Illinois Official Reports

Appellate Court

Hutson v. Pate, 2022 IL App (4th) 210696

Appellate Court Caption	MICHAEL HUTSON, Individually and as Father and Next Friend of J.H., a Minor, Plaintiff-Appellant, v. MATTHEW PATE, Individually and as Father and Next Friend of M.P., a Minor, Defendant-Appellee.
District & No.	Fourth District No. 4-21-0696
Filed	July 14, 2022
Decision Under Review	Appeal from the Circuit Court of McLean County, No. 20-L-35; the Hon. Rebecca S. Foley, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	James P. Ginzkey, of Ginzkey Law Office, of Bloomington, for appellant. Jack Kiley, of Erickson, Davis, Murphy, Johnson & Walsh, Ltd., of Decatur, for appellee.
Panel	JUSTICE STEIGMANN delivered the judgment of the court, with opinion. Justices DeArmond and Cavanagh concurred in the judgment and opinion.

OPINION

¶ 1 In March 2020, plaintiff, Michael Hutson, filed a complaint on behalf of his minor daughter, J.H., alleging negligence against defendant Mathew Pate, individually and as father and next friend of M.P., his minor son. The complaint alleged that in July 2018, J.H. visited M.P. at his home while he was using a garden hose to water plants in the front yard. At some point, M.P., without warning, yanked the hose, causing J.H. who was standing on or near the hose to fall to the ground and seriously injure her ankle.

¶ 2 In September 2021, Pate filed a motion for summary judgment, which the trial court granted based primarily on the court's application of the "open and obvious rule."

¶ 3 Hutson appeals, arguing that the trial court erred by (1) construing his claim as one for premises liability, (2) applying the open and obvious doctrine, and (3) granting summary judgment in favor of Pate because a genuine issue of material fact is present regarding the manner in which J.H.'s injury occurred. We agree with Hutson, reverse the trial court's order, and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 A. The Pleadings

¶ 6 1. *The Complaint*

¶ 7 In March 2020, Hutson filed a complaint on behalf of his minor daughter, J.H., alleging, among other things, negligence against Pate and M.P. The complaint alleged that in July 2018, J.H. visited M.P.'s home while he was using a garden hose to water plants in the front yard of the property. When J.H. arrived, M.P. and a mutual friend, J.M., "were in the process of moving the garden hose from the front of the house to the back yard." J.H. then helped J.M. to "feed[ ] the hose along the side of the house to M.P. who was *** watching [J.H.] and [J.M.]" At some point, "[w]ithout warning, M.P. yanked on the hose causing it to sweep [J.H.'s] feet out from under her, causing her to fall to the ground" and fracture her tibial plafond—essentially, a fracture near her ankle.

¶ 8 The complaint alleged that "M.P. had a duty to[ ] [(1)] [e]xercise reasonable care for the safety of [J.H.] and others lawfully on the property; and [(2)] [c]onduct himself in a manner that would not cause injury to [J.H.] and others." The complaint further alleged that M.P. breached that duty by (1) failing to warn J.H. before forcefully pulling on the hose, (2) failing to anticipate that the hose could make J.H. fall to the ground, (3) failing to allow J.H. to step clear of the hose before pulling it, and (4) unexpectedly and forcefully pulling on the hose. According to the complaint, M.P.'s pulling the hose directly and proximately caused J.H. to sustain severe and permanent injuries, incur medical expenses, and endure pain and suffering.

¶ 9 2. *The Answer*

¶ 10 In June 2020, Pate filed an answer to Hutson's allegation of negligence. Pate admitted that (1) M.P. did not announce he was going to pull the hose, (2) M.P. pulled the hose, and (3) J.H. fell to the ground. Pate denied that M.P. owed a duty or that he breached that duty. Pate also asserted the affirmative defense of "contributory fault," alleging that J.H. failed to (1) observe an open and obvious condition, (2) failed to "keep a proper lookout," and (3) "failed to maintain control of her body."

¶ 11 B. Hutson's Motion for Summary Judgment

¶ 12 In July 2020, Hutson filed a motion for summary judgment, supported by Pate's answer and an affidavit by J.H. In her affidavit, J.H. averred that on the date of the incident, she joined J.M. in feeding a hose along the side of the Pate home to M.P. The affidavit further asserted that M.P. and J.H. could see each other when M.P. yanked the hose, sweeping J.H.'s feet out from under her. Hutson argued that because (1) Pate admitted that M.P. did not announce that he was going to pull the hose, (2) M.P. pulled the hose, and (3) J.H. fell and suffered a facture, no issue of material fact existed regarding M.P.'s negligence.

¶ 13 Pate filed a response to Hutson's motion for summary judgment, arguing that M.P. had merely admitted to his "pulling" (as opposed to yanking) the hose and not warning J.H. about his pulling the hose. Pate further argued that (1) the reasonableness of M.P.'s actions was a material fact that needed to be determined, (2) Hutson did not plead the existence of a duty to warn, and (3) Pate had not yet been able to depose the witnesses. The trial court denied Hutson's motion.

¶ 14 C. Pate's Motion for Summary Judgment
and the Attached Deposition Transcripts

¶ 15 1. *The Motion for Summary Judgment*

¶ 16 In September 2021, Pate moved for summary judgment, arguing that J.H. failed to establish M.P. had a duty to warn J.H. of his pulling the hose because J.H. (1) was participating in watering the plants and (2) knew that the hose was being moved about. Pate further argued that because the hose was "open and obvious," Pate did not owe a duty under premises liability. Last, Pate argued that M.P. did not breach any duty because the accident was unforeseeable and the injury unlikely. In support of Pate's motion, he attached deposition transcripts of J.H. and J.M.

¶ 17 2. *The Deposition of J.H.*

¶ 18 In J.H.'s deposition, she stated she had previously watered plants at the Pates' residence once or twice a year when the Pate family was on vacation, using what she believed to be the same hose as the one that caused her injury. She had watered the plants at the Pates' house once or twice a week while they were on vacation, which had occurred about eight times. On the day of the incident, M.P. and J.M. had been watering the flowers prior to J.H.'s arrival. When J.H. arrived, M.P. and J.M. were moving with the hose along the side of house towards the back of the house. J.H. assisted them by lifting the hose to keep it from dragging on the grass.

¶ 19 J.H. testified that her memory of the incident was fuzzy because two years had passed since it occurred. She did not remember whether she was standing on the hose or if the hose "hooked" her foot and dragged her when she fell. However, J.H. recalled that, leading up to the incident, she was looking straight ahead while M.P. looked at her. She testified that the three teenagers were "laughing, having normal conversations, and [M.P.] made some type of noise, and the next minute," J.H. fell. The noise that she heard was "some type of like grunt that you would make like if you were pulling something or like lifting something heavy."

¶ 20 J.H. testified that she did not see M.P. pull or yank the hose because she was looking down at her hands while feeding the hose to J.M. and M.P. When the accident occurred, J.H. was

about 9 or 10 feet from M.P. J.H. did not remember anything that would suggest that M.P. was aware of the hose either around or under J.H.'s foot. J.H. explained that her fall was almost like "slipping on a banana peel" with her right foot going up in the air and her landing on her back. She tried to stand up afterwards but was unable. Not long after, J.H. called her mother, who took her to the hospital. Within a few days, J.H. had surgery on her left leg.

¶ 21 3. *The Deposition of J.M.*

¶ 22 J.M. stated that on the date of the incident, she was with M.P. while he watered the plants around the Pates' house. She arrived at the house shortly before J.H. J.M. testified that she and J.H. did not help M.P. with the hose except for "a couple times where *** it was around a tough corner or if it was stuck behind a plant, one of [the teenagers] might have grabbed [the hose] and pulled it." J.M. did not notice anything peculiar about the way M.P. was watering the plants and did not find M.P.'s pulling the hose as he watered the plants to be unreasonable. J.M. also testified that M.P. was not pulling the hose too hard or in an aggressive manner. J.M. was looking at J.H. and did not see M.P. pull the hose.

¶ 23 When J.M. was asked to recall what she saw right before the incident, she testified as follows:

> "So, I remember hearing [M.P.] He was kind of like—He was trying to pull the hose. And I think, as we all know, hoses can be difficult to pull when there's water in them in the grass. So, he was pulling the hose to put it away after finishing watering those plants next to it.
>
> And I remember talking to [J.H.] I heard [M.P.] make a noise or something, and then the hose cuffed [J.H.'s] ankle, and she fell onto her back."

¶ 24 J.M. later acknowledged that she never actually saw the hose loop around J.H.'s ankle. Regarding how the accident happened, J.M. opined that before the fall, the hose "wasn't wrapped like a loop. It was more like a cuff, so it was like a U around." She continued, "So maybe when we were walking around, [J.H.] happened to step in that loop area, and so when [M.P.] went to pull it, it caught her ankle, and which made her fall back onto her back."

¶ 25 Nothing gave J.M. any reason to believe that M.P. knew the hose was cuffed around J.H.'s leg or foot before he pulled on it. J.M. testified that the hose was plainly visible in the grass. When asked whether she remembered seeing the hose cuffed around J.H.'s leg prior to the accident, J.M. testified that she did not realize it was cuffed around [J.H.'s] leg until "that split second before she fell" when she heard M.P. make a noise. At that moment, J.M. watched J.H. fall as if she slipped on a banana peel with her feet going "straight up in the air." J.H. began screaming in pain and used her cellphone to call her mother.

¶ 26 4. *Hutson's Response*

¶ 27 In September 2021, Hutson filed a response to Pate's motion for summary judgment, realleging the entirety of his July 2020 motion for summary judgment.

¶ 28 5. *The Court's Order*

¶ 29 In October 2021, the trial conducted a hearing at which it issued its oral ruling on Pate's motion for summary judgment. The court first noted that the parties had not submitted "deposition testimony of the defendant, if that was taken." Accordingly, the court would

consider only the testimony of J.M. and J.H., as well as J.H.'s affidavit from Hutson's prior motion for summary judgment, in making its decision.

¶ 30 In the court's oral ruling, it found that M.P. had no duty to warn J.H. about the hose because she "was a participant in the very activity which she alleges caused her injury" and, assuming that using the hose was a dangerous activity, the danger was open and obvious to J.H.

¶ 31 In October 2021, Hutson filed a motion to reconsider and attached the deposition testimony of M.P. That same month, the trial court denied the motion to reconsider because it found that M.P. did not owe a duty to J.H. under a theory of premises liability and that Hutson did not provide evidence that M.P. "acted in any unreasonable fashion." In doing so, the court noted that M.P.'s deposition testimony was not newly discovered evidence and would not consider the evidence in making its decision.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Hutson appeals, arguing that the trial court erred by (1) construing his claim as one for premises liability, (2) applying the open and obvious doctrine, and (3) granting summary judgment in favor of Pate because a genuine issue of material fact is present regarding the manner in which J.H.'s injury occurred. We agree with Hutson, reverse the trial court's order, and remand for further proceedings.

¶ 35 A. The Applicable Law

¶ 36 1. *Summary Judgment*

¶ 37 Summary judgment is appropriate only 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 2020). A genuine issue of material fact exists when "the material facts are disputed or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." *Mashal v. City of Chicago*, 2012 IL 112341, ¶ 49, 981 N.E.2d 951. "When ruling on a motion for summary judgment, courts consider all of the evidence in the light most favorable to the nonmoving party." *Winters v. MIMG LII Arbors at Eastland, LLC*, 2018 IL App (4th) 170669, ¶ 44, 115 N.E.3d 282. "If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is the proper result." *Id.* Appellate courts review grants of summary judgment *de novo*. *Id.*

¶ 38 2. *Negligence Generally*

¶ 39 "To state a cause of action for negligence, a plaintiff must allege that (1) the defendant owed plaintiff a duty, (2) the defendant breached this duty, and (3) that this breach was the proximate cause of plaintiff's resulting injuries." *Id.* ¶ 45. Whether a duty exists under a particular set of circumstances is a question of law for the court to decide. *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22, 980 N.E.2d 58. Whether the defendant breached that duty or whether the breach proximately caused a plaintiff's injury are questions of fact for the trier of fact to decide, provided those questions present genuine issues of material fact. *Hougan v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 2013 IL App (2d) 130270, ¶ 20, 999

N.E.2d 792.

¶ 40 B. This Case

¶ 41 1. *The Open and Obvious Doctrine Does Not Apply in This Case*

¶ 42 Pate argues that the open and obvious doctrine should apply in the present case because trial courts frequently apply the open and obvious doctrine in ordinary negligence cases, as well as premises liability cases. In support of this argument, Pate cites *Ward v. K Mart Corp.*, 136 Ill. 2d 132, 554 N.E.2d 223 (1990), *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 18, 21 N.E.3d 684, and *Winters*, 2018 IL App (4th) 170669, ¶ 66. We agree that the open and obvious doctrine applies in ordinary negligence cases but only when the alleged cause of injury is a condition on the land instead of a defendant's active negligence, as occurred in this case.

¶ 43 a. Premises Liability and Ordinary Negligence

¶ 44 "Illinois has adopted the rules set forth in sections 343 and 343A of the Restatement (Second) of Torts regarding the duty of possessors of land to their invitees." *Deibert v. Bauer Brothers Construction Co.*, 141 Ill. 2d 430, 434, 566 N.E.2d 239 (1990). A claim for premises liability requires that a possessor of land (1) knew or should have known that (2) a condition on the property presented an unreasonable risk of harm and (3) should have anticipated that persons would not discover the danger or would otherwise fail to protect themselves against it. *Wind v. Hy-Vee Food Stores, Inc.*, 272 Ill. App. 3d 149, 154, 650 N.E.2d 258 (1995).

¶ 45 In contrast to premises liability, "ordinary negligence" refers to the standard of care required of a defendant for him to act as an "ordinarily careful person" or a "reasonably prudent person" would (internal quotation marks omitted) (*Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 295, 730 N.E.2d 1119 (2000)) and "requires proof of only three elements—the existence of a duty, a breach of that duty, and an injury proximately caused by the breach" (*Garcia v. Goetz*, 2018 IL App (1st) 172204, ¶ 31, 121 N.E.3d 950). In effect, the difference between premises liability and ordinary liability is that in a premises liability case the defendant is alleged to have "maintained a dangerous condition," whereas in an ordinary liability case the defendant is alleged to have caused the dangerous condition. *Reed v. Wal-Mart Stores, Inc.*, 298 Ill. App. 3d 712, 717, 700 N.E.2d 212 (1998).

¶ 46 "[U]nder circumstances where a landowner's conduct in creating an unsafe condition precedes the plaintiff's injury, a plaintiff may elect to pursue a negligence claim, a premises liability claim, or both." *Smart v. City of Chicago*, 2013 IL App (1st) 120901, ¶ 54, 43 N.E.3d 532 (citing *Reed*, 298 Ill. App. 3d at 717); *Wind*, 272 Ill. App. 3d at 157; *Donoho v. O'Connell's, Inc.*, 13 Ill. 2d 113, 117-18, 148 N.E.2d 434 (1958).

¶ 47 b. The Open and Obvious Doctrine

¶ 48 i. *The Doctrine Generally*

¶ 49 "In Illinois, the open and obvious doctrine is an exception to the general duty of care owed by a landowner." *Park v. Northeast Illinois Regional Commuter R.R. Corp.*, 2011 IL App (1st) 101283, ¶ 12, 960 N.E.2d 764 (citing Restatement (Second) of Torts § 343A(1) (1965)). "When a condition is deemed open and obvious, the likelihood of injury is generally considered slight as it is assumed that people encountering potentially dangerous conditions that are open and obvious will appreciate and avoid the risks." *Id.*

¶ 50 The open and obvious doctrine, as stated in section 343A of the Restatement (Second) of Torts, provides that 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." (Emphasis added.) Restatement (Second) of Torts § 343A(1) (1965). Accordingly, an activity or condition of the land must have caused the injury at issue for the open and obvious doctrine to apply.

¶ 51 We note that this doctrine should not be confused or conflated with the "open and obvious *danger* rule," which applies only in premises liability cases involving children under the age of seven. (Emphasis added and internal quotation marks omitted.) *Chu v. Bowers*, 275 Ill. App. 3d 861, 865-66, 656 N.E.2d 436 (1995); see also Restatement (Second) of Torts § 339 (1965) ("Artificial Conditions Highly Dangerous to Trespassing Children").

¶ 52 ii. *The Doctrine's Application in Ordinary Negligence Actions*

¶ 53 Regarding the open and obvious doctrine's application to ordinary negligence cases, the Second District in *Kun Mook Lee v. Young Rok Lee*, 2019 IL App (2d) 180923, ¶ 25, 149 N.E.3d 551, held that defendants are "entitled to raise the open-and-obvious rule to either an ordinary negligence claim or a premises liability claim." As Pate correctly points out, other courts have held the same. See *Winters*, 2018 IL App (4th) 170669; *Bruns*, 2014 IL 116998; *Ward*, 136 Ill. 2d 132. However, although the doctrine *may* apply in both premises liability and ordinary negligence cases, it does not necessarily apply in all cases involving a land-possessor and invitee. Instead, each of the above cases bears one striking similarity: they each involve a negligence claim that arose from an injury *caused by a condition on the land*.

¶ 54 For example, when the Second District stated in *Kun Mook Lee* that the open and obvious doctrine applies to ordinary negligence, the injury at issue was caused by Kun Mook's falling from two ladders that were tied together and placed against a tree limb that he was tasked to cut. *Kun Mook Lee*, 2019 IL App (2d) 180923, ¶ 29. In *Ward*, 136 Ill. 2d 132, the plaintiff walked into a post while carrying merchandise out of the store. In *Bruns*, 2014 IL 116998, the plaintiff tripped on an uneven and broken sidewalk. And in *Winters*, 2018 IL App (4th) 170669, the plaintiff slipped while trying to circumvent snow piled on the sidewalk outside an apartment complex.

¶ 55 None of the above cases involved claims for negligence that were independent of an existing condition or activity on the land. In contrast, in the present case, J.H. was tripped by M.P.'s pulling the hose, not by some passive feature of the hose independent of M.P.'s possibly dangerous conduct or active negligence.

¶ 56 In fact, we are not aware of any court that has applied the open and obvious doctrine beyond the confines of a fact pattern sounding in traditional premises liability—in other words, a fact pattern where a condition on the land is both the cause and instrument of a plaintiff's injury.

¶ 57 For the purposes of the open and obvious doctrine, conditions on the land not only include fire, height, and bodies of water, but also include, among other things, sidewalk defects (*Bruns*, 2014 IL 116998), piles of snow (*Winters*, 2018 IL App (4th) 170669), store posts (*Ward*, 136 Ill. 2d 132), moving trains (*Park*, 2011 IL App (1st) 101283, ¶ 21), electrified third rails (*Jae Boon Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 444-45, 605 N.E.2d 493 (1992)), power wires (*Genaust v. Illinois Power Co.*, 62 Ill. 2d 456, 343 N.E.2d 465 (1976)), and ladders (*Kun Mook Lee*, 2019 IL App (2d) 180923, ¶ 20).

¶ 58 In contrast, courts have concluded that conditions on the land do *not* include carrying bundles of shingles (*Recio v. GR-MHA Corp.*, 366 Ill. App. 3d 48, 62, 851 N.E.2d 106 (2006)), partying by social guests (*Dearing v. Baumgardner*, 358 Ill. App. 3d 540, 831 N.E.2d 1187 (2005)), operating a pulley device (*Bokodi v. Foster Wheeler Robbins, Inc.*, 312 Ill. App. 3d 1051, 1054-55, 728 N.E.2d 726 (2000)), or mixing grout (*Haberer v. Village of Sauget*, 158 Ill. App. 3d 313, 318, 511 N.E.2d 805 (1987)).

¶ 59 The lack of case law applying the open and obvious doctrine to cases of active negligence is telling. If it were true that the doctrine applied to circumstances where the active negligence of defendant caused injury, then the case law would presumably abound on this subject. But as the earlier list of cases show, only static, preexisting conditions have been determined to be open and obvious, as opposed to the active negligence of a defendant.

¶ 60 Accordingly, regarding the application of the open and obvious doctrine, the proper question to ask is not whether the doctrine applies to ordinary negligence or premises liability claims, but whether the cause of injury is a condition on the land or the active negligence of the defendant.

¶ 61 C. Condition of Land v. Direct Action

¶ 62 In the present case, when viewing the record in the light most favorable to Hutson, J.H. did not simply trip over a hose laying across the Pates' front yard but was tripped by the direct action of M.P.'s pulling the hose. In other words, the condition of the hose was merely the instrumentality of J.H.'s injury, not its cause. Accordingly, the cause of defendant's injury was not an activity or condition on the land, and the open and obvious doctrine does not apply.

¶ 63 We also note that any speculation of whether J.H. should have appreciated the risk that her helping M.P. water plants created or what precautions she should have taken are questions of fact going towards comparative negligence and not the existence of a duty. See *Deibert*, 141 Ill. 2d at 447 ("[p]laintiff's own comparative negligence did not negate defendant's duty, rather it reduced the amount of plaintiff's recovery").

¶ 64 1. *Duty Analysis*

¶ 65 As an initial matter, Hutson does not assert that he made a claim for premises liability, so we need not address that theory of negligence and will address only whether M.P. owed a duty to J.H. under a traditional negligence analysis. We also note that, contrary to Hutson's argument that the trial court did not analyze his claims under a theory of ordinary negligence, the trial court briefly addressed ordinary negligence in its oral rulings at the hearing for Pates' motion for summary judgment and the hearing on the motion to reconsider.

¶ 66 " '[E]very person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act, and such a duty does not depend upon contract, privity of interest or the proximity of relationship, but extends to remote and unknown persons.' " (Internal quotation marks omitted.) *Bogenberger v. Pi Kappa Alpha Corp.*, 2018 IL 120951, ¶ 22, 104 N.E.3d 1110 (quoting *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 19, 965 N.E.2d 1092). "Thus, where an individual's course of action creates a foreseeable risk of injury, the individual has a duty to protect others from such injury." *Id.* To determine whether a defendant owed a legally recognized duty to a plaintiff, courts examine four traditional duty factors: (1) the reasonable foreseeability of the

injury, (2) the likelihood of the injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing that burden on the defendant. *Id.*

¶ 67 Regarding the first factor, "[i]n deciding reasonable foreseeability, we note that an injury is not reasonably foreseeable where it results from freakish, bizarre, or fantastic circumstances." *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 31, 973 N.E.2d 880. To be foreseeable, the injury must be objectively reasonable to expect, given the circumstances apparent to the defendant at the time of his injurious conduct. *Jarosz v. Buona Cos.*, 2022 IL App (1st) 210181, ¶ 37.

¶ 68 In the present case, we cannot say, as a matter of law, that J.H.'s injury was so bizarre as to be unforeseeable by a reasonable person. It is undisputed that M.P. pulled on the hose without warning J.H. and that she fell to the ground, resulting in her injury. Viewing the record in the light most favorable to Hutson, M.P. was looking at J.H. shortly before pulling the hose, which implies that M.P. was aware that J.H. was handling the hose at the moment he pulled it. Both J.H. and J.M. testified that when J.H. fell, her feet went into the air like she had slipped on a banana peel. That testimony leads to the inference that M.P. likely pulled the hose suddenly and forcefully enough to cause a teenager to fall backwards in a dramatic fashion. Moreover, the testimony indicating that neither J.H. nor J.M. saw the hose lying near to J.H.'s feet in a manner likely to trip her likewise implies that M.P. pulled the hose suddenly and forcefully. In light of the record, J.H.'s injuries were objectively foreseeable because tripping someone is precisely the sort of injury one would expect from pulling, without warning, on a hose lying directly near another person's feet.

¶ 69 The second factor in the duty analysis is the likelihood of injury. In the context of negligence, likeliness "is not a certainty or a possibility, but a probability." *Raffen v. International Contractors, Inc.*, 349 Ill. App. 3d 229, 235, 811 N.E.2d 229 (2004). For the same reasons we just explained, we conclude that nothing in the record suggests J.H.'s injuries are too remote or unlikely as a matter of law to preclude the finding of a duty. Tripping and falling is common and has a significant probability of causing injury. *Jarosz*, 2022 IL App (1st) 210181, ¶ 38.

¶ 70 The third and fourth factors are the magnitude of M.P.'s burden of guarding against such injury and the adverse consequences, if any, that could result from imposing that burden on an individual. If an individual decides to water his plants using a garden hose knowing other people are in the immediate vicinity of the hose, he must move that hose with reasonable care. Requiring an individual to exercise heightened caution when pulling on a hose—for example, by warning others or looking for potential hazards before sharply pulling on the hose—"is not so unreasonable and impractical as to negate the imposition of a legal duty." *Doe-3*, 2012 IL 112479, ¶ 34 (defining undue burden). Such a slight burden is also unlikely to create any adverse consequences.

¶ 71 Based on those four factors, we conclude that M.P. owed J.H. a duty of ordinary care. Having so concluded, we now address whether genuine issues of material fact remain regarding a breach of that duty.

¶ 72 2. *Breach*

¶ 73 Pate argues that no genuine issues of material fact exist, and even if M.P. owed a duty to J.H., as a matter of law, Hutson did not provide any evidence that M.P. breached that duty. We disagree.

¶ 74 "Negligent conduct may be proven with circumstantial evidence provided that the inferences drawn from such evidence are reasonable." *Laflin v. Estate of Mills*, 53 Ill. App. 3d 29, 32, 368 N.E.2d 522 (1977). The evidence is unclear regarding how hard M.P. pulled the hose, the grunt the girls heard, and the way J.H. fell. However, when taken in the light most favorable to the plaintiff, it suggests that M.P. pulled the hose suddenly, without warning, and with substantial force. Further, J.H.'s testimony suggests that M.P. was either looking in her direction or had just been looking in her direction shortly before he pulled the hose, meaning he failed to warn her or wait until she was clear of the hose. Accordingly, based on the record before us, reasonable persons could find that M.P. breached his duty of care to J.H.

¶ 75 III. CONCLUSION

¶ 76 For the reasons stated, we reverse the trial court's order and remand for further proceedings.

¶ 77 Reversed and remanded.