genuine issues of fact as to whether defendants had notice of the dangerous condition on the premises. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 In her complaint, plaintiff alleged that she was a resident at a condominium property managed and maintained by defendants. According to plaintiff, on October 21, 2012, she was injured when she slipped and fell while taking trash to a dumpster on the property. She alleged that the floor around the dumpsters was in a dangerous condition in that the dumpsters were overflowing with trash and leaking a slippery liquid onto the floor. She maintained that defendants were negligent in allowing the floor to remain in the dangerous condition, failing to inspect the area, failing to warn of the dangerous condition, failing to prevent residents' access to the area, failing to anticipate that residents would be distracted while in the area, and failing to clean the area. She further maintained that, as a result of defendants' negligence, she "was caused to slip and fall in the liquid leaking from the dumpsters onto the premises' floor."

¶ 5 Defendants filed an amended motion for summary judgment, arguing: (1) they owed plaintiff no duty, because the alleged dangerous condition was open and obvious; (2) there was no evidence that defendants had actual or constructive notice of the condition; and (3) there was no evidence that any alleged dangerous condition was the proximate cause of plaintiff's injuries.

¶ 6 Defendants' motion attached a copy of plaintiff's deposition, in which she testified as follows. On October 21, 2012, at about 5:55 p.m., plaintiff went outside to throw away a trash bag from a wastebasket. The garbage dumpsters are located in a room that is connected to an underground parking garage. When someone enters the room and takes about four steps, a light turns on automatically. She did not need the light in the room to see, because the light in the parking garage allowed her to see inside. When she walked into the room, she saw water on the

ground. She was about a meter away when she first saw the water, which was coming from a leaking faucet on the wall. She could tell that the water had recently been turned off, because “it was still fresh water.” All of the concrete in the room was wet. She testified: “I saw that it was wet and I took my precautions.” She further testified: “People are dirty and there was garbage on the floor.” When asked what she slipped on, she stated: “In all honesty, I do not know if it was the water or if it was the garbage that was there because it was very, very dirty.” She thought that someone had thrown a bag of garbage and that it had broken open, because there was pasta on the ground. When asked whether she had stepped on the pasta and whether the pasta caused her fall, she replied, “No. No. I was looking for spots to where to step and I fell.”

¶ 7 Plaintiff responded to the motion for summary judgment by arguing only that defendants had a duty to use reasonable care to keep the subject area in a reasonably safe condition and that they should have known of the condition. Plaintiff did not respond to defendants’ argument that plaintiff cannot establish proximate cause or to defendants’ argument that it owed no duty as the condition was open and obvious.

¶ 8 The trial court granted summary judgment for defendants. The record does not contain a transcript of the hearing on the motion, and the order does not set forth the trial court’s basis for granting summary judgment. Plaintiff timely appealed.

¶ 9 II. ANALYSIS

¶ 10 Summary judgment is proper when the pleadings, depositions, and other matters on file establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). Our review is *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992). To prevail in a negligence action, a plaintiff must plead and prove (1) that the defendant owed him a duty;

(2) that the defendant breached that duty; and (3) that an injury proximately resulted from that breach. *Deibert v. Bauer Brothers Construction Co.*, 141 Ill. 2d 430, 434 (1990). The existence of a duty is a question of law that may be decided by summary judgment. *Crum & Forster Managers Corp. v. Resolution Trust Corp.*, 156 Ill. 2d 384, 391 (1993).

¶ 11 Plaintiff's only argument for reversal is that there is a genuine issue of fact as to whether defendants had actual or constructive notice of the condition on the premises that caused plaintiff's fall. Plaintiff once again fails to address defendants' argument that they owed no duty because the condition was open and obvious or their argument that plaintiff cannot establish proximate cause. (Indeed, plaintiff's argument before this court is essentially a carbon copy of the argument presented below.) Defendants maintain that plaintiff's failure to argue these issues results in forfeiture on appeal. We agree.

¶ 12 The order granting defendant's motion for summary judgment simply states that the motion was granted. In her brief, plaintiff argues only that there was a genuine issue of fact as to defendants' notice of the alleged dangerous condition. However, defendants' motion for summary judgment stated two alternative grounds for relief, and the trial court's order does not specify on which basis the motion was granted. Plaintiff does not argue in her initial brief that there are genuine issues of fact as to the open and obvious nature of the condition or as to whether the condition proximately caused her injuries. Under Illinois Supreme Court Rule 341(h)(7) (eff. Feb. 6, 2013), an argument not raised in the appellant's opening brief is forfeited. *Lake County Grading Co. v. Village of Antioch*, 2014 IL 115805, ¶ 36. Here, plaintiff forfeited any argument regarding the trial court's grant of summary judgment on any basis other than the one raised in her brief, *i.e.*, defendants' notice of the alleged dangerous condition. In light of the

record, we must presume that plaintiff's sole argument, even if valid, would be insufficient to warrant reversal.

¶ 13 Given this conclusion, we need not address plaintiff's argument concerning notice. Even if we were to agree with plaintiff and find that there was a genuine issue of fact as to whether defendants had notice, such a finding would not warrant reversal as it would not negate defendants' arguments that it owed no duty, based on the open and obvious nature of the condition (see, *e.g.*, *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 54 (1999) (a defendant who created the dangerous condition is not precluded from relying on the open-and-obvious doctrine to avoid the imposition of a duty)), and that plaintiff cannot establish that the alleged condition was the proximate cause of her injuries (see *Phillips v. Budget Rent-A-Car Systems, Inc.*, 372 Ill. App. 3d 155, 165 (2007) (finding that even if a genuine issue of material fact had existed as to the defendants' duties of care, summary judgment was appropriate due to lack of proximate cause)). Accordingly, we must affirm.

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we affirm the order of the circuit court of Du Page County, granting summary judgment for defendants.

¶ 16 Affirmed.