Affirmed and Memorandum Opinion filed May 8, 2025.

In The

Fourteenth Court of Appeals

NO. 14-24-00200-CV

ROBBIN NELSON, Appellant

V.

HOUSTON METHODIST SUGAR LAND HOSPITAL, Appellee

On Appeal from the 434th Judicial District Court
Fort Bend County, Texas
Trial Court Cause No. 16-DCV-235055

M E M O R A N D U M O P I N I O N

In this premises-liability suit, appellant Robbin Nelson sued Houston Methodist Sugar Land Hospital for injuries she sustained after falling in the hospital's parking lot. A jury found in Nelson's favor, but the trial court granted Houston Methodist's motion for judgment notwithstanding the verdict and signed a final take-nothing judgment in its favor. Nelson appeals.

We conclude that the evidence is legally insufficient to support Nelson's premises-liability claim because the divot in the concrete that caused her fall was not unreasonably dangerous as a matter of law. We affirm the trial court's judgment.

Background

While Nelson walked through the parking lot after taking a class at Houston Methodist, one of her shoes became stuck in a depression or divot in the concrete. Nelson fell, injuring her foot and back and breaking her ankle. Shortly after the incident, Nelson's husband returned to the parking lot and took pictures of the area, which we reproduce here:

The back heel of Nelson's shoe, shown above, became wedged in the larger hole depicted in the photograph. When Nelson fell, her shoe came off and remained lodged in the hole.

Nelson described the condition as a "pothole." According to Houston Methodist, this type of concrete damage is called "spalling," which generally is caused by wear and tear, weathering, water pooling, or friction from vehicles driving over the area. Nelson's husband agreed that the divot in which Nelson's shoe became lodged was "out in the open" and "obvious." Nelson, however, did not see the condition before her foot became stuck.

Before this incident, no one had reported any falls or other incidents due to the concrete condition. According to Nelson and her husband, however, a Houston Methodist representative, Caitlin Mahoney, told them after the incident that "she was always after maintenance to get them to work on these incidences in the parking lot . . . . she was after maintenance always to get them fixed" and that maintenance did not do what she asked them to do.

Methodist Hospital presented the testimony of three witnesses: Mahoney, who at the time of trial was no longer employed by Houston Methodist; Sean Sevy, Houston Methodist's corporate representative; and registered architect and designated expert Linda Pirtle.

Mahoney testified that she met with Nelson and Nelson's husband shortly after the incident. Nelson's husband took her to the location of the fall. According to Mahoney, she was not "alarmed" by the chipped concrete, nor did she think it appeared to be a dangerous condition. Nonetheless, Mahoney emailed Houston Methodist's facilities director, Sevy, to notify him about her interaction with Nelson and her husband. Mahoney attached a photograph of the area to her email. Mahoney believed that the divot was "less than half an inch" in depth, "not a very deep mark in the concrete," although she acknowledged that she did not actually measure it. Mahoney testified that she provided the Nelsons with her business card and explained Houston Methodist's formal complaint process, but the Nelsons never filed a complaint regarding the incident. Mahoney also denied telling the Nelsons that she "had been after maintenance all of the time to fix these chips or divots" or that maintenance was not doing what she asked them to do.

Sevy testified that, in June 2016, he was the director of facilities and security at the hospital's Sugar Land campus. According to Sevy, before Nelson's incident, he had never received any reports regarding spalled concrete in the parking lot. Mahoney's email was "the first notification of an issue of a fall out on the parking lot" and the first report of spalled concrete. After receiving the email, he walked to the parking lot to personally look at the area. Sevy did not consider it a hazard. He said it was "[n]ot something that we would normally be that concerned about," and he did not consider it a "dangerous condition." Sevy acknowledged, however, that there were "multiple areas" in the parking lot—fifty plus—of "pitting[] and little

cracks." He described the damage as "significant" because it required an outside contractor to fix and could not simply be fixed "in-house." Sevy also testified to the routine inspections performed twice annually by Houston Methodist risk management personnel, who walked through the entire campus to inspect for any safety concerns. Houston Methodist personnel performed regular safety commission inspections every two weeks, and security officers made daily inspections. None of these inspections resulted in any reports of the spalled concrete in the parking lot.

Pirtle testified as an expert in premises liability cases, with experience in cases involving concrete parking lots and sidewalks. According to Pirtle, although she did not measure the specific concrete defect at issue in this case, concrete spalling generally is no more than three-quarters of an inch to an inch in depth. She explained that concrete spalling is typically caused by weathering due to freezing and thawing or from wear and tear by vehicles driving over the concrete. Pirtle opined that the spalling in the area where Nelson fell was not a dangerous condition, nor did it present an unreasonable risk of harm. Pirtle also testified that the spalling shown in the photograph was "not a defect" and did not violate any codes or regulations. She agreed that spalling like that shown in the photograph was "common in parking lots."

The jury found that both Houston Methodist's and Nelson's negligence caused Nelson's injury and apportioned their respective fault at 50 percent each. The jury found damages in the total amount of $395,000. The trial court signed a final judgment awarding Nelson actual damages of $197,500, plus pre- and post-judgment interest and costs.

Houston Methodist filed a motion for judgment notwithstanding the verdict ("JNOV") or, alternatively, motion for new trial. Among other contentions, Houston Methodist asserted that it was entitled to judgment notwithstanding the verdict

because: (1) the spalled concrete did not constitute an unreasonably dangerous condition as a matter of law; (2) the "open and obvious" nature of the spalled concrete precluded recovery as a matter of law; and (3) Nelson provided no more than a scintilla of evidence that Houston Methodist had actual knowledge of the spalled concrete before the incident or that the spalled concrete posed an unreasonable risk of harm. After briefing by both parties, the trial court granted Houston Methodist's motion for JNOV and signed a take-nothing judgment. Nelson filed a timely notice of appeal.

Analysis

A. Standard of Review

Nelson's three issues challenge the trial court's JNOV ruling. We review a trial court's decision to disregard a jury verdict under the same standard used for any motion that would render judgment as a matter of law. *See Cent. Ready Mix Concrete Co. v. Islas*, 228 S.W.3d 649, 651 (Tex. 2007) (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex. 2005)). This standard requires that we credit evidence favoring the jury verdict if reasonable jurors could and disregard contrary evidence unless reasonable jurors could not. *Id.* We view the evidence presented in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the movant. *City of Keller*, 168 S.W.3d at 824. To the extent that the trial court's ruling was based on a pure question of law, our review is de novo. *See In re Humphreys*, 880 S.W.2d 402, 404 (Tex. 1994).

B. Application

The parties agree that Nelson was a licensee. Absent willful, wanton, or gross negligence, a licensee must prove the following elements to establish the breach of a premises-liability duty owed: (1) a condition of the premises created an

unreasonable risk of harm to the licensee; (2) the owner actually knew of the condition; (3) the licensee did not actually know of the condition; (4) the owner failed to exercise ordinary care to protect the licensee from danger; and (5) the owner's failure was a proximate cause of injury to the licensee. *Sampson v. Univ. of Tex. at Austin*, 500 S.W.3d 380, 391 (Tex. 2016). As these elements illustrate, Houston Methodist, as a premises owner, owes a duty to licensees to use ordinary care either to warn of, or to make reasonably safe, any unreasonably dangerous condition of which it is aware and the licensee is not. *Un. Pac. R.R. Co. v. Prado*, 685 S.W.3d 848, 861 (Tex. 2024).

Although more than one element is at issue in this appeal, we limit our discussion to the first element—whether the concrete divot was unreasonably dangerous—because we find it dispositive. "A condition is unreasonably dangerous if there is a sufficient probability of a harmful event occurring that a reasonably prudent person would have foreseen it or some similar event as likely to happen." *United Supermarkets, LLC v. McIntire*, 646 S.W.3d 800, 803 (Tex. 2022) (per curiam) (internal quotation omitted). In determining whether a condition is unreasonably dangerous, courts consider "whether the relevant condition was clearly marked, its size, whether it had previously caused injuries or generated complaints, whether is substantially differed from conditions in the same class of objects, and whether it was naturally occurring." *Christ v. Tex. Dep't of Transp.*, 664 S.W.3d 82, 87 (Tex. 2023) (quoting *United Supermarkets*, 646 S.W.3d at 803).

Whether a specific condition is unreasonably dangerous ordinarily is a question of fact. *United Supermarkets*, 646 S.W.3d at 802. Nonetheless, some "particularly innocuous or commonplace hazards are not unreasonably dangerous as

a matter of law." *Id.*[1] To create a fact issue whether a common or innocuous hazard is unreasonably dangerous, the supreme court has required evidence of "prior complaints or injuries or that some surrounding circumstance transformed an everyday hazard into one measurably more likely to cause injury." *Christ*, 664 S.W.3d at 87-88.

The circumstances of *United Supermarkets* are notably similar to those at issue here. In *United Supermarkets*, the supreme court held that a small divot in a grocery store parking lot did not pose a risk of unreasonable harm as a matter of law. *United Supermarkets*, 646 S.W.3d at 804. There, the divot measured about three-quarters of an inch deep at its deepest point and approximately six inches long at its longest point. *Id.* at 801 n.2. The court explained that "nothing in the record indicates that [the divot] yielded other complaints or injuries or was 'unusual' relative to other small pavement defects. If anything, the defect was profoundly *ordinary*." *Id.* (emphasis in original). "Tiny surface defects in pavement are ubiquitous and naturally occurring." *Id.* Thus, the court reasoned, reasonable people using parking lots know that they are not "perfectly flat and even" and "use caution when exiting their vehicles." *Id.* at 803. Expecting otherwise "would impose an incredibly costly burden on businesses, which would have to identify and remedy every small crumble in the surfaces surrounding their premises." *Id.*

[1] *Accord Scott & White Mem'l Hosp. v. Fair*, 310 S.W.3d 411, 415 (Tex. 2010) (holding that a patch of ice on the road causing a patron to slip and fall was not unreasonably dangerous as a matter of law); *Brinson Ford, Inc. v. Alger*, 228 S.W.3d 161, 163 (Tex. 2007) (holding that a pedestrian ramp did not pose an unreasonable risk of harm as a matter of law); *Brookshire Grocery Co. v. Taylor*, 222 S.W.3d 406, 408-09 (Tex. 2006) (holding that the wet floor in front of a self-serve soft-drink dispenser was not unreasonably dangerous as a matter of law); *M.O. Dental Lab v. Rape*, 139 S.W.3d 671, 676 (Tex. 2004) (holding that naturally accumulating mud was not unreasonably dangerous as a matter of law).

Based on the photographs presented to the jury, the divot in this case is quite similar to the divot described in *United Supermarkets*. There is no objective evidence of its measurements, but Houston Methodist's expert believed that the divot shown in the photographs was at most one inch deep. This is consistent with the depictions in the photographs. By comparison, the parking lot divot in *United Supermarkets* measured about three-quarters of an inch deep at its deepest point and approximately six inches across at its longest. *See id.* at 801 n.2. Additionally, the undisputed evidence here was that the divot or spalling occurred naturally.

Nelson relies on the statement attributed to Mahoney to the effect that "she was always after maintenance to get them to work on these incidences in the parking lot . . . she was after maintenance always to get them fixed" and that maintenance did not do what she asked them to do. Accepting this testimony as true, it shows nothing more than that Mahoney had noticed the concrete spalling and asked the hospital's maintenance department to fix it. Mahoney did not say that she was aware of any other complaints or injuries related to the divots, and the record does not reveal evidence of any. Evidence of other complaints or injuries was lacking in *United Supermarkets* as well. *See id.* at 803. The "standalone fact" that the divot in question caused Nelson's injury does not make it unreasonably dangerous. *See Pay & Save, Inc. v. Canales*, 691 S.W.3d 499, 502 (Tex. 2024).

We therefore agree with the trial court and conclude that the concrete divot at issue in today's case was not unreasonably dangerous as a matter of law. *United Supermarkets*, 646 S.W.3d at 803; *see also Pay & Save, Inc.*, 691 S.W.3d at 502-04.

Because the trial court properly granted Houston Methodist's motion for judgment notwithstanding the verdict on this basis, we overrule Nelson's issues.[2]

Conclusion

We affirm the judgment.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Christopher and Justices Jewell and McLaughlin.

[2] Our opinion should not be interpreted as holding or suggesting that parking lot divots such as the one at issue can never be unreasonably dangerous. We merely conclude that the evidence in the present record is insufficient to create a fact question on that point.