2019 IL App (1st) 180590-U

No. 1-18-0590

Third Division
June 19, 2019

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ALICIA GRAY, Plaintiff-Appellant, v. LEWIS PROPERTIES, INC. d/b/a CARLTON INN MIDWAY, CARLTON INN MIDWAY CORP., and BEVERLY SNOW AND ICE, INC., Defendants (Beverly Snow and Ice, Inc., Defendant-Appellee).	)	Appeal from the Circuit Court of Cook County. No. 16 L 493 Honorable Kathy M. Flanagan, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Justice Howse concurred in the judgment.
Justice Ellis specially concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial court properly granted summary judgment for snow-removal contractor where plaintiff failed to prove contractor's actions were performed negligently and created an unnatural accumulation or aggravated a natural condition causing her fall.

¶ 2 Plaintiff Alicia Gray was injured after a slip and fall in the parking lot of Carlton Inn Midway (the Inn). She brought a negligence claim against Lewis Properties, Inc. d/b/a

Carlton Inn Midway, Carlton Inn Midway Corp., and Beverly Snow and Ice, Inc. (collectively the Defendants). Beverly Snow and Ice, Inc. (Beverly) provided snow removal services at the Inn. Gray now appeals the trial court's order granting summary judgment in favor of Beverly.

¶ 3 I. BACKGROUND

¶ 4 Gray's second amended complaint alleged in counts I through III that defendants were negligent in maintaining the surface, removing snow or ice, and salting the Inn's parking lot on February 20, 2015. The complaint additionally alleged in counts I and II that Lewis Properties, Inc. and Carlton Inn Midway Corporation were also negligent in providing inadequate lighting in the parking lot and failing to repair defects on the surface of the parking lot. Beverly moved for and was granted summary judgment. The facts and evidence adduced from the pleadings and discovery depositions are as follows.

¶ 5 Gray testified that she lived in Lake Station, Indiana, and worked at the Chicago offices of J.B. Hunt near the Inn. On February 19, 2015, she stayed at the Inn after returning from a work trip to Green Bay, Wisconsin. At some point during the drive between Green Bay and Chicago, she encountered a light dusting of snow. She arrived at the Inn around 11 p.m. and did not recall whether it was snowing there as well. The Inn is a two-story hotel with exterior corridors that form a "u-shape" wrapping around the courtyard parking lot. Gray checked in at the office, parked close to her assigned room, and walked to her room without any issues. However, she noted that she was unable to pull completely into the parking spot due to a snow pile where the pavement and the sidewalk curb met. She also recalled "a lot of snow buildup" in other areas of the parking lot.

¶ 6 The next morning, sometime after 6 a.m., Gray slipped and fell in the parking lot. She testified that there was some sunlight, but the parking lot was not well illuminated and the Inn's lights covered only the walkways and corridors. As she walked to her van, she was aware that there was snow and ice buildup "all over the place" but she was not specifically focused on the patch of ice behind her van. She walked "gingerly" and placed her suitcase in the backseat passenger side without any issue. She then walked around the back of the van, towards the driver's side, when she suddenly felt her feet "slipping apart." She leaned forward as her left leg slid back and fell into a split, landing on her hands and knees, with her left knee taking the brunt of the impact.

¶ 7 Gray testified that she was able to get up and walk to the Inn's office. She proceeded to check out and informed the front desk of her slip and fall. She returned to her van and took four pictures of the parking lot prior to reporting for work. She did not seek medical treatment and worked the full day, despite some pain in her leg. She also filed an incident report with J.B. Hunt and a subsequent workers' compensation claim. Over the next three months, she took over-the-counter pain medication and developed a limp in her walk. She finally sought medical treatment on May 18, 2015, and was diagnosed with a torn meniscus of the left knee and cartilage damage. She spent $56,269.630 in medical expenses and experienced approximately $13,111.56 in lost wages.

¶ 8 Joseph Acevedo, an employee at the Inn, testified that he had worked at the Inn for over ten years doing maintenance. Every morning, Acevedo would review a report of maintenance requests submitted by other employees at the Inn to set his schedule for the day. Acevedo

would occasionally take the initiative to address unreported matters or report maintenance needs beyond his abilities to his supervisor.[1]

¶ 9 Acevedo testified that the Inn's parking lot was made of asphalt and flat all over. The parking lot was regularly serviced every spring by a paving company. The company would check for cracks caused by the rain or snow and would seal the cracks as needed. Every two years, the whole lot is "seal coated and striped." Acevedo could not recall any issues with the asphalt in 2015. He only mentioned that sometime in 2017, there was an issue with the asphalt chipping or cracking around the edges of a sewer cover. His supervisor called in the asphalt company to complete repairs.

¶ 10 Acevedo could not recall the specifics of the snowfall in February 2015, but believed that the snow generally fell evenly across the parking lot. He also testified that rain would be similarly distributed before draining into the sewers. The parking lot did not experience any flooding or accumulation of water in certain areas. Acevedo testified that he was not responsible for contacting Beverly to request snow removal services, but believed that it was contracted to plow the parking lot. After plowing, snow would typically be piled on the east end of the lot. Occasionally, there would be instances when the snow could not be completely cleared due to cars remaining in the lot at the time of servicing. The Inn also kept shovels and salt on the premises and he was responsible for servicing the lot if Beverly did not. He did not maintain a service log and, to his knowledge, there had never been problems or complaints about the snow removal service.[2]

[1]We note that Beverly's Motion for Summary Judgment quotes a section from the deposition of Gary Gray, the Inn's general manager, whom Acevedo refers to as his supervisor; however, there is no deposition transcript for Gary Gray in the record on appeal.

[2]Acevedo could not remember the case name and gave no other details but disclosed that he was deposed sometime in 2016 for another slip-and-fall case at the Inn.

¶ 11 Thomas Marsan, Beverly's general manager, testified that the company provided full-service snow removal for a wide array of customers ranging from large hospitals and shopping centers to condominium buildings. During peak service periods, Beverly had 150 employees working in various roles. Marsan's role includes overseeing sales and determining dispatch plans but he rarely visited the locations serviced.

¶ 12 To Marsan's knowledge, Beverly would conduct an inspection of the property to determine the scope of work and provide a cost estimate prior to entering into a contract with a customer. The contract between the Inn and Beverly provided for the automatic dispatch of plows if there was "one (1) inch of snow accumulation or when [the] National Weather Services determine that hazardous conditions exist[.]" The contract covered plowing services for the parking lot with salting "at [the] time of plowing" or additional salting at the Inn's request. The contract also expressly provided that Beverly was not responsible for "preventing formation and accumulation of ice on the property or for removal of ice from the property." According to Marsan, the company would monitor weather forecasts as well as field conditions to determine whether plowing services were needed on a day-to-day basis. Employees did not physically measure the amount of snowfall to determine the customers' needs. If Beverly determined that there was snowfall over one inch, it would dispatch a plow to service the Inn.

¶ 13 Plows were dispatched according to the size of the area to be serviced, and Marsan testified that Beverly had four pick-up trucks that were appropriately sized for the Inn's lot. Beverly's record of service included copies of the invoices sent to the Inn after each service date and log sheets filled out by the plow drivers as they completed their routes for the day. Each log sheet would record the time of service, the specific driver, and the services

provided. The invoices for February 2015 indicated that Beverly plowed on February 1, 2, 3, 25, and 26. Beverly also salted each day it plowed, with an additional salting service provided on February 8.

¶ 14 Marsan testified that with regards to the Inn, there were no specific instructions or methods for plowing other than to clear the area and push the snow to a certain area which would vary depending on the circumstances of the day. He acknowledged that it was not always possible to get all the snow cleared due to parked cars. However, he noted that the plow drivers would make as many passes around the lot as necessary to clear as much snow as the circumstances would allow. The drivers also followed general safety guidelines that comply with the industry standard, such as avoiding plowing towards buildings or handicap spots and blocking doorways or entrances with snow. Marsan was asked to review a weather report for February 2015. He explained that a "T" in the precipitation columns indicated trace amounts, quantified as less than a tenth of an inch. Marsan further testified that direct sunlight could thaw the snow on days where the temperature was below freezing.

¶ 15 In our review of the attached weather data, we noted the following between the last plowing date and Gray's fall. There were 11 days of light snow or rain, excluding February 3 and including February 20. Of these 11 days, six included trace amounts of snow while five were between 0.1 and 0.3 inches of snow. Additionally, the weather report noted conditions of freezing rain or drizzle on February 8 and 9, as well as blowing snow on February 14. The daily temperatures rose above freezing only on four occasions, and ranged from -8 degrees Fahrenheit to 41 degrees.

¶ 16 The four photographs taken the day of Gray's accident were submitted with the pleadings and reviewed during the depositions. The first picture shows small piles of snow in an open

parking spot in front of some of the Inn's rooms as well as a patch of ice or snow in the middle of the driving lanes of the parking lot. The second picture provides a close-up of two separate patches of snow or ice that appear to be in the center of the driving lanes. The third picture shows the rear bumper of Gray's van as well as patches of snow or ice in the driving lanes of the parking lot and several chunks of snow or ice scattered across the lot. The last picture shows the location of additional snow piles in other areas of the parking lot. Additional photographs were included that showed the Inn's parking lot in the summer of 2015 including the placement of the available corridor lighting and parking lot lampposts.

¶ 17 On March 16, 2018, the trial court granted Beverly's motion for summary judgment finding that Beverly owed no duty to Gray. The court found that there was no evidence of a nexus between the snow piles created by Beverly's plowing operations and the ice patch on which Gray slipped. The court distinguished the present case from *Russell v. Village of Lake Villa*, 335 Ill. App. 3d 990 (2002), because, unlike in *Russell*, there was no testimony discussing melting run-off and pooling creating the ice patch, nor was the patch next to or contiguous with the snow piles. The court further distinguished *McCann v. Bethesda Hospital*, 80 Ill. App. 3d 544 (1979), as, unlike in *McCann*, no expert testimony was offered regarding the slope or grading of the parking lot which would cause an unnatural accumulation due to run-off and pooling. Lastly, the court rejected Gray's reliance on weather reports indicating a freeze-thaw cycle. In other cases, a freeze-thaw cycle was established in conjunction with eye-witness testimony that the melting snow or ice was linked to the areas on which the plaintiffs fell. As Gray had not provided any testimony connecting the snow piles to the ice patch, the court found that "there [wa]s nothing more than a theoretical possibility of a nexus ***."

¶ 18 The court also found that the ice patch was an open and obvious condition as established by Gray's testimony. However, the court noted that this issue did not matter in regards to summary judgment if Beverly was found not negligent in plowing or salting the lot. The court further commented that Gray was not an intended third-party beneficiary of the contract between Beverly and the Inn nor did the scope of the contract cover liability for the accumulation of ice in the parking lot.

¶ 19 The court entered summary judgment in favor of Beverly on count III of the second amended complaint. The case was continued against the remaining defendants and proceeded on counts I and II. Gray filed her notice of appeal on March 20, 2018, and was granted a stay of the proceedings on March 23, 2018.

¶ 20 II. ANALYSIS

¶ 21 On appeal, Gray argues that the trial court erred in granting summary judgment for Beverly because (1) she provided evidence of an unnatural accumulation causing her fall; (2) Beverly's contract terms cannot shield it from a finding of liability; and (3) a genuine issue of material fact exists as to the "open and obvious" condition of the ice patch which precludes summary judgment.

¶ 22 We review the trial court's decision on a motion for summary judgment *de novo*. *Murphy-Hylton v. Lieberman Mgmt. Services, Inc.*, 2016 IL 120394, ¶ 16. A motion for summary judgment should only be granted where "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 2016). We construe the record in the light most favorable to the nonmoving party. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). We may

affirm on any basis appearing in the record, whether or not the trial court relied on that basis or its reasoning was correct. *Ray Dancer, Inc. v. DMC Corp.*, 230 Ill. App. 3d 40, 50 (1992).

¶ 23 To prevail in a negligence action, the plaintiff must prove that the defendant owed a duty to her, that the defendant breached that duty, and that the plaintiff's injury proximately resulted from that breach. *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App. 3d 740, 745-46 (2005). To survive a motion for summary judgment, the nonmoving party must present some evidence that would arguably entitle her to recover at trial. *Keating v. 68th & Paxton, L.L.C.*, 401 Ill. App. 3d 456, 472 (2010). "Mere speculation, conjecture, or guess is insufficient to withstand summary judgment." *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999).

¶ 24 It has long been the rule that landowners are not liable for the failure to remove natural accumulations of ice and snow from their property. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 227, (2010); *Ziencina v. County of Cook*, 188 Ill. 2d 1, 11 (1999); *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 19. Despite this general rule, a landowner may be liable for injuries that are the consequence of an unnatural or artificial accumulation, or a natural condition that is aggravated by the owner. *Handy v. Sears, Roebuck & Co.*, 182 Ill. App. 3d 969, 971 (1989). "A finding of an unnatural or aggravated natural condition must be based upon an identifiable cause of water accumulation." *Cole v. Paper Street Group, LLC.*, 2018 IL App (1st) 180474, ¶ 45 (quoting *Branson v. R & L Investment, Inc.*, 196 Ill. App. 3d 1088, 1094 (1990)). In cases where a landowner has hired a snow-removal contractor, the contractor has a duty to third-party patrons of the landowner to avoid creating or aggravating an unnatural accumulation of snow or ice through negligent snow removal. See *e.g.*, *McBride v. Taxman Corp.*, 327 Ill. App. 3d 992 (2002); *Madeo v.*

Tri–Land Properties, Inc., 239 Ill. App. 3d 288 (1992); *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325, 330 (1992); *Burke v. City of Chicago*, 160 Ill. App. 3d 953 (1987). A plaintiff does not need to prove his or her case at a summary judgment hearing, but must present facts to show that the origin of the snow and ice was unnatural or caused by the defendant. *Tzakis*, 356 Ill. App.3d at 745.

¶ 25 Gray initially argues that the ice patch she slipped on was an unnatural accumulation caused by Beverly's plowing of the parking lot. Gray contends that the plowing resulted in snow piles which underwent a thaw and refreeze cycle between Beverly's last service date and her accident. She further asserts that the evidence shows no new snow or precipitation in the area which could have contributed to the formation of the ice patch. Later, in her reply brief, Gray asserts that she would provide photographic evidence[3] that the source of water contributing to the ice patch was the downspout in front of the entrance and near the parking lot. It is unclear how these additional assertions would advance Gray's argument that summary judgment was improperly granted. Assuming that Gray's assertions are true, the pictures would not prove Beverly's negligence. Rather, it would appear to point out a conflicting source of water accumulation which is better suited for a claim of negligent maintenance of property by Lewis Properties, Inc. and Carlton Inn Midway Corporation. Therefore, we will only focus our analysis on Gray's arguments that the snow piles were the water source creating the ice patch.

[3]Although there are a number of photographs in the record, we cannot find pictures to verify Gray's claims that the location of the gutter, the slope of the sidewalk, and the drainage of the water across the sidewalk to the parking lot provided the source of water for the ice patch. Even if these photographs existed, they should have been presented to the trial court and cannot be introduced on appeal. See *Campos v. Campos*, 342 Ill. App. 3d 1053, 1066 (2003) ("scope of appellate review of a summary judgment motion is limited to the record as it existed when the circuit court ruled").

¶ 26 Before discussing the evidence of unnatural accumulation, we first address the dispute over the effect of Beverly's contract terms. Beverly admits that it was contractually obligated to perform snow removal services for the Inn. However, Beverly contends that Gray cannot assert that Beverly had any duty to remove the ice on which she slipped as it was not covered in the contract, nor can she prove its plowing operations were performed negligently and contributed to the formation of the ice patch. Gray responds that the contract terms cannot "obviate liability" or "abrogate [Beverly's] common-law duty."

¶ 27 Gray's arguments on appeal misapprehend the findings of the trial court. The trial court agreed with Beverly that the contract terms did not impose a duty to remove or prevent the accumulation of ice. In so doing, the trial court correctly relied on *Williams v. Sebert Landscape Co.*, 407 Ill. App. 3d 753 (2011), which states that "[t]he scope of a snow removal contractor's duty of care is delineated by the terms of the contract with the property owner." 407 Ill. App. 3d at 757 (citing *Flight v. American Community Management, Inc.*, 384 Ill. App. 3d 540, 544 (2008)).

¶ 28 Here, the contract clearly provided that Beverly would monitor snow conditions and dispatch plows as necessary. Beverly would simultaneously salt the parking lot each time it plowed. The contract offered the Inn the option of requesting additional salting services, but Beverly was not responsible for monitoring the formation or accumulation of ice to determine when salting was needed. Thus, we would find that an allegation of slipping on ice, alone, is not covered by the terms of the contract and Beverly had no duty to prevent or remove ice buildup. This finding does not relieve Beverly of all duties in relation to the conditions of the parking lot, but only as to the formation or accumulation of ice unrelated to

the snow removal service, such as from freezing rain. Thus, recognizing the limited scope of the contract is not an attempt to obviate or abrogate Beverly's duty.

¶ 29 Gray argues that Beverly was responsible for the unnatural accumulation of ice in the parking lot which caused her fall. It is undisputed that Beverly created an unnatural accumulation in the form of snow piles by its plowing efforts. Gray asserts that the evidence before the trial court demonstrated a causal connection between the snow piles and the ice she slipped on because temperature cycling caused the snow piles to thaw and refreeze and created the accumulation of ice on the ground. In support of her assertions, Gray analogizes her case to *Russell v. Village of Lake Villa.*

¶ 30 In *Russell*, the plaintiff was walking across brick pavers on the way to the train platform when he slipped and fell on an ice patch. 335 Ill. App. 3d at 992. The plaintiff asserted that snow piles created by the defendant's plowing efforts had melted, puddled, and refroze creating the ice patch on which he slipped. *Id*. at 994. The plaintiff did not recall any recent snow, water on the ground, or dripping water, and submitted photographs taken the day after his accident showing snow piles in close proximity to, and even on, the brick pavers with ice "aprons" around the base of the pile. *Id*. at 992. The defendant's employees admitted to clearing the parking lot and plowing the snow onto the pavers. *Id*. at 992. The Appellate Court, Second District reversed summary judgment for the defendant finding that a genuine issue of material fact was presented to the trial court. *Id*. at 993. The court acknowledged that the resulting ice from an unnatural accumulation of snow which melts and refreezes is also an unnatural accumulation. *Id*. at 996. The court found that the plaintiff presented facts indicating there was no recent precipitation suggesting alternate water sources, the weather was warm enough to cause the snow pile to melt, and there was a direct link between the

snow pile and the ice patch where the ice surrounded the base and was contiguous with the snow pile. *Id.*

¶ 31 We find that *Russell* is distinguishable. Gray's testimony about the location of the ice patch in relation to the snow piles is not analogous to *Russell*. Unlike in *Russell*, the ice patch at issue here was not contiguous to or surrounding the snow piles created by Beverly. In *Russell* there was no need for additional testimony to establish the causal connection, but we would require more here in order to impose liability on Beverly. Secondly, the record belies Gray's contention that there had not been any recent precipitation. In *Russell*, there was no recent precipitation and it was clear that the only water source for the ice patch was the snow piles along the brick pavers. Here, there were the ten days of precipitation between February 3 and February 20. We recognize that the amount of rain or snow in this case appears minor, but Gray's fall could have just as likely been caused by a natural accumulation during the intervening period from Beverly's service and her accident.

¶ 32 We find that Gray's case is more analogous to *Strahs v. Tovar's Snowplowing, Inc.*, in which this court affirmed a directed verdict for the snow contractor because the plaintiff had not presented sufficient evidence to submit the question of negligence to the jury. 349 Ill. App. 3d 634 (2004). The plaintiff in *Strahs* testified that she fell on an ice patch in the parking lot of shopping plaza after the snow had been plowed in a way that it would melt and create a hazard. *Id*. at 638-39. However, she admitted that it had recently rained, the streets were uniformly wet, she did not see any water flowing from the snow piles along the periphery of the lot to the area she fell, and she had based her allegations on the assumption that the ice patch was caused by the run-off of the snow piles. *Id*. at 639-40. The plaintiff's son also testified about the numerous locations that snow was piled around the lot, but he did

not establish a sufficient factual basis that the ice patch at issue was connected to any of the snow piles. *Id*. at 640.

¶ 33 Here, we note that the snow piles, based on Gray's testimony and as depicted in the photographs, were situated around the periphery of the parking lot and at the part of the parking spaces where the asphalt abutted the sidewalk curbs. However, the ice patch at issue was located behind Gray's vehicle, several feet from the nearest snow pile and closer to the center of the driving lanes. Acevedo testified that the parking lot was fairly flat and snowmelt did not flow to any certain areas. Acevedo also testified that there were no areas where rainwater tended to pool or flood. Gray offered no testimony or evidence in rebuttal showing water runoff from the snow piles to other areas of the parking lot. Typically, this can be proven by direct evidence or circumstantial evidence. See *e.g.*, *Hornacek v. 5th Ave. Property Management*, 2011 IL App (1st) 103502, ¶¶ 32-33 (witnesses' deposition testimony provided a direct link between the snow pile and the ice patch where the slip and fall occurred by describing an "ice flow," the snowmelt, and the tendency of water to pool in the area at issue); *McCann v. Bethesda Hospital*, 80 Ill. App. 3d 544, 550 (1979) (licensed architect concluded that the incline of the parking lot was excessive and would have caused an unnatural accumulation of ice). Thus, even construing the testimony and evidence in a light favorable to Gray, we find that she did not prove the source of ice accumulation on which she fell was caused by Beverly. As such, Gray's only support for a causal link between the unnatural accumulations of the snow piles created by Beverly's plowing service and her injury was her own speculation and summary judgment for Beverly was appropriate.

¶ 34 Lastly, we address Gray's claim that whether the ice patch was an open and obvious condition remains a genuine issue of fact which precludes summary judgment. She further

argues that we should also assess Beverly's duty under the traditional four-factor test. A court may determine whether to impose a duty based upon consideration of the following factors: (1) the likelihood of injury, (2) the reasonable foreseeability of injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing that burden on the defendant. *Winters v. MIMG LII Arbors at Eastland, LLC*, 2018 IL App (4th) 170669, ¶¶ 48-49. The open and obvious doctrine affects the first and second of these duty factors. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 19.

¶ 35 We have already employed a more specific analysis applicable to Beverly, as a snow-removal contractor, to determine that Beverly did not owe Gray any duty. See *supra* ¶¶ 32-33. This is the standard analysis when addressing claims between a defendant snow-removal contractor, and third-parties like Gray who are not direct beneficiaries of the contract under which the defendant is liable. See *supra* ¶¶ 23-24. Thus, it is unnecessary to rely on the general principles to determine duty and liability where a more specific analysis is applicable. Even were we to consider the four traditional factors, we would nonetheless find that the ice patch was open and obvious[4] and we would not impose any duty on Beverly.

¶ 36 A hazardous condition on a property is "open and obvious" when a reasonable person in the plaintiff's position, exercising ordinary perception, intelligence, and judgment, would recognize both the condition and the risk. *Olson v. Williams All Seasons Co.*, 2012 IL App (2d) 110818, ¶ 42. Gray contends that the lighting conditions were poor and she was not focused on the particular patch of ice on which she slipped. There was no additional testimony or evidence contradicting her claim that the lighting conditions were poor. Even

[4]Gray also briefly contends that the ice was unavoidable and therefore the fact that it was open and obvious does not matter for a finding of liability. We disagree with her assertion as it is contradicted by the pictures she submitted which reveal areas she could have stepped on to avoid the ice patch while walking around the back of her van.

accepting that the lighting conditions were poor, Gray testified that she was aware of the ice throughout the parking lot and recognized the risk. She even testified to altering her behavior and walking in a certain way to account for the danger presented by the ice. It is clear that she recognized both the condition and the risk posed by the ice patch. We can determine from the undisputed facts that the condition was open and obvious. See *Alqadhi v. Standard Parking, Inc.*, 405 Ill. App. 3d 14, 17 (2010) (If there is no dispute of material facts, it is a question of law whether the condition is open and obvious). As the condition was open and obvious, the foreseeability of harm and the likelihood of injury were slight and weigh against the imposition of a duty. See *Bucheleres v. Chicago Park District*, 171 Ill. 2d 435, 456-57 (1996). Although Gray contends that the magnitude and consequences of burdening Beverly with an additional duty to Gray are minor, we would not impose any duty on Beverly under the traditional four-factor test. Thus, we find that there is no dispute which would preclude summary judgment.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm summary judgment for Beverly.

¶ 39 Affirmed.

¶ 40 JUSTICE ELLIS, specially concurring:

¶ 41 As the majority correctly recognizes, liability for a voluntary undertaking, via contract or otherwise, is limited to the scope of that undertaking. See *Frye v. Medicare-Glaser Corp.*, 153 Ill. 2d 26, 32 (1992); *Pippin v. Chicago Housing Authority*, 78 Ill.2d 204, 210 (1979). When that voluntary undertaking is found in a contract, the language of the contractual promise determines the scope of the duty. *Eichler v. Plitt Theatres, Inc.*, 167 Ill. App. 3d 685, 692 (1988); *Allen v. Cam Girls, LLC*, 2017 IL App (1st) 163340, ¶ 28.

¶ 42 So to the extent that Beverly owed plaintiff a duty based on that snow-removal contract, the contractual language limits that duty accordingly. Beverly was required to exercise reasonable care in the performance of that contractual duty. See *Eichler v. Plitt Theatres, Inc.*, 167 Ill. App. 3d 685, 692 (1988) (snow-removal contractor is liable to third parties for failure to perform contractual promise with reasonable care); *Allen v. Cam Girls, LLC*, 2017 IL App (1st) 163340, ¶ 28 (same); Restatement (Second) of Torts, § 324A (1965).

¶ 43 Here, as the majority notes, Beverly's contract required only the removal of snow, not ice. As Beverly did not voluntarily undertake to remove or prevent an accumulation of ice, it thus had no duty to remove ice from the premises. See *Eichler*, 167 Ill. App. 3d at 692 (snow-removal contractor owed contractual duty to "remove snow only, not ice," and thus could not be held liable for failure to remove ice accumulation).

¶ 44 Of course, one example of failing to exercise reasonable care in the performance of its contractual duty to remove snow would be if the snow removal were performed negligently, leading to piles of snow that, upon melting, created unnatural and dangerous accumulations of ice. Here, however, the majority correctly finds the lack of any causal nexus between the snow piles and the ice on which plaintiff slipped. So plaintiff was unable to establish a breach of duty as a matter of law. I thus concur in the judgment.