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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1963**

Patti Lang,
Appellant,

vs.

US Bancorp (US BANK), et al., Defendants,

City of Austin,
Respondent.

**Filed May 18, 2020
Affirmed
Connolly, Judge**

Mower County District Court
File No. 50-CV-18-956

Andrew L. Davick, Ava Marie M. Cavaco, Meshbesher & Spence, Ltd., Rochester,
Minnesota (for appellant)

Patrick L. Arneson, League of Minnesota Cities, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges the grant of summary judgment dismissing her personal injury claim arising out of her trip-and-fall accident on respondent city's sidewalk, arguing that there is a genuine issue of material fact as to whether the sidewalk posed a foreseeable risk of harm. Because we see no error in the district court's grant of summary judgment, we affirm.

FACTS

In May 2015, appellant Patti Lang was injured when she tripped on a raised portion of a sidewalk owned by respondent City of Austin and fell. In May 2017, she brought this action against respondent.¹

Both parties moved for summary judgment. The district court granted respondent's motion and dismissed appellant's claim on the ground that no relief could be granted. Appellant challenges the summary judgment, arguing that the district court erred in granting it.

DECISION

On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law. We view the evidence in the light most favorable to the party against whom summary judgment was granted. We review de novo whether a genuine

¹ Appellant also brought the action against US Bancorp, which owned the building appellant was about to enter, and Viox Services, provider of maintenance to that building. Respondent filed crossclaims against them. These were resolved, and appellant's claims against them were also resolved. Therefore, they take no part in this appeal.

issue of material fact exists. We also review de novo whether the district court erred in its application of the law.

STAR Ctrs., Inc. v. Faegre & Benson, L.L.P., 644 N.W.2d 72, 76-77 (Minn. 2002) (citations omitted). “A defendant in a negligence suit is entitled to summary judgment when the record reflects a complete lack of proof on any of the four essential elements of the negligence claim . . . [including] the existence of a duty of care[.] . . . Existence of a duty in a negligence case is a question of law.” *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001).

“[A] landowner has a duty to use reasonable care for the safety of all such persons invited upon the premises. . . . This rule imposes the duty of reasonable care on both the landowner and the entrant.” *Louis v. Louis*, 636 N.W.2d 314, 318-19 (Minn. 2001) (quotation and citations omitted). “[L]andowners are not liable for harm . . . caused by known or obvious dangers unless the landowner should have anticipated the harm despite its known or obvious nature.” *Id.* at 319.

[C]ertain conditions have been held to involve dangers so obvious that no warning was necessary, including walking into a low hanging branch, walking down a steep hill, walking into a large planter, walking across a 20-foot square pool of water, and skydiving over a lake. . . . [T]he rationale underlying the rule eliminating a duty where the dangers are known or obvious is that no one needs notice of what he knows or reasonably may be expected to know. In each of the above cases, the danger associated with the condition at issue was found to be clearly visible, or in plain view, meaning the condition itself posed the obvious danger.

Id. at 321-22 (quotation and citation omitted). The district court relied on *Louis*, which was remanded for the district court to determine if the danger involved in that case, i.e., going down a waterslide headfirst, was obvious. *Id.* at 322.

Appellant argues that whether a danger is open and obvious is a genuine issue of material fact that precludes summary judgment. For this argument, appellant relies on *Louis* and on *Rinn v. Minnesota State Agric. Soc’y*, 611 N.W.2d 361, 363 (Minn. App. 2000) (concerning the injury sustained by a spectator who saw a puddle covering a step on a staircase then chose to step into the puddle, and fell). But appellant’s reliance on both cases is misplaced.

In *Louis*, the district court had not considered whether the danger and risk were obvious. *Louis*, 636 N.W.2d at 322. The supreme court noted that, on remand, the district court could determine whether “the danger was either known or obvious as a matter of law.” *Id.* Here, the district court concluded that respondent “owe[d] no duty of care to [appellant] as the condition of the sidewalk was, by her own admission, obvious to [appellant].” *Rinn* affirmed the district court’s determination that a puddle was not an open and obvious danger as a matter of law. *Rinn*, 611 N.W.2d at 364. Thus, both cases indicate that whether a danger is open and obvious is not a fact question that would preclude summary judgment.

Appellant also argues that “a reasonable fact finder could establish that [appellant] did not appreciate the danger created by the sidewalk irregularity.” But appellant testified that (1) she did not look down at the sidewalk; (2) the raised portion was clearly visible to her both before and after her fall; (3) she would have stepped over it if she had seen it

because she knew it could cause her to trip; (4) she could have prevented the accident by watching where she was going; (5) even though she had twisted her ankle in a fall on a public sidewalk about a year earlier, she still was not looking at the sidewalk at the time of this accident. Appellant's testimony refutes her argument that she did not know that not looking at the sidewalk when walking on it could be dangerous.

The district court did not err in granting respondent's motion for summary judgment.

Affirmed.