

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF NEVADA  
13

14 STEPHANIE RIDGWAY, ) 3:15-cv-00002-HDM-WGC  
15 Plaintiff, )  
16 vs. ) ORDER  
17 SUN VALLEY GENERAL IMPROVEMENT )  
18 DISTRICT, )  
19 Defendant. )  
\_\_\_\_\_ )

20 Defendant Sun Valley General Improvement District ("defendant")  
21 operates the Sun Valley pool ("the pool"). (Mot. Summ. J. Ex. 1  
22 (Ariztia Aff. ¶ 4)). Defendant, a political subdivision of the State  
23 of Nevada, assumed control of the pool from Washoe County in 2010.  
24 *Id.* Plaintiff Stephanie Ridgway ("plaintiff"), a citizen of  
25 California, visited the pool on June 20, 2014. (See Compl. ¶¶ 1, 4).  
26 After going down one of the water slides, plaintiff struck her foot  
27 on the bottom of the pool. (Compl. ¶ 5). Plaintiff suffered injuries  
28 as a result of the incident and sought medical treatment. (Compl.

1 ¶ 10).

2 On January 2, 2015, plaintiff filed a complaint (#1) against  
3 defendant asserting a single claim for breach of duty to exercise  
4 reasonable care. Before the court is defendant's motion for summary  
5 judgment (#19). Plaintiff responded (#20) and defendant replied  
6 (#23).

7 **Standard**

8 In a diversity case, substantive summary judgment issues are  
9 determined by state law. *Bank of Cal. v. Opie*, 663 F.2d 977, 980 (9th  
10 Cir. 1981). Summary judgment shall be granted "if the movant shows  
11 that there is no genuine issue as to any material fact and the movant  
12 is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a).  
13 The burden of demonstrating the absence of a genuine issue of material  
14 fact lies with the moving party, and for this purpose, the material  
15 lodged by the moving party must be viewed in the light most favorable  
16 to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144,  
17 157 (1970); *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1378 (9th  
18 Cir. 1998). A material issue of fact is one that affects the outcome  
19 of the litigation and requires a trial to resolve the differing  
20 versions of the truth. *Lynn v. Sheet Metal Workers Int'l Ass'n*, 804  
21 F.2d 1472, 1483 (9th Cir. 1986); *S.E.C. v. Seaboard Corp.*, 677 F.2d  
22 1301, 1306 (9th Cir. 1982).

23 Once the moving party presents evidence that would call for  
24 judgment as a matter of law at trial if left uncontroverted, the  
25 respondent must show by specific facts the existence of a genuine  
26 issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
27 (1986). "[T]here is no issue for trial unless there is sufficient  
28 evidence favoring the nonmoving party for a jury to return a verdict

1 for that party. If the evidence is merely colorable, or is not  
2 significantly probative, summary judgment may be granted." *Id.* at  
3 249-50 (citations omitted). "A mere scintilla of evidence will not  
4 do, for a jury is permitted to draw only those inferences of which the  
5 evidence is reasonably susceptible; it may not resort to speculation."  
6 *British Airways Board v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir.  
7 1978); see also *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S.  
8 579, 596 (1993) ("[I]n the event the trial court concludes that the  
9 scintilla of evidence presented supporting a position is insufficient  
10 to allow a reasonable juror to conclude that the position more likely  
11 than not is true, the court remains free . . . to grant summary  
12 judgment."). Moreover, "[i]f the factual context makes the non-moving  
13 party's claim of a disputed fact implausible, then that party must  
14 come forward with more persuasive evidence than otherwise would be  
15 necessary to show there is a genuine issue for trial." *Blue Ridge*  
16 *Ins. Co. v. Stanewich*, 142 F.3d 1145, 1149 (9th Cir. 1998) (citing  
17 *Cal. Architectural Bldg. Prods., Inc. v. Franciscan Ceramics, Inc.*,  
18 818 F.2d 1466, 1468 (9th Cir. 1987)). Conclusory allegations that are  
19 unsupported by factual data cannot defeat a motion for summary  
20 judgment. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

## 21 **Analysis**

22 As an initial matter, plaintiff and defendant agree that Nevada  
23 law applies to this case. (See Mot. Summ. J.; Pl. Opp'n to Mot. Summ.  
24 J.).

25 Under Nevada law, political subdivisions are provided immunity  
26 for: (1) failing to inspect, whether or not a duty to inspect exists;  
27 or (2) failing to discover a hazard, whether or not an inspection is  
28 performed. NEV. REV. STAT. § 41.033(1). As the Nevada Supreme Court

1 explained in *Nardozzi v. Clark County School District*, 108 Nev. 7, 9,  
2 823 P.2d 285, 287 (1992), immunity under NRS § 41.033(1) "will not bar  
3 actions based upon a public entity's failure to act reasonably when  
4 it has express knowledge of a hazard." See also *Chastain v. Clark*  
5 *Cty. Sch. Dist.*, 109 Nev. 1172, 1175, 866 P.2d 286, 288 (1993); *Lotter*  
6 *v. Clark Cty. Bd. of Comm'rs*, 106 Nev. 366, 793 P.2d 1320 (1990).  
7 Plaintiff has set forth specific facts showing a genuine issue for  
8 trial as to whether defendant had express knowledge of a hazard prior  
9 to plaintiff's injury.

10 The crux of defendant's motion is that there is no evidence that  
11 anyone other than plaintiff has ever been significantly injured by  
12 striking the bottom of the pool after using the slide. Defendant  
13 provided an affidavit from Michael Ariztia, Public Works Director for  
14 defendant from August 1, 2007, through June 12, 2015, which states  
15 that all incidents involving injuries to patrons at the pool were  
16 reported to him. (Mot. Summ. J. Ex. 1 (Ariztia Aff. ¶ 5)). The  
17 affidavit states that Mr. Ariztia is not aware of any incidents at the  
18 pool where a patron was "injured significantly enough to require any  
19 medical attention by virtue of coming into contact with the bottom of  
20 the swimming pool after using one of the slides." (*Id.* at ¶ 8).

21 Additionally, Mr. Ariztia's affidavit states that when defendant  
22 began operating the pool, Washoe County never advised it "of any  
23 particular or unusual problems" with the slides. (*Id.* at ¶ 6). Mr.  
24 Ariztia asserts that "the most common incidents involving the slides  
25 at the pool involved young children who used the slides and had to be  
26 rescued from the water when they could not touch the bottom because  
27 the pool was too deep for them or because they were otherwise in  
28 distress." (*Id.* at ¶ 7). Defendant claims that plaintiff's incident

1 was unprecedented and, therefore, argues that the absence of prior  
2 accidents demonstrates that defendant had no express knowledge that  
3 an adult using the water slide could strike the bottom of the pool  
4 with sufficient force to cause significant injury. Defendant contends  
5 that it is entitled to immunity because there is no admissible  
6 evidence showing that it had express knowledge of a hazard.

7 Plaintiff, however, provided depositions from two lifeguards at  
8 the Sun Valley pool who testified that, prior to the incident with  
9 plaintiff on June 20, 2014, other users of the slide scraped the  
10 bottom of the pool. (Pl. Opp'n to Mot. Summ. J. Ex. 5 (Pachnik Dep.  
11 11:9-24), Ex. 6 (Ray Dep. 10:24-25, 11:1-25, 12:1-5, 13:10-15)). One  
12 of the lifeguards also testified that he hit the bottom of the pool  
13 after using the water slide. (Pl. Opp'n to Mot. Summ. J. Ex. 6 (Ray  
14 Dep. 12:6-8)).

15 In reply defendant asserts that the testimony from the lifeguards  
16 supports its contention that defendant "was not on actual notice of  
17 any condition in the pool's waterslide that is relevant to Plaintiff's  
18 injury, i.e., a situation where someone significantly injured  
19 themselves after using the slide and striking the bottom of the pool."  
20 (Reply to Mot. Summ. J. at 6). Defendant highlights the difference  
21 between hitting the bottom of the pool and striking the bottom of the  
22 pool with significant force to cause any sort of injury. (*Id.* at 9).  
23 Thus, Defendant focuses on its lack of express knowledge of the  
24 potential consequences from the alleged hazard.

25 The Nevada Supreme Court has found that the issue of whether the  
26 governmental entity had express knowledge of the existence of the  
27 alleged hazardous condition is distinct from whether the governmental  
28 entity acknowledged that it constituted a hazardous condition. See

1 *Chastain v. Clark Cty. Sch. Dist.*, 109 Nev. 1172, 1178, 866 P.2d 286,  
2 289 (1993). In *Chastain v. Clark County School District*, the Nevada  
3 Supreme Court stated that "Nardozzi does not require that the public  
4 entity acknowledge as hazardous a condition of which it has express  
5 knowledge. Rather, the entity need only have express knowledge of the  
6 existence of the condition."<sup>1</sup> *Id.* Thus, defendant's emphasis on the  
7 severity of injuries is misplaced because "whether a particular  
8 condition constitutes a hazard is a question of fact for the jury."  
9 *Id.* at 1178. Moreover, in *Chastain*, the Nevada Supreme Court defined  
10 the alleged hazardous conditions as the "sandbox low in sand and the  
11 broken bottles therein," and did not connect it to Chastain's injury,  
12 i.e. a child getting pushed into the sandbox and being injured  
13 significantly enough to require any medical attention. *Id.* at 1172.  
14 For purposes of determining immunity, the issue is whether defendant  
15 knew the depth of the pool was a hazard, not whether the depth of the  
16 pool would cause significant injuries requiring medical attention.

17 In ruling on a motion for summary judgment, the court must  
18 construe the evidence and the inferences which flow from the evidence  
19 in the light most favorable to the non-moving party, here plaintiff  
20 Stephanie Ridgway. See *Guidroz-Brault v. Missouri Pacific R. CO.*, 254  
21 F.3d 825, 829 (9th Cir. 2001). The evidence presented in this case  
22 can lead to the inference that defendant had express knowledge of the  
23 alleged hazard. Thus, plaintiff has raised a genuine issue of  
24 material fact that precludes summary judgment on the issue of whether  
25 the defendant is entitled to governmental immunity. Therefore,

---

27 <sup>1</sup> The court finds defendant's efforts to distinguish the facts of this case from *Chastain* and  
28 *Nardozzi* unavailing. (Reply to Mot. Summ. J. at 11-12). The statute does not differentiate between  
transient/temporary hazardous conditions and fixed/static hazardous conditions. See NEV. REV. STAT.  
§ 41.033(1).

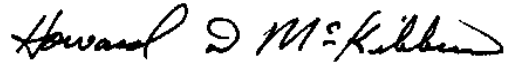
1 defendant's motion for summary judgment (#19) is **DENIED**.

2 IT IS SO ORDERED.

3 DATED: This 18th day of November, 2015.

4

5



6

UNITED STATES DISTRICT JUDGE

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28