2016 IL App (4th) 150927-U

NO. 4-15-0927

FILED
December 23, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

GERRY S. BURDETTE,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Champaign County
STEAK 'N SHAKE OPERATIONS, INC.,	)	No. 14L74
Defendant-Appellee.	)	
	)	Honorable
	)	Michael Q. Jones,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Knecht and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court committed no error in granting defendant's motion for summary judgment in connection with plaintiff's negligence complaint.

¶ 2 Plaintiff, Gerry S. Burdette, filed a negligence cause of action against defendant, Steak 'N Shake Operations, Inc., alleging she slipped and fell at one of defendant's restaurants after stepping on a "wet floor" sign that had fallen over. The trial court granted defendant's motion for summary judgment, finding defendant owed plaintiff no duty because the danger presented by the "wet floor" sign was open and obvious. It entered judgment in defendant's favor. Plaintiff appeals, arguing summary judgment was improper because a genuine issue of material fact existed as to whether the dangerous condition complained of was open and obvious. Alternatively, she contends that even if the dangerous condition was open and obvious, defendant

owed her a duty of care because it violated its own policies in creating the dangerous condition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2014, plaintiff filed her initial negligence complaint against defendant, alleging she fell at one of its Steak 'n Shake restaurants. In March 2015, she filed a first amended complaint. Ultimately, the trial court allowed a motion by plaintiff to amend her pleading a second time, and she filed a three-count second amended complaint, which is the subject of this appeal.

¶ 5 In count I of her second amended complaint, plaintiff alleged negligence based on the theory of premises liability. She asserted, on July 10, 2013, she was a patron at defendant's restaurant and "stepped and fell on a 'wet floor' sign," which was lying "flat on the floor rather than in its upright position." Plaintiff maintained defendant had a duty to exercise reasonable care to ensure that its premises was reasonably safe for the use of those lawfully upon it but breached its duty by (1) placing the "wet floor" sign flat on the floor rather than in an upright position, (2) failing to monitor or inspect its premises to ensure the "wet floor" sign remained in an upright position, (3) failing to remove the "wet floor" sign when the floor was dry, (4) placing the "wet floor" sign flat on the floor and in a high traffic location near the cashier area of its restaurant, (5) improperly utilizing the "wet floor" sign by failing to place it upright, (6) failing to provide an adequate warning of the "wet floor" sign by allowing it to become situated flat on the floor, and (7) failing to have written policies and procedures concerning the inspection of its premises to ensure the "wet floor" sign remained upright or was removed once the floor was no longer wet. Plaintiff alleged she was injured as a proximate result of defendant's negligence.

¶ 6 In count II of her second amended complaint, plaintiff alleged negligence based on allegations of "distraction." Specifically, she asserted the "wet floor" sign, which was lying flat on the floor "and in close proximity to the cashier's station where customers *** are directed to pay for their food orders," presented a "condition" that posed an unreasonable risk of harm to people on the property. Plaintiff alleged defendant knew, or in the exercise of ordinary care should have known, of the condition and the risks it presented and "could reasonably expect that people on its property *** would become distracted by the condition" she described. She asserted defendant was negligent by (1) allowing or permitting the "wet floor" sign to be flat on the floor near the cashier's station "when it knew or should have known that [p]laintiff would be distracted by her efforts to pay for her food service and exit [d]efendant's restaurant," (2) locating and placing a "wet floor" sign in an area next to where plaintiff was required to pay for her food when defendant "should have known that [p]laintiff would then encounter the wet floor sign as she attempted to exit [d]efendant's restaurant at a time [p]laintiff was distracted," and (3) failing "to remove the wet floor sign located very near to the area where [p]laintiff was required to pay for her food and would be distracted despite knowing that no liquids or moisture were present in and around the area where [p]laintiff tripped." Again, she asserted she sustained injuries that were a direct and proximate result of defendant's negligence.

¶ 7 Finally, in count III of her complaint, plaintiff raised a claim of negligent spoliation of evidence. She asserted her fall had been recorded on video by an in-store surveillance camera and that defendant's store manager drafted a report regarding the incident. Plaintiff alleged, although defendant knew or should have known the video and report were material to a potential civil action, it negligently failed to retain and secure, or lost and misplaced, such items.

¶ 8 In August 2015, defendant filed a motion for summary judgment. (We note defendant's motion was initially filed in response to plaintiff's first amended complaint; however, after the trial court allowed plaintiff's motion for leave to file her second amended complaint, the parties agreed defendant's previously filed motion for summary judgment would "apply" to plaintiff's second amended complaint.) In its motion, defendant argued the hazard complained of by plaintiff—a yellow "wet floor" sign lying flat on a black and white tile floor—was an open and obvious condition and, as a result, it owed no duty to plaintiff. It further maintained the distraction exception to the open and obvious doctrine was inapplicable under the facts alleged by plaintiff. With respect to plaintiff's spoliation claim, defendant maintained it had no duty to preserve evidence. Defendant submitted a memorandum of law in support of its summary judgment motion. Additionally, attachments to plaintiff's filings included plaintiff's deposition and the deposition of Daniel Dragon, a manager at the restaurant where plaintiff fell.

¶ 9 During her deposition, plaintiff testified that, on July 10, 2013, at approximately 11 p.m., she visited a Steak 'n Shake restaurant in Champaign, Illinois, with her son. After ordering food and eating, plaintiff and her son walked to the cash register at the front of the restaurant to pay their bill. Plaintiff testified no one came to take her payment, so she decided to leave her credit card with her son so that he could pay while she went outside to get her vehicle. When attempting to exit the restaurant, plaintiff stepped on the "wet floor" sign, slid forward, and fell. According to plaintiff, she "turned and walked toward the door, [and] it was pretty much immediate that [her] left foot was on the sign." She testified the "wet floor" sign was a "fluorescent type yellow color" and agreed that it had red and black lettering. Plaintiff further agreed that a photograph of a "wet floor" sign shown to her by defendant's counsel looked like the sign she

slipped on at defendant's restaurant.

¶ 10 Plaintiff testified that the "wet floor" sign had to have been lying flat when she first made contact with it, noting she stepped directly on top of it. She described it as being "folded on top of itself." Also, plaintiff stated that the first time she saw the "wet floor" sign was after she stepped on it. The following colloquy occurred between plaintiff and defendant's counsel:

> "Q. But [there were] no obstructions, no napkins, no anything that would have prevented you from seeing that sign as you looked down?
>
> A. No.
>
> Q. As you turned to leave the restaurant—because you were going to go get your car, right?
>
> A. Right.
>
> Q. As you made that turn, what direction were you looking?
>
> A. At the front door.
>
> Q. Were you looking at all down to where you were stepping?
>
> A. I don't believe so. I believe I was looking out and it was dark out the front door. I was probably—I am thinking where did I put the car."

Finally, plaintiff denied that there were any other people in the front area of the restaurant at the

time she fell or that the lighting in the area of her fall was inadequate.

¶ 11 During his deposition, Dragon described himself as the assistant manager of the restaurant where plaintiff fell. He testified he received training for his position and his duties included ensuring that the restaurant was safe for patrons, with no hazards present. Dragon testified "wet floor" signs were to be used when a spill occurred or when an employee had been mopping. The signs were to be removed once the floor was dry. Also, he stated employees would check to make sure "wet floor" signs were maintained in an upright position; however, he stated he was unaware of any policies from defendant regarding when and how to periodically check on the proper positioning of a "wet floor" sign.

¶ 12 Dragon testified a "wet floor" sign had been used in the restaurant on the evening of plaintiff's fall because an employee had mopped the front area of the restaurant. He described the "wet floor" sign as brightly colored, stating it was yellow with red and black writing. Dragon further testified that the floor on which the sign had been located was black and white.

¶ 13 In October 2015, plaintiff filed a response to defendant's motion for summary judgment and a counter-motion for summary judgment. Initially, she asserted that, as a matter of law, the condition complained of—"a 'wet floor' sign lying flatly on the floor (as opposed to upright)"—constituted a hazard that was not open and obvious. She pointed to the deposition testimony of defendant's employees, stating they acknowledged a "wet floor" sign lying flat on the floor would constitute a potentially hazardous condition, which defendant's own policies required to be rectified. She asserted defendant's contention "that the 'wet floor' sign was 'open and obvious' could only apply if the evidence irrefutably established that the 'wet floor' sign was in an upright position when the incident occurred," which she maintained was not the case. She

asked the court "to conclude that the condition [she complained of was] not open and obvious as a matter of law and that [her] Counter-Motion for Summary Judgment on the open and obvious issue be granted."

¶ 14 Alternatively, plaintiff argued a genuine issue of material fact existed as to whether a "wet floor" sign lying flat on the floor is an open and obvious condition. In particular, she maintained that when a dispute exists about a condition's physical nature, such as visibility, the question of whether a condition is open and obvious is factual. Plaintiff argued that, because the sign at issue in her case was lying flat on the floor when she encountered it, a question of fact existed as to the sign's visibility.

¶ 15 Additionally, plaintiff asserted the distraction exception to the open and obvious doctrine applied because defendant placed the "wet floor" sign "in the immediate area where [p]laintiff was required to turn her attention to pay for food." Finally, she maintained she appropriately pleaded a claim for negligent spoliation of evidence and asserted significant genuine issues of material fact existed as to that issue.

¶ 16 To her response, plaintiff attached her own deposition; Dragon's deposition; and the depositions of two of defendant's employees, Kelly Hughes and Jillayne Johnson. Hughes testified she worked as a district manager for defendant. She identified a document entitled "server task outline," which she stated was a training tool for new servers and provided that "wet floor" signs should be removed once floors were completely dry. Hughes testified removal of a sign indicated that the floor was available to walk on. She was not aware of any policy defendant had for its employees to monitor or periodically check on a "wet floor" sign to ensure that it did not buckle and lie flat. Hughes stated that if she saw a "wet floor" sign lying flat on the

floor, she would place it in an upright position "[i]n case someone didn't see it."

¶ 17 Johnson testified she was working for defendant as a server on the night plaintiff fell. Relevant to the issues presented on appeal, she stated she did not know if defendant had a policy regarding when to remove "wet floor" signs. However, she stated she would remove them as soon as the floor was dry because they would be in her way.

¶ 18 Along with her response to defendant's summary judgment motion, plaintiff also submitted the affidavit and report of Mark Briggs. Briggs identified himself as a "Certified Safety Professional *** with over 30 years of safety and risk management experience[;] a degree in safety studies ***[;] and continuing education in safety, health, and risk management issues." He stated he was asked by plaintiff to review information related to the incident at issue and develop professional opinions based on his review. In his report, Briggs opined as follows:

> "11. When lying flat on the floor, the 'Wet Floor' sign provides a very low vision profile. This profile provides minimal opportunity for customers, employees, and others to observe the sign and to then alter their travel path to avoid the sign. The sign offers very minimal vision profile, especially when it lies lengthwise in line with an individual's sightline. ***
>
> 12. It is reasonable to believe that [plaintiff], and other customers may not see or recognize the presence of a 'Wet Floor' sign lying flat on the floor. Given the low profile of the signs in this state, the number and types of visual distractions present in this setting, a sign lying flat on the floor may not be recognized by

an individual as an obstacle and related hazard.

13. The presence of a 'Wet Floor' sign, especially one that is lying flat on the ground, may be even less likely to be noted when additional visual distractions may be presented by the lighted amusement games present in the customer cashier area. This added distraction may be even more profound at night."

¶ 19 On October 22, 2015, the trial court conducted a hearing on the matter and granted defendant's summary judgment motion. It found defendant owned no duty to plaintiff because the condition complained of was open and obvious. The court entered judgment in defendant's favor on all three counts of plaintiff's second amended complaint and dismissed her complaint with prejudice.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, plaintiff challenges the trial court's decision to grant defendant's motion for summary judgment. She first argues a genuine issue of material fact exists as to whether the "wet floor" sign was open and obvious. Alternatively, she contends that, even if the sign was open and obvious, defendant's own policies regarding the use of "wet floor" signs created a duty owed by defendant to plaintiff.

¶ 23 "Summary judgment is proper when '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.' " *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 11, 43 N.E.3d 923 (quoting 735 ILCS 5/2-1005(c)

(West 2012)). "[T]o survive a motion for summary judgment, a plaintiff need not prove her case, but she must present a factual basis that would arguably entitle her to a judgment." *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12, 21 N.E.3d 684. A trial court's decision to grant a motion for summary judgment is subject to *de novo* review. *Wade v. Wal-Mart Stores, Inc.*, 2015 IL App (4th) 141067, ¶ 12, 39 N.E.3d 1141.

¶ 24 "In a negligence action, the plaintiff must plead and prove the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and injury proximately resulting from the breach." *Bruns*, 2014 IL 116998, ¶ 12, 21 N.E.3d 684. "Whether a duty exists is a question of law for the court to decide." *Id.* ¶ 13. Factors to consider when determining the existence of a duty include: "(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.* ¶ 14. "The weight to be accorded these factors depends upon the circumstances of a given case." *Id.*

¶ 25 "Pursuant to the theory of premises liability, an owner or occupier of land *** owes a duty of reasonable care under the circumstances to all entrants upon the premises except to trespassers." *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 24, 980 N.E.2d 58. However, under the open and obvious doctrine, "a party who owns or controls land is not required to foresee and protect against an injury if the potentially dangerous condition is open and obvious." *Rexroad v. City of Springfield*, 207 Ill. 2d 33, 44, 796 N.E.2d 1040, 1046 (2003). " 'Obvious' means that both the condition and the risk are apparent to and would be recognized by a reasonable man, in the position of the visitor, exercising ordinary perception, intelligence, and judgment.' " *Wade*, 2015 IL App (4th) 141067, ¶ 14, 39 N.E.3d 1141 (quoting Restatement

(Second) of Torts § 343A cmt. b (1965)). When there is no dispute as to the physical nature of a dangerous condition, whether it is open and obvious presents a question of law. *Bruns*, 2014 IL 116998, ¶ 18, 21 N.E.3d 684.

¶ 26 Here, plaintiff first argues a genuine issue of material fact exists as to whether the "wet floor" sign was open and obvious when lying flat on the floor. To support her argument, she relies on two appellate court decisions, *Alqadhi v. Standard Parking, Inc.*, 405 Ill. App. 3d 14, 938 N.E.2d 584 (2010), and *Buchaklian v. Lake County Family Young Men's Christian Ass'n*, 314 Ill. App. 3d 195, 732 N.E.2d 596 (2000), asserting they are similar to the facts of her case. Plaintiff also relies on Briggs' report and affidavit, asserting he provided "several expert opinions regarding the lack of visibility of the 'wet floor' sign in light of its dimension and contrast."

¶ 27 First, in *Alqadhi*, 405 Ill. App. 3d at 15, 938 N.E.2d at 586, the plaintiff tripped over a 3/4-inch rise in the concrete of a wheelchair-accessible ramp in the defendants' parking garage. The defendants moved for summary judgment and argued, in part, that the condition that caused the plaintiff's injury was open and obvious. *Id.* In response, the plaintiff presented the affidavit of a registered professional engineer, who found " '[t]he lack of contrast between the surface of the parking level and the curb ramp *** disguised the abrupt change in vertical elevation.' " *Id.* at 16, 938 N.E.2d at 586. The plaintiff also presented her own deposition, in which she testified the concrete " 'was all the same color' " and "created an optical illusion of a flat walking surface." *Id.* at 15, 938 N.E.2d at 586. She further asserted the area of her fall had been poorly lit. *Id.*

¶ 28 The trial court granted the defendants' motion for summary judgment, finding "the raised concrete was an open and obvious condition." *Id.* at 16, 938 N.E.2d at 586. On review,

the First District reversed, finding a question of fact was presented regarding the physical nature of the condition, specifically its visibility. *Id*. at 17-18, 938 N.E.2d at 588. The court stated as follows:

> "Here, the trial court found as a matter of law that the raised concrete causing [the] plaintiff's injury was open and obvious. But we must disagree based on the testimony of [the] plaintiff's expert. [The] [p]laintiff described the lighting conditions around the curb as 'low' and 'dark.' She testified that she was unable to appreciate the change in elevation from the parking lot and the curb, and that the lack of contrast created the 'illusion' of walking on a flat surface. [The] [p]laintiff's engineer's opinion supports [the] plaintiff's observations. He concluded that the lack of contrast paint 'disguised' the change in vertical elevation between the parking lot and the curb, creating an impermissible tripping hazard that was 'not obvious.' " *Id*. at 18, 938 N.E.2d at 588.

¶ 29 Second, in *Buchaklian*, 314 Ill. App. 3d at 198, 732 N.E.2d at 598, the plaintiff was injured after she tripped and fell while traversing a black floor mat. After falling, she "observed that one particular piece of the mat was standing up approximately an inch or two higher than the other portions of the mat." *Id*. During her deposition, the plaintiff admitted that she would have seen that part of the mat was sticking up and would not have tripped if she had been looking at the mat. *Id*. The trial court granted summary judgment in the defendant's favor, "finding no question of fact regarding the 'open and obvious' issue," and the plaintiff appealed.

Id. at 199, 732 N.E.2d at 598.

¶ 30 On review, the Second District reversed, finding a question of fact existed as to whether the danger presented by the mat was open and obvious. *Id*. at 202, 732 N.E.2d at 601. In so holding, the court noted that neither plaintiff nor a witness to the incident saw the defect in the mat until after plaintiff's fall. *Id*. Further, it found the evidence in the record could "support a reasonable inference that the defect in the mat was difficult to discover because of its size, the lack of significant color contrast between the defect and the surrounding mat, or merely the short time that a person has in which to discover the defect as he or she takes a few steps toward the mat." *Id*.

¶ 31 Initially, we find *Alqadhi* and *Buchaklian* are factually distinguishable from the present case. Evidence in each of those cases was sufficient to raise a factual question as to the physical nature of the dangerous conditions complained of and indicated the conditions may have been difficult to discover due to poor lighting, a lack of color contrast, size, or a short time to discover a defect. The same issues were not present in this case, and the physical nature of the condition at issue was not in dispute. Evidence showed plaintiff slipped and fell in defendant's restaurant after stepping on a "wet floor" sign that was lying flat on the floor. Plaintiff's own deposition testimony showed the lighting in the area where she fell was sufficient. Additionally, evidence showed the "wet floor" sign was bright yellow in color, presenting a significant contrast to the restaurant's black and white tiled floor. Further, nothing in the record indicates the sign's size presented an issue or that plaintiff had only a limited time frame in which to discover the sign.

¶ 32 As stated, plaintiff relies on Briggs' report and affidavit to support her argument

that a question of fact exists as to the "wet floor" sign's visibility. Briggs opined the "wet floor" sign provided a "very low vision profile" when lying flat on the floor and, therefore, was difficult to see. The trial court rejected Briggs' opinions, finding that the fact that the "wet floor" sign provided a low visual profile when lying flat on the floor was something the court could determine for itself and not properly within the scope of expert witness testimony. We agree with the trial court.

¶ 33 Expert testimony is admissible when the expert's "experience and qualifications afford him knowledge that is not common to laypersons, and where his testimony will aid the trier of fact in reaching its conclusions." *Thompson v. Gordon*, 221 Ill. 2d 414, 428, 851 N.E.2d 1231, 1240 (2006). As the trial court found, the fact that a "wet floor" sign provides a low profile when lying flat on the floor and may not be as noticeable as it would be if it were standing up is knowledge that is common to laypersons. It does not require specialized training or experience and is not properly the subject of an expert's opinion. Thus, given the evidence presented, Briggs' opinions would not aid the trier of fact in reaching its conclusions, and we find his opinions insufficient to raise a genuine issue of material fact as to the "wet floor" sign's visibility.

¶ 34 Further, we find the facts presented by this case are more similar to those presented in this court's recent decision in *Wade* than in those cited by plaintiff. In *Wade*, the plaintiff was injured after stepping into a pothole in a Wal-Mart parking lot. *Wade*, 2015 IL App (4th) 141067, ¶ 6, 39 N.E.3d 1141. The trial court granted summary judgment in Wal-Mart's favor and we affirmed. *Id.* ¶ 41. In so holding, we distinguished *Alqadhi* and *Buchaklian* on the basis that, in *Wade*, the evidence presented before the trial court did not raise a factual question as to the physical nature of the alleged dangerous condition. *Id.* ¶¶ 21-22. Specifically, we stated as

follows:

> "Simply put, we disagree with [the plaintiff's] assertion that the pleadings, depositions, affidavits, or other documents filed in this case supported a reasonable inference that the pothole at issue was inadequately lit, concealed, obscured, or a subtle hazard. Indeed, the undisputed evidence, which was supported by a video recording, revealed that on a clear, dry night in November 2009, [the plaintiff] was trotting through Wal-Mart's illuminated asphalt parking lot back to her car when she stepped into a hole that was a couple of feet long and a few inches deep. In finding that the pothole was an open and obvious hazard, the trial court stated that [the plaintiff's] testimony clearly established that no reason existed why she could not have seen the pothole and thus, could have avoided the hazard if she had been looking where she was going. Because we agree with the court's analysis, we conclude that under the circumstances presented, a reasonable person in [the plaintiff's] position, exercising ordinary perception, intelligence, and judgment, would have avoided the open and obvious hazard posed by the pothole." *Id*. ¶ 23.

¶ 35 The same is true in this case. The record fails to reflect the "wet floor" sign "was inadequately lit, concealed, obscured, or a subtle hazard." *Id*. In granting defendant's motion for summary judgment, the trial court found no dispute about the physical nature of the alleged dan-

gerous condition, noting defendant submitted photographs depicting "a yellow sign laying [*sic*] on a black and white tile floor." It found "[n]o one who saw th[e] sign would step on it; you'd step around it." Further, the court noted plaintiff's deposition testimony established she was looking forward rather than down when the incident occurred. As in *Wade*, the record fails to reflect any reason why plaintiff could not have seen the "wet floor" sign and avoided it "if she had been looking where she was going." *Id.* Thus, we find no error in the court's finding that the "wet floor" sign lying flat on the floor was an open and obvious hazard.

¶ 36 On appeal, plaintiff also argues that, even assuming the "wet floor" sign lying flat on the floor was open and obvious, defendant owed her a duty because it violated its own policies in creating a dangerous condition. She maintains that under a traditional duty analysis, the final two factors "strongly favor the imposition of a duty of care."

¶ 37 We agree that the existence of an open and obvious danger does not automatically bar the finding of a legal duty owed by a defendant, and a court must still apply a traditional duty analysis to the facts presented. *Bruns*, 2014 IL 116998, ¶ 19, 21 N.E.3d 684. Again, a traditional duty analysis requires consideration of "(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.* ¶ 14. "Application of the open and obvious rule affects the first two factors of the duty analysis: the foreseeability of injury, and the likelihood of injury." *Id.* ¶ 19. "Where the condition is open and obvious, the foreseeability of harm and the likelihood of injury will be slight, thus weighing against the imposition of a duty." *Id.* Additionally, a court must also consider whether an exception to the open and obvious doctrine applies. *Id.* ¶ 20. "Illinois law recognizes two such exceptions: the 'distraction excep-

tion,' and the 'deliberate encounter exception.' " *Id.* "Where an exception to the open and obvious rule applies, the outcome of the duty analysis with respect to the first two factors is 'reversed.' " *Id.* (quoting *Belluomini v. Stratford Green Condominium Ass'n*, 346 Ill. App. 3d 687, 692, 805 N.E.2d 701, 705 (2004)).

¶ 38 On appeal, plaintiff has failed to argue that either exception to the open and obvious doctrine applies. Therefore, the first two factors of the duty analysis weigh in favor of finding no duty was owed by defendant. Plaintiff contends the remaining two factors weigh in her favor as "neither the magnitude of the burden of guarding against the injury nor the consequence of placing that burden on [the] [d]efendant would be severe." Specifically, she argues defendant should utilize a "better designed" "wet floor" sign, follow its own policies of removing "wet floor" signs when the floor is dry, and monitor the condition of the signs to ensure they remain upright.

¶ 39 Here, we cannot agree that the burden of guarding against injury is insignificant. Plaintiff's suggestions would require defendant to replace the "wet floor" signs in all of its restaurants and constantly monitor "wet floor" signs and the area around them. Also, we find "[t]he imposition of this burden [on defendant] is not justified given the open and obvious nature of the risk involved." *Id.* ¶ 36.

¶ 40 Under the facts presented, defendant owed no duty to plaintiff, and the trial court properly granted summary judgment in defendant's favor.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment.

¶ 43 Affirmed.