DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DANIELLE KRISTINE VEGA, Plaintiff/Appellant, v. JOE KILLIP, Defendant/Appellee.	)	1 CA-CV 10-0855 DEPARTMENT B **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules Of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-092287

The Honorable John R. Ditsworth, Judge

AFFIRMED

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D O W N I E, Judge

¶1 Danielle Kristine Vega appeals the superior court's entry of summary judgment for Joe Killip on her negligence claim. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In December 2007, Killip hosted a party at his home. Cy McKee, one of the party guests, brought a golf cart and parked it in Killip's backyard. During the party, Jaime Willingham, another guest, drove the golf cart off the property with Vega as a passenger. Willingham drove down the street approximately one block before attempting a U-turn, causing the golf cart to overturn and injure Vega.

¶3 Vega filed this action for negligence against Willingham, McKee, and Killip. Killip moved for summary judgment, arguing he owed Vega no duty of care or, in the alternative, that there was no evidence his actions breached any duty of care. The court granted the motion and entered judgment for Killip. Vega timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1).

DISCUSSION

¶4 A court may grant summary judgment when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). We view the evidence in the light most favorable to

Vega, against whom judgment was entered, and determine *de novo* whether there are genuine issues of material fact and whether the trial court erred in its application of the law. *Unique Equip. Co. v. TRW Vehicle Safety Sys., Inc.*, 197 Ariz. 50, 52, ¶ 5, 3 P.3d 970, 972 (App. 1999).

¶5 A plaintiff alleging negligence must prove: (1) the existence of a duty recognized by law requiring the defendant to conform to a certain standard of care; (2) the defendant's breach of that duty; (3) a causal connection between the breach and the plaintiff's resulting injury; and (4) actual damages. *Gipson v. Kasey*, 214 Ariz. 141, 143, ¶ 9, 150 P.3d 228, 230 (2007) (citation omitted). A duty is an "obligation, recognized by law, which requires the defendant to conform to a particular standard of conduct in order to protect others against unreasonable risks of harm." *Id.* at ¶ 10 (citation omitted). The existence of a duty is a question of law that we review *de novo*. *Diaz v. Phoenix Lubrication Serv., Inc.*, 224 Ariz. 335, 338, ¶ 12, 230 P.3d 718, 721 (App. 2010).

¶6 Vega contends Killip owed her a duty of care because she was a social guest on his property. It is undisputed, though, that Vega was not on Killip's property when she was injured. In *Wickham v. Hopkins*, 226 Ariz. 468, 250 P.3d 245 (App. 2011), we held that the landowner-licensee relationship ended when a social guest left the homeowner's property and

walked into the street in front of the home, where he was injured.[1] We stated:

> While Wickham was on the premises, the landowner-licensee relationship existed, triggering the limited duty owed by landowners or occupiers to licensees. But that relationship ceased when Wickham walked off the Hopkinses' property onto the street. We are unable to identify any duty-creating relationship between Wickham and the Hopkinses at the time of Wickham's injury.

Wickham, 226 Ariz. at 472, ¶ 17, 250 P.3d at 249.

¶7 Vega insists Killip owed her a duty of care even after she left his property because her injury was caused by a dangerous condition on his land. She contends Restatement (Second) of Torts ("Restatement") § 364 (1965) supports imposition of a duty. That section states, in pertinent part, that a possessor of land may be subject to liability for "physical harm caused by a structure or other artificial

[1] Moreover, a landowner generally owes a social guest no duty "other than to refrain from knowingly letting him run upon a hidden peril or wantonly or wilfully causing him harm." *Shannon v. Butler Homes, Inc.*, 102 Ariz. 312, 316, 428 P.2d 990, 994 (1967). Even if Vega had been injured while on Killip's property, there is no genuine issue of material fact regarding whether the golf cart was a hidden peril. There is no evidence Vega lacked the age or the experience to appreciate the dangers associated with such a vehicle when driven improperly. *See*, *e.g.*, *id*. at 318, 428 P.2d at 996 (stating that what constitutes a hidden peril is only a question of fact for the jury in borderline cases); *Shaw v. Petersen*, 169 Ariz. 559, 821 P.2d 220 (App. 1991) (declining to rule as a matter of law that backyard swimming pool was not a hidden peril to 19-month-old child).

condition on the land, which the possessor realizes or should realize will involve an unreasonable risk of harm" if the condition is "created by a third person with the possessor's consent or acquiescence while the land is in his possession." Restatement § 364(b). Because § 364 addresses harms that result from structures or artificial conditions *on the land*, it does not support imposition of a duty here, where the golf cart was not on Killip's property at the time of the incident, but merely had been parked there earlier in the night.

¶8 Killip did not owe a duty of reasonable care to protect Vega after she left his property. The superior court properly granted him summary judgment.

CONCLUSION

¶9 We affirm the judgment of the superior court.

/s/
MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/
PETER B. SWANN, Judge

/s/
DONN KESSLER, Judge