STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1095

Charlotte Nelson,
Appellant,

vs.

Townhomes at Water's Edge, Inc.,
Respondent,

Prairie Property Management of Fargo-Moorhead, Inc.,
Respondent,

Pro Landscapers, L.L.C.,
Respondent,

Ian Hansen, Inc.,
Respondent.

Filed April 17, 2017
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Clay County District Court
File No. 14-CV-14-1123

Timothy M. O'Keeffe, Tatum O'Brien Lindbo, Sara M. Monson, O'Keeffe, O'Brien, Lyson & Foss Ltd., Fargo, North Dakota (for appellant)

Kendra E. Olson, H. Morrison Kershner, Pemberton, Sorlie, Rufer & Kershner, P.L.L.P., Fergus Falls, Minnesota (for respondent Townhomes at Water's Edge, Inc.)

Paul R. Aamodt, Eden Prairie, Minnesota (for respondent Prairie Property Management of Fargo-Moorhead, Inc.)

Troy A. Wolf, Tyler S. Carlson, Fisher Bren & Sheridan, LLP, Fargo, North Dakota (for respondent Pro Landscapers, L.L.C.)

Michael T. O'Rourke, Daniel J. Jardine, Law Office of Settano & Hill, Bloomington, Minnesota (for respondent Ian Hansen, Inc.)

Considered and decided by Schellhas, Presiding Judge; Hooten, Judge; and Bratvold, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

In this slip-and-fall case against a townhome association and others, appellant challenges the district court's order granting summary judgment in favor of respondents, arguing that: (1) respondents owed her a duty of care; (2) the primary-assumption-of-risk doctrine does not bar her claim; and (3) questions of fact about causation make summary judgment inappropriate. Because the district court erred when it granted summary judgment in favor of respondents Townhomes at Water's Edge, Inc. and Prairie Property Management of Fargo-Moorhead, Inc., but did not err in granting summary judgment in favor of respondents Pro Landscapers, L.L.C. and Ian Hansen, Inc., we affirm in part, reverse in part, and remand.

FACTS

On March 1, 2013, appellant Charlotte Nelson, who was then 89 years old, slipped and fell on the sidewalk leading from the front door of her townhome, breaking a bone in her upper arm near her shoulder. "It was a beautiful wonderful day," with sunshine and "a lot of melting" snow. At the time she fell, Nelson was trying to push water down her sidewalk so it would drain into the street. Before that day, snow, ice, and water had accumulated on Nelson's sidewalk, which led from her front door to the driveway.

Nelson owns a unit at Townhomes at Water's Edge, L.L.C., which is a common-interest community known as Water's Edge Townhomes (Water's Edge) in Moorhead, Minnesota. Respondent Townhomes at Water's Edge, Inc. (the Association) is the townhome association for the community. The Association had several agreements governing its relationship with unit owners, including bylaws, covenants, and declarations (collectively, the "Association agreements").

The Association retained respondent Prairie Property Management of Fargo-Moorhead, Inc. (Prairie Property) to manage Water's Edge. Prairie Property hired respondent Pro Landscapers, L.L.C. (Pro Landscapers), to remove snow at Water's Edge, and specifically contracted for removal following any snow "event" of two or more inches. Pro Landscapers would provide additional services upon request, for example, "sanding, salting, ice removal, and/or remediation," as well as snow removal of less than two inches.

Prairie Property occasionally hired respondent Ian Hansen, Inc. (Hansen) to complete "odd jobs" at Water's Edge. Hansen did not have a written contract or "standing" oral agreement. In an affidavit, Hansen's owner described his work at Water's Edge as "on call"; "project by project"; "always narrowly defined"; and "limited in scope and duration."

In her deposition, Nelson testified that she understood that Prairie Property would remove snow from her sidewalk if more than two inches fell. If less than two inches of snow fell, Nelson testified that "we just let it go." Sometimes, Nelson shoveled a "small amount," and sometimes, the snow would accumulate on her sidewalk. According to Nelson's testimony, even when Prairie Property and its agents cleared snow from her sidewalk, "they [didn't] do a very good job." During the winter months, Nelson did not use

her front door or sidewalk because the sidewalk was "too packed with ice." Instead, Nelson entered her townhome directly from inside her garage without using her sidewalk.

The parties appear to agree that, at least for the purposes of summary judgment, no snowfall of two or more inches had occurred at Water's Edge during the ten days preceding Nelson's fall. In fact, the undisputed record evidence establishes that (1) Pro Landscapers received no requests for additional services at Water's Edge at any time during the winter of 2012–13, meaning Prairie Property made no requests for sanding, salting, additional snow removal, ice removal, and/or other remediation; and (2) in performing its regular contract, Pro Landscapers removed snow at Water's Edge on February 18, 2013, and did not work there again until after Nelson's fall.

Four days before Nelson's fall, on February 25, 2013, Hansen was at Water's Edge and "put down" sand and salt mix and shoveled snow from rooftops, among other jobs. Hansen's invoice describes the work, which did not include any snow, ice, or water removal from individual sidewalks. Hansen did not work at Water's Edge again until after Nelson's fall.

Before Nelson's fall on March 1, four inches of snow and ice had accumulated on her sidewalk, according to Nelson's deposition testimony. On the morning of March 1, Nelson saw snow, ice, and water on her sidewalk, as well as water dripping onto her sidewalk from the roof.

Before Nelson left for the day, she telephoned Prairie Property and asked them to remove "snow and water" from her sidewalk. Nelson testified that Paulette of Prairie Property said it was going to be "taken care of, or something to that effect." Nelson

explained that she had made similar calls in the past, and "got the same answer that we usually got." After talking to Paulette, Nelson left through her garage, did not walk on her sidewalk, and drove to visit her son.

When Nelson returned home around 6:30 p.m., she "peeked" at her sidewalk from around the corner of her garage "to see how the ice was doing." She saw "all water" on the sidewalk. Nelson testified that she thought, "I can get rid of that." Planning to push the water down the sidewalk so it would drain into the street, Nelson walked through her garage, grabbed her shovel, entered her home, and then stepped out the front door. Nelson fell on her first step onto her sidewalk, knew she had injured something, and lay there, waiting for help from a neighbor. When asked whether she saw ice before she stepped onto the sidewalk, Nelson testified that she "didn't expect there to be ice under the water."

Nelson sued the Association, Prairie Property, Pro Landscapers, and Hansen alleging that they were negligent in failing to keep Water's Edge "common areas," including her sidewalk, clear and in a reasonably safe condition. Respondents moved for summary judgment. After a hearing, the district granted respondents' motions for summary judgment and dismissed Nelson's claim with prejudice. Nelson appeals.

D E C I S I O N

This court reviews a district court's summary-judgment decision de novo, analyzing "whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "We view the evidence in the light most favorable to the party against whom summary judgment was granted." *STAR Ctrs.*,

Inc. v. Faegre & Benson, L.L.P., 644 N.W.2d 72, 76–77 (Minn. 2002). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03.

I. The district court erred in granting summary judgment to the Association and Prairie Property.

A. The Association and Prairie Property did not owe Nelson a duty of care to remove ice and water from her sidewalk under the Association agreements.

To recover on a negligence claim, a plaintiff must show: "(1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) that the breach of the duty was a proximate cause of the injury." *Doe 169 v. Brandon*, 845 N.W.2d 174, 177 (Minn. 2014). "Summary judgment is appropriate when the record lacks proof of any of the four elements [of a negligence claim]." *Kellogg v. Finnegan*, 823 N.W.2d 454, 458 (Minn. App. 2012). "The existence of a duty of care is a threshold question because a defendant cannot breach a nonexistent duty." *Doe 169*, 845 N.W.2d at 177. Whether a duty exists is a legal question that we review de novo. *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). If a duty of care does not exist, the district court need not reach the remaining elements of a negligence claim. *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011)

"Landowners have a duty to use reasonable care for the safety of all . . . persons invited upon the premises." *Ironwood Springs Christian Ranch, Inc. v. Walk to Emmaus*, 801 N.W.2d 193, 197 (Minn. App. 2011) (quotation omitted). "It is generally recognized

that one who carries on activities on land on behalf of the possessor is subject to the same liabilities as the possessor, and that one in control of the premises is under the same duty as the owner to keep the premises in safe condition." *Id.* at 197–98 (citing Restatement (Second) of Torts § 328E (1965) (defining "possessor")).

Nelson admits that she owns her individual unit and sidewalk but argues that the Association and Prairie Property owed her a duty of care as "possessors" and specifically owed a duty to remove snow and ice under the Association agreements. Nelson claims that the Association agreements establish that her sidewalk is part of the "common areas" and "common elements," and also asserts that the Association, and its agent Prairie Property, had a duty to clear snow, ice, and water from her sidewalk under the same agreements. The district court determined that Nelson's sidewalk is part of her individual unit and not part of the "common areas" or "common elements."

We review the terms of a contract de novo. *Bus. Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009). When a contract is unambiguous, the "plain and ordinary meaning of the contract language controls." *Id.* A contract is unambiguous when "it has only one reasonable interpretation." *Halla Nursery, Inc. v. City of Chanhassen*, 781 N.W.2d 880, 884 (Minn. 2010). "In interpreting a contract, we give effect to all of its terms, and read its terms in the context of the entire contract." *Kalenburg v. Klein*, 847 N.W.2d 34, 40 (Minn. App. 2014) (citations omitted). We also construe "[a] contract and several writings relating to the same transaction" consistent with each other. *Am. Nat'l Bank of Minn. v. Housing & Redevelopment Auth. for City of Brainerd*, 773 N.W.2d 333, 337 (Minn. App. 2009).

The Association agreements specifically refer to snow removal in one section. In article III, section 4, the covenants provide, as follows: "The landscaping, mowing and snow clearing of the Common Areas and the individual yards, shall be maintained by the Association." The covenants define "Common Areas" in article I, section 4, as "all real property (including the improvements thereto) to be maintained by the condominium for the *common use* and enjoyment of the Owners." (Emphasis added.) Thus, the covenants expressly limit common areas to those of common use. The covenants do not define "individual yards," so we turn to its common meaning, the "ground next to, surrounding, or surrounded by a building" and conclude that "individual yards" are the grounds, but not sidewalks, surrounding an individual townhome. *The American Heritage College Dictionary* 1587 (4th ed. 2007) (defining "yard").

In contrast, the covenants define "unit" in article I, section 5, as "the individual residential dwelling Units as shown on Exhibit A constituting the CIC Plat." We agree with the district court's determination that Nelson's sidewalk is depicted as part of her unit, which includes everything within her lot line in Exhibit A, the CIC plat. Exhibit A also shows "common areas" as *not* including individual units or yards. Because Nelson's sidewalk falls within her lot lines, and is part of her individual unit and not for common use, we conclude that the Association's snow-removal duty did not include the sidewalk in front of Nelson's individual unit. Moreover, the covenants establish that the Association had a duty to clear snow from the common areas, but did not impose a duty to remove ice or water.

Alternatively, Nelson points to a number of general provisions regarding the Association's maintenance obligations for the "common elements" and argues that those provisions are ambiguous. We are not convinced that general maintenance obligations include snow removal. *Burgi v. Eckes*, 354 N.W.2d 514, 519 (Minn. App. 1984) (stating "the rule of construction that the specific in a writing governs over the general"). Even assuming this is the case, we are not persuaded by Nelson's argument. Nelson is correct that the bylaws provide that the Board's duties shall include "[o]peration, care, upkeep and maintenance of the common elements." The bylaws also state that "[a]ll maintenance, repair and replacements to the common elements, whether located inside or outside of the Units . . . shall be made by the Board of Managers and be included as part of the common expense."

But we agree with the district court that the declarations unambiguously exempt individual units from the common elements. In paragraph 7, the declarations provide that "[t]he boundaries of each unit shall consist of the lot lines for each townhome." In paragraph 8, the declarations define "Common Elements," as follows:

> The common elements consist of the entire Townhome property *except for the individual units as defined above* and set forth on the CIC plat . . . . *Such common elements shall include* all recreational or community facilities, *driveway areas*, parking areas, and all other parts of the Townhome and any apparatus and installations existing on the premises *for common use* or which may be necessary or convenient to the existence, maintenance or safety of the Townhome development.

(Emphasis added.) Similar to the provision about snow removal in the "common areas," the provision about maintenance of the common elements specifically excludes the

individual units. Also, the general maintenance duties imposed by the declarations are expressly limited to areas of common use. In contrast, the bylaws establish that general duties of maintenance and repair for each unit fall to the owner of that individual unit.[1]

We conclude that the district court did not err when it determined that the Association and its agent Prairie Property did not owe Nelson a duty to remove snow, ice, or water from the sidewalk in front of her individual unit, based on the Association agreements.

B. Questions of fact exist regarding whether the Association and Prairie Property assumed a duty of care.

"[O]ne who voluntarily assumes a duty must exercise reasonable care or he will be responsible for damages resulting from his failure to do so." *Ironwood Springs*, 801 N.W.2d at 198. "Whether a duty has been assumed is a question of fact." *Id.* Nelson relies on Restatement (Second) of Torts § 323 (1965) to establish that the Association and Prairie Property assumed a duty of care. *See Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 674 (Minn. 2001) (applying Restatement section 323). The elements of this theory are: (1) a defendant undertakes to provide services to plaintiff (gratuitously or for consideration); (2) the services are necessary for the protection of the plaintiff's person or things; (3) there is a breach of reasonable care in performing the undertaking because either (a) the defendant increases the risk of harm, or (b) the plaintiff relies on the undertaking; and (4) physical harm results. Restatement (Second) of Torts § 323.

[1] The bylaws, in article V, section 5, provides that "[a]ll maintenance of and repairs to any Unit shall be made by the Owner of such Unit."

On summary judgment, Nelson argued that the Association and its agent, Prairie Property, assumed a duty of care to remove snow, ice, and water from her sidewalk. The district court initially determined that any duty to remove snow from Nelson's sidewalk was limited to a snowfall of two or more inches. Nelson admitted this duty was not breached and that she was responsible to remove snow of less than two inches. Based on this allocation of duties, the district court concluded that respondents had no duty to protect Nelson from a "buildup of ice, water, or snow on her individual sidewalk."

On appeal, Nelson has narrowed her theory on this issue and argues that the district court erred because, on the day of her fall, Prairie Property promised Nelson that it would "take care" of the ice and water on her sidewalk. Because Nelson's testimony on this promise is undisputed and we must view the evidence in the light most favorable to Nelson, we conclude that reasonable persons could draw different conclusions as to whether the Association and Prairie Property assumed a duty to remove ice and water from Nelson's sidewalk. *See Ironwood Springs*, 801 N.W.2d at 200 (reversing summary judgment for respondent who volunteered to remove snow and ice for landowner, creating question of fact on whether respondent assumed a duty of care).

Respondents contend that Nelson's theory fails because she offered no evidence of reliance on Prairie Property's promise to remove ice and water. We reject respondents' argument for two reasons. First, reliance may be, but is not always, required to establish assumption of a duty under section 323, which states that the breach of assumed duty must *either* increase the risk of harm *or* cause harm because of reliance. Restatement (Second) of Torts § 323.

Second, and more importantly, reliance is generally a fact question. *See Campbell v. Ins. Serv. Agency*, 424 N.W.2d 785, 791 (Minn. App. 1988) (reversing directed verdict in favor of defendant and remanding for jury trial because fact dispute existed whether plaintiff actually relied on defendant's assumption of duty); *see also Ironwood Springs*, 801 N.W.2d at 202 (reversing summary judgment award under Restatement section 324A where genuine fact dispute existed regarding plaintiff's reliance on defendant's undertaking). In its brief discussion of this issue, the district court stated that, when Nelson returned from her son's home on March 1, she saw her sidewalk and knew respondents had not removed snow, ice, or water, and that she therefore did not rely on Prairie Property's promise.[2]

We conclude that the record evidence supports conflicting inferences. One inference is that Nelson tried to remove water that day because she did not rely on Prairie Property

---

[2] This issue overlaps somewhat with whether the sidewalk conditions were a known or obvious danger and whether Nelson assumed the risk, both of which are discussed later in this opinion. Regarding the assumed-duty issue, the district court stated it was undisputed that, when Nelson returned at 6:30 p.m., "[s]he could tell that nobody had been there and the sidewalk was still covered in water." The district court appears to be referring to the following exchange between Nelson and the Association's attorney:

> Q: And so when you came back in the evening you could tell that nobody had been there?
>
> A: Yes, that's why I peeked mostly.
>
> Q: Okay. And you could see that there was ice and there was water just like had been there earlier in the day?
>
> A: Yes.
>
> Q: Okay.
>
> A: Well, actually there was more water because it had, you know, melted all day.

While Nelson responded affirmatively to the question, she also stated "that's why I peeked mostly," which, when viewed favorably to the non-moving party, suggests that she looked to determine whether Prairie Property had removed the water as she requested. Nelson did not affirmatively state that "nobody had been there."

to remove ice and water from her sidewalk. Evidence supporting this inference includes Nelson's observation of water on the sidewalk and her usual practice of not using the sidewalk during winter. Another inference is that Nelson relied on Prairie Property to remove ice and water on March 1. Evidence supporting this inference is that Nelson did not usually shovel or otherwise maintain her sidewalk during the winter and she called Prairie Property on March 1 to ask for removal of ice and water on her sidewalk. The district court erred in drawing an inference adverse to Nelson where the evidence reasonably supports a favorable inference.

Because questions of fact exist regarding whether the Association and Prairie Property assumed a duty by undertaking to remove snow, ice, and water from Nelson's sidewalk on March 1 and whether Nelson relied on any undertaking, the district court erred when it granted summary judgment in favor of the Association and Prairie Property on this theory.

C. The district court erred in determining that respondents had no duty because the ice on Nelson's sidewalk was a known or obvious danger.

A landowner or possessor has no common-law duty to warn a person of known or obvious dangers. *Baber v. Dill*, 531 N.W.2d 493, 496 (Minn. 1995). Whether no duty exists because the danger is known or obvious is a legal determination that is reviewed de novo; and, because this issue determines existence of a duty, a court must consider this issue before assumption of the risk. *Id*. at 495.

Minnesota has adopted the Restatement (Second) of Torts § 343A (1965), which provides that a possessor of land is not liable to others for physical harm caused by any

activity or condition "whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." *Id.* at 495–96. The Minnesota Supreme Court has said that "[t]he difference between open and obvious dangerous activities and conditions for which the possessor should anticipate harm and those activities and conditions for which the possessor should not anticipate harm because they are so open and obvious is a fine one, but one that we choose to make." *Id*. at 496 (holding no duty existed because plaintiff assisted in creating dangerous condition that caused injury). To be known or obvious, a danger "must not only be known to exist, but it must also be recognized that it is dangerous." *Louis v. Louis*, 636 N.W.2d 314, 321 (Minn. 2001). "[W]hat constitutes an 'obvious' danger is an objective test: the question is not whether the injured party actually saw the danger, but whether it was in fact visible." *Id*.

The district court relied on section 343A and concluded that respondents owed no duty because Nelson was aware of the "snow and ice buildup" on her sidewalk during the winter months, aware of "water and ice buildup" and saw "water was pooling on top of the accumulated ice on the sidewalk" on the day she fell, and "[j]ust before she chose to step out onto the sidewalk, she again observed those same conditions." Nelson contends that this was error because it was undisputed that the ice buildup was melting during the day that she fell and, while she saw and reported ice to Prairie Property earlier in the day, she observed "all water" on the sidewalk just before her fall.

We conclude there is a fact question whether the ice on Nelson's sidewalk was a known or obvious danger for two reasons. First, Nelson offered the only evidence of sidewalk conditions just before she stepped on it. In Nelson's deposition, respondents

repeatedly questioned Nelson about the sidewalk conditions and she testified in various ways. Nelson consistently testified that the sidewalk was covered by snow, ice, and water earlier in the day, before she called Prairie Property. Nelson also testified that, after she returned at 6:30 p.m., the sidewalk was "clear water"; later, she agreed with a question that there was "clear water over the top" of ice. She testified that, after she fell and was lying on the sidewalk waiting for help, she was in a "lot of water," maybe three to four inches, and "I thought it was all water." Nelson further testified that she did not know if she could see ice when she stepped out her door. Because we must view the evidence in the light most favorable to the non-moving party and do not consider credibility on summary judgment, we conclude that Nelson's testimony, if believed, establishes a fact question. *See Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 320 (Minn. 2007) (stating that a court may not make credibility determinations on summary judgment).

Second, given our determination that this record creates a fact issue regarding whether the Association and Prairie Property assumed a duty to remove ice and water on the day Nelson fell, it seems likely that the known-or-obvious-danger doctrine does not apply. A possessor of land is not relieved of a duty of care when it "can and should anticipate that the dangerous condition will cause physical harm." *Peterson v. W. T. Rawleigh Co.*, 274 Minn. 495, 497, 144 N.W.2d 555, 557–58 (1966) (holding known-or-obvious-danger doctrine did not eliminate defendant's duty of care for icy parking lot because it could anticipate use by invitees). Based on Nelson's undisputed testimony that she alerted Prairie Property to the conditions on her sidewalk on the day she fell, and that Prairie Property responded that it would "take care" of the problem, we conclude that a fact

issue arises whether Prairie Property anticipated the dangerous condition, thus, the district court erred in granting summary judgment.

II. The district court erred when it determined that respondents had no duty because Nelson assumed the risk.

Minnesota recognizes two types of assumption of the risk. Primary assumption of the risk occurs when a plaintiff "voluntarily enters into a relationship in which the plaintiff assumes well-known, incidental risks" and "consents to look out for himself and relieve the defendant of his duty." *Schneider v. Erickson*, 654 N.W.2d 144, 148 (Minn. App. 2002). Primary assumption of the risk is not an affirmative defense. *Armstrong v. Mailand*, 284 N.W.2d 343, 348 (Minn. 1979). Rather, it is a complete bar to a plaintiff's recovery because if a plaintiff primarily assumed the risk, the defendant owed the plaintiff no duty of care. *Daly v. McFarland*, 812 N.W.2d 113, 119 (Minn. 2012). But primary assumption of the risk is rarely applied in Minnesota, and is "limited to certain types of circumstances," such as cases involving inherently dangerous sports. *Id.* at 120; *Renswick v. Wenzel*, 819 N.W.2d 198, 205 (Minn. App. 2012) ("A finding of primary assumption of the risk is a rare thing in Minnesota."), *review denied* (Minn. Oct. 16, 2012). If the primary-assumption-of-the-risk doctrine applies, "[w]hether a party has primarily assumed the risk is usually a question for the jury, unless the evidence is conclusive." *Schneider*, 654 N.W.2d at 148.

Secondary assumption of the risk is "an affirmative defense to an established breach of duty which may only be raised when the plaintiff has voluntarily chosen to encounter a known and appreciated danger created by the negligence of the defendant." *Rusciano v. State Farm Mut. Auto. Ins. Co.*, 445 N.W.2d 271, 273 (Minn. App. 1989) (quotation

omitted). "Secondary assumption of risk is a form of contributory negligence." *Id.* (quotation omitted). Because secondary assumption of the risk is fault that is apportioned under the comparative-negligence statute, it does not bar plaintiff's claim and instead generally raises a fact question for the jury. *Iepson v. Noren*, 308 N.W.2d 812, 816 n.1 (Minn. 1981); *Springrose v. Willmore*, 292 Minn. 23, 24–25, 192 N.W.2d 826, 827 (1971). "The basic elements of primary and secondary assumption of the risk are the same and include whether the plaintiff had (a) knowledge of the risk, (b) an appreciation of the risk, and (c) a choice to avoid the risk but voluntarily chose to take it." *Schneider*, 654 N.W.2d at 149.

Nelson contends that the district court erred because it did not view the evidence in the light most favorable to her as the non-moving party. Nelson argues that "she reasonably believed that the ice had melted into water" before she stepped onto her sidewalk. In contrast, the district court concluded that "a reasonable person in [Nelson's] position would understand the dangers of stepping onto a sidewalk that is known to be covered in water with a layer of ice underneath." We conclude that the district court erred.

First, it is unclear whether the district court applied primary or secondary assumption of the risk. We conclude that primary assumption of the risk does not apply because this doctrinal bar to all recovery is generally limited to inherently dangerous sporting activities. *Daly*, 812 N.W.2d at 120 (declining to apply primary-assumption-of-the-risk doctrine to snowmobiling accident). Previous appellate decisions have recognized that walking over a known icy or slippery surface may raise questions of comparative fault, but does not bar a claim. *See, e.g.*, *Lillemoen v. Gregorich*, 256 N.W.2d 628, 632–33 (Minn.

1977) (reversing directed verdict for defendant and remanding for jury trial because evidence established that defendant-landlord did not provide proper roof coverage or drainage for melting ice, but plaintiff-tenant knew steps where he fell were icy); *Johnson v. Alford & Neville, Inc.*, 397 N.W.2d 591, 593–94 (Minn. App. 1986) (affirming jury verdict in favor of plaintiff and determination that she was not contributorily negligent when she slipped and fell on icy pavement); *Olson v. City of St. James*, 380 N.W.2d 555, 558–59 (Minn. App. 1986) (reversing directed verdict and remanding for jury trial where plaintiff slipped on icy sidewalk, even though evidence established plaintiff knew of icy conditions and usually avoided sidewalk).

Second, secondary assumption of the risk does not support summary judgment on this record because fact questions exist on all three elements: whether Nelson knew or should have known her sidewalk was icy at the time of her fall, whether Nelson appreciated the risk of falling, and whether Nelson could have chosen to avoid the risk, but voluntarily chose to take it.

Here, it is undisputed that Nelson did not ordinarily use the sidewalk in the winter months because it was covered with ice and that she stepped onto her sidewalk voluntarily after observing wet and icy conditions during the morning before she fell. It is also undisputed, however, that Nelson complained to Prairie Property about her sidewalk conditions, and Prairie Property promised to "take care" of the sidewalk. Nelson essentially admitted that, after she returned home, she decided to clear the sidewalk herself. But record evidence establishes that March 1 was a warm, sunny day, and snow and ice had been melting onto Nelson's sidewalk. Nelson also testified that when she stepped onto the

sidewalk, she did not expect there to be ice underneath the water because she saw "all water." Accordingly, the district court erred in granting summary judgment in favor of the Association and Prairie Property on Nelson's assumption of the risk because the record evidence raises questions of fact for the jury.

III. The district court erred in concluding that there was no question of fact regarding causation.

The district court determined that "evidence of causation is clearly lacking" because it was "more likely than not that the dripping water from the roof is what subsequently caused the accumulation of ice or water" and caused Nelson to slip and fall. But causation is a fact question for the jury. *Ironwood Springs*, 801 N.W.2d at 200. A jury may ultimately agree with the district court and reject Nelson's claim. *See Mattson v. St. Luke's Hosp. of St. Paul*, 252 Minn. 230, 234–35, 89 N.W.2d 743, 746 (1958) (holding that land possessor's duty to maintain premises in reasonably safe condition "does not require that outside steps be kept free of ice at all times but permits a reasonable length of time for the removal of the ice" when precipitation is continuous); *Frykman v. Univ. of Minn.-Duluth*, 611 N.W.2d 379, 381 (Minn. App. 2000) (same, and noting that whether defendant acted reasonably in clearing ice is fact question for jury). But because genuine issues of material fact remain regarding whether the Association and Prairie Property assumed a duty of care, and whether Nelson was at fault, the district court erred in concluding that there was no fact question for the jury to decide whether the Association's or Prairie Property's negligence was the proximate cause of Nelson's injury.

IV. The district court did not err in granting summary judgment to Pro Landscapers and Hansen.

The district court determined that, because the Association and Prairie Property did not owe Nelson a duty of care, Pro Landscapers and Hansen also did not owe Nelson a duty of care. Nelson only briefly mentions Pro Landscapers and Hansen in her appellate brief and makes no argument specific to either of these two respondents. As a result, it is unclear whether Nelson challenges this portion of the summary-judgment decision on appeal. Nonetheless, we first address whether Pro Landscapers and Hansen owed Nelson a duty of care, and then analyze whether either respondent assumed a duty of care.

Neither Pro Landscapers nor Hansen was a party to the Association agreements with unit owners. There is also no evidence that Nelson ever communicated directly with Pro Landscapers or Hansen. Pro Landscapers had a limited contract with Prairie Property, and the contract did not specifically cover work on Nelson's unit. Pro Landscapers' contract obligated it to remove snow from Water's Edge after a snowfall "event" of two inches or more. Pro Landscapers offered evidence, not rebutted by Nelson, that Prairie Property made no requests for sanding, salting, additional snow removal, ice removal, and/or other remediation during the winter of 2012–13. Also, in performing its regular contract, Pro Landscapers removed snow at Water's Edge on February 18, 2013, and did not work there again until after Nelson's fall.

Hansen had no written contract or standing oral agreement with Prairie Property. Hansen performed odd jobs at Water's Edge on an "on call" basis. Nelson did not present any evidence that Hansen was hired to complete work at Water's Edge on any date other

than February 25, 2013, four days before Nelson fell. No evidence establishes that Hansen worked at Nelson's unit on February 25 and Hansen did not return to Water's Edge until after Nelson's fall. We conclude that neither Pro Landscapers nor Hansen owed Nelson a duty of care regarding the condition of her sidewalk on the day of her fall.

We also conclude that there is no genuine issue of material fact that Pro Landscapers or Hansen assumed a duty of care. Even if a jury were to decide that Prairie Property assumed a duty of care, there is no evidence that Prairie Property contacted Pro Landscapers or Hansen on March 1 and asked either respondent to clear the snow, ice, or water from Nelson's sidewalk. Viewing the evidence in the light most favorable to Nelson, there is no evidence linking Prairie Property's promise to "take care" of Nelson's sidewalk to Pro Landscapers or Hansen.

Because Pro Landscapers and Hansen did not owe or assume a duty of care regarding Nelson's sidewalk, Nelson cannot recover on her negligence claim and the district court did not err in granting summary judgment in favor of Pro Landscapers and Hansen.

Affirmed in part, reversed in part, and remanded.