

September 25, 2026

No. 1-25-2356

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LUCIANA LYNETTE CLARK,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 25 L 1675
	)	
CITY OF CHICAGO,	)	Honorable
	)	Michael B. Barrett,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE C.A. WALKER delivered the judgment of the court.
Presiding Justice Oden Johnson and Justice Mikva concurred in the judgment.

ORDER

¶ 1 **Held:** We hold that summary judgment was improper because the sidewalk defect was not *de minimis* as a matter of law and the record contains sufficient evidence to raise a question of fact regarding whether the distraction exception to the open and obvious doctrine applies. Accordingly, we reverse the circuit court's judgment and remand for further proceedings.

¶ 2 This appeal arises from a negligence action brought by plaintiff, Luciana Lynette Clark, against defendant, the City of Chicago, seeking damages for injuries allegedly sustained after she tripped and fell on a sidewalk at O’Hare International Airport. The circuit court granted the City’s motion for summary judgment, concluding the alleged condition was *de minimis* and therefore not actionable. Clark appeals, and for the reasons that follow, we reverse and remand.

¶ 3 BACKGROUND

¶ 4 Clark filed an initial complaint, which she amended on July 13, 2022, under case number 2021 L 9380. In 2025, the case was refiled under case number 25 L 1675, for reasons not explained by the parties, and after the City’s motion for summary judgment had been fully briefed. Clark alleged that on December 1, 2020, she “tripped and fell due to construction work performed on a sidewalk” at O’Hare for which the City was responsible. Clark alleged the City negligently failed to maintain, repair, barricade, and warn of the sidewalk’s deteriorated condition.

¶ 5 Clark was deposed during the discovery process. She testified, in relevant part, that in December 2020 she worked as senior human resources manager for Areas USA, whose office was in Terminal 5 at O’Hare. Part of her routine job tasks required her to walk from the office in Terminal 5 to obtain parking passes from an office of the Department of Transportation (DOT) in Terminal 3. On December 1, 2020, she made the walk to the DOT office, then set out to return to the Areas USA office via the same route, including the same sidewalk. Clark noticed metal plates in a courtyard area during her outbound trip. On the inbound trip, she again “saw the metal plates from before when I was walking towards the [DOT].” She then described her fall as follows:

“[M]e knowing the weather and temperature, again I see these metal plates everywhere so I’m thinking it could either be icy or cold. And some of the metal plates were sticking up

from the ground, so I was trying to avoid those plates. And as I was trying to avoid those plates and avoid a pedestrian on the other side, I started to walk and then I tripped.”

She tripped due to the “damage” and “poor condition” of the sidewalk, explaining, “my foot hit that hole and that’s what caused me to tumble.” Another factor in her fall was “a chunk of the sidewalk that was missing.” Clark did not notice any debris come out of the area where she tripped.

¶ 6 Patrick Tagler, the aviation safety director for the Chicago Department of Aviation, was also deposed during discovery and submitted an affidavit. In the affidavit, he averred that on October 15, 2021, he photographed and measured the deteriorated sidewalk seam identified by Clark. Tagler confirmed that the area Clark identified at her deposition corresponded to the condition depicted in the City’s photographs. He further averred that his measurements showed a vertical depth of less than ½ inch, a width of approximately three to five inches, and a length of approximately four feet. The photographs, which are included in the record on appeal, depict exposed dirt between the sidewalk slabs, along with loose rocks, debris, and cigarette butts.

¶ 7 James Harney, a City employee who served as deputy commissioner for O’Hare facilities, testified that the City had received reports of deteriorated concrete in the area before Clark’s fall. Harney had also personally observed deteriorated concrete in the area. In July 2019, the City obtained a cost estimate and prepared a requisition to repair that portion of the sidewalk, but the proposed repairs were never approved or completed. Harney further testified that the proposed repairs were limited to the concrete near the grates and did not include the portion of the sidewalk where Clark fell. Harney acknowledged, however, that a sidewalk crack or seam measuring two inches or more in width could “[p]ossibly” be unsafe and agreed that the condition identified by Clark could “[p]otentially” constitute a safety issue.

¶ 8 In the City’s motion for summary judgment, it argued that the sidewalk condition was *de minimis* as a matter of law and, alternatively, that it was open and obvious. As to the *de minimis* argument, the City argued a defect measuring less than two inches in height differential between sidewalk slabs was *de minimis* as a matter of law, and “[t]he undisputed evidence establishes that the height variation of the broken sidewalk seam where Plaintiff fell is less than ½ inch from the dirt surface of the sidewalk.” Alternatively, the City contended that any alleged defect in the sidewalk was open and obvious, and thus the City owed no duty to Clark, because the condition was “visibly highlighted by the dark exposed dirt surrounded by the light-colored concrete of the sidewalk,” and, moreover, Clark “testified that she had noticed the condition of the sidewalk on prior occasions before her fall.” The City attached the depositions of Clark and Tagler, along with Tagler’s affidavit, to its motion.

¶ 9 Clark responded, arguing summary judgment was inappropriate because whether the condition was *de minimis* was a question of fact under the circumstances. In support, Clark claimed the City ignored the additional evidence regarding the width and length of the condition, precluding resolution of the issue based solely on the ½ inch height disparity. As to the open and obvious doctrine, Clark responded that her claim was not barred because a question of fact existed as to whether the distraction exception to the doctrine applied, pointing to her deposition testimony that she was focused on avoiding the metal plates at the time she fell. She attached Harney’s deposition to her response.

¶ 10 In the City’s reply, it argued Clark had not established sufficient aggravating factors under Illinois law to survive the *de minimis* defense, and the distraction exception to the open and obvious doctrine did not apply because Clark had notice of the condition before her fall. As to the latter, it emphasized Clark had walked through the area “minutes prior” and had noted the metal plates at

that time. The City further argued Clark admitted she was walking with care to avoid the plates, and “[i]n taking care to avoid one potential hazard, she inadvertently encountered another, but that does not constitute a distraction.”

¶ 11 On July 22, 2025, the circuit court granted the City’s motion for summary judgment, finding the alleged defect *de minimis* as a matter of law without further substantive explanation. The court did not reach the open and obvious issue. Clark subsequently filed a motion to reconsider, which the circuit court denied on October 23, 2025. In denying the motion, the court noted, “The only aggravating factor [Clark] argued was that the City had notice of the defect and plans to amend it,” but concluded Clark offered no authority for the proposition that notice was a valid aggravating factor that could defeat a *de minimis* defense. This appeal followed.

¶ 12 JURISDICTION

¶ 13 The circuit court denied the motion to reconsider on October 23, 2025, and Clark filed her notice of appeal on November 17, 2025, giving this court jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. July 1, 2017).

¶ 14 ANALYSIS

¶ 15 On appeal, Clark argues the circuit court erred by granting summary judgment because the record shows genuine issues of material fact as to whether the sidewalk condition was *de minimis* and whether the distraction exception to the open and obvious doctrine applies.

¶ 16 Summary judgment is proper where the pleadings, depositions, admissions, and affidavits, construed strictly against the moving party, demonstrate no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Travelers Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278, 292 (2001). “A triable issue precluding summary judgment

exists where the material facts are disputed or where, the material facts being undisputed, reasonable persons might draw different inferences” from those facts.” *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Summary judgment is a drastic means of resolving litigation and should be granted only where the moving party’s right to judgment is clear and free from doubt. *Haase v. Kankakee School District 111*, 2025 IL 131420, ¶ 29. A grant of summary judgment is reviewed *de novo*. *Id.*

¶ 17 We begin with the *de minimis* issue. A municipality owes pedestrians a duty to maintain its sidewalks in a reasonably safe condition, but that duty does not extend to defects that are *de minimis*. *Arvidson v. City of Elmhurst*, 11 Ill. 2d 601, 604-05 (1957); see also *Monson v. City of Danville*, 2018 IL 122486, ¶¶ 41-44. A height disparity between two areas of sidewalk measuring less than 2 inches may be *de minimis* as a matter of law in the absence of other relevant circumstances. See *Bartkowiak v. City of Aurora*, 2018 IL App (2d) 170406, ¶ 28. “In general, unless it is clear the defect is so minimal that no danger to pedestrians could reasonably be foreseen, a reviewing court should remand the cause for consideration by the fact finder.” *Monson*, 2018 IL 122486, ¶ 44. No fixed mathematical formula governs the inquiry, and the court must consider the totality of the circumstances surrounding the defect rather than its dimensions in isolation. *Arvidson*, 11 Ill. 2d at 604.

¶ 18 We find that the totality of the circumstances demonstrates Clark has shown a genuine dispute of fact over whether the condition was *de minimis*, making resolution on summary judgment inappropriate. While the height disparity in isolation might be *de minimis*, that was not the only issue with the sidewalk condition. Instead, the seam’s width measured between three and five inches, a size Harney testified could “possibly” render a sidewalk unsafe, and the seam was four feet long. Additionally, Clark testified that a “chunk of the sidewalk” was missing from the

specific area of the seam where she fell. She acknowledged that no debris came loose at the time of her fall, but this does not foreclose the inference that the seam was already structurally deteriorated. The missing chunk of concrete Clark described, together with the length and width of the seam, presents a question of fact as to whether enough circumstances existed to bring the condition outside of the *de minimis* category. See *West v. City of Hoopeston*, 146 Ill. App. 3d 538, 542-43 (1986); see also *Bartkowiak*, 2018 IL App (2d) 170406, ¶¶ 35-36.

¶ 19 The circuit court did not analyze any of these additional factors, but did note in its order denying Clark’s motion to reconsider that the only aggravating factor Clark argued was the City’s notice, for which the court found no supporting authority as a basis for avoiding a *de minimis* finding. The City echoes this contention on appeal, arguing that the only aggravating factors Clark points to are the dimensions of the condition, which indicate only a minor defect. The record, however, reflects that Clark identified additional circumstances. Clark identified additional factors beyond the ½ inch height disparity — specifically, that the sidewalk was in a deteriorated condition, including missing “chunks” in the concrete, and the deteriorated area over which she tripped was much larger and more severe than a ½ inch height disparity would indicate by itself, as evidenced by the photographs and width and length measurements. Thus, a *de minimis* finding here based only on the ½ inch height disparity would violate the core consideration in this area of law that no one measurement is definitive, and the totality of the circumstances must be considered. See *Monson*, 2018 IL 122486, ¶¶ 44-47.

¶ 20 In so finding, we are guided by the court’s conclusion in *West*, a case both parties discuss at length. The *West* court concluded that a condition with a height disparity of less than two inches was not *de minimis* as a matter of law because the record showed there were additional issues with the condition and the area, including that the defect was two inches wide and contained rocks and

pebbles that would come loose by hand pressure, and evidence of pedestrian congestion in the area. *Id.* at 540-41. In finding the condition was not *de minimis* as a matter of law, the *West* court explained, “In the instant case, the defect in level was slight; however, the broken area between the slabs was sufficiently wide that a reasonable man could anticipate danger to persons walking upon it.” *Id.* at 543. Applying the same principle here, while the height disparity of the seam over which Clark tripped may have been less than the two-inch threshold, the width and length of the seam, along with the missing portions of concrete, alter this situation from a case where the alleged defect consists only of a slight height differential between two otherwise in-tact sidewalk slabs. The City argues that *West* is distinguishable because it also involved pedestrian congestion and loose debris, while Clark focuses on the defect’s dimensions. This argument ignores the plain language of the *West* opinion, quoted above, that even width alone can serve as a sufficient aggravating factor such that a reasonable person could conclude the sidewalk condition might pose a danger to pedestrians.

¶ 21 In sum, because reasonable minds could differ as to whether this defect, considering the totality of the circumstances, was one a reasonably prudent person would anticipate as dangerous, the circuit court erred in resolving the *de minimis* issue as a matter of law rather than submitting it to the fact finder.

¶ 22 Next, the City argues we may affirm the circuit court on the alternative basis that it did not owe Clark a duty to protect from the sidewalk condition as a matter of law because the condition was open and obvious. Although the circuit court did not reach this issue, the City is correct that we may consider the argument on this appeal because we may affirm the grant of summary judgment on any basis supported by the record. See *Lewis v. Kalbhen*, 2025 IL App (1st) 242110,

¶ 45. Clark does not contest that the condition was open and obvious but responds that the distraction exception to the open and obvious doctrine preserves her claim.

¶ 23 Under Illinois law, a court will consider four factors in determining whether a landowner owes a duty: “(1) the foreseeability that defendant’s conduct will result in injury to another; (2) the likelihood of injury; (3) the magnitude of guarding against it; and (4) the consequences of placing that burden upon defendant.” *Sandoval v. City of Chicago*, 357 Ill. App. 3d 1023, 1027 (2005). As to foreseeability, “Illinois law holds that persons or entities who own or control land are not required to foresee and protect against injuries from potentially dangerous conditions that are open and obvious,” but this is not a “*per se* bar,” and limited exceptions exist. *Id.* at 1027-28.

¶ 24 One such exception, “the distraction exception,” applies where some circumstance required a plaintiff to divert her attention from an open and obvious danger, or otherwise prevented her from avoiding it, and where that distraction was reasonably foreseeable to the defendant. *Id.* at 1028. A defendant who creates or has knowledge of a condition likely to draw a pedestrian’s attention may be charged with the foreseeability of an injury that results when a pedestrian, attending to that condition, fails to appreciate a separate open and obvious hazard. *Sandoval*, 357 Ill. App. 3d at 1030. Additionally, “the distraction exception will only apply where evidence exists from which a court can infer that [a] plaintiff was actually distracted,” and not merely looking elsewhere. See *Bruns v. City of Centralia*, 2014 IL 11698, ¶¶ 4-9, 20, 22, 28-29 (distraction exception did not apply where the plaintiff’s claimed distraction was that she was looking toward a building entrance of her own accord when she stubbed her toe on a sidewalk crack).

¶ 25 A finding that a condition is open and obvious does not conclude the application of the four-factor duty test, but weighs against imposition of a duty. See *Bruns*, 2014 IL 116998, ¶ 20. Instead, “[t]he open and obvious doctrine addresses substantially the same issues as the first two

factors of the four-factor duty test,” but the remaining factors must also be analyzed before resolving the duty issue. *Belluomini v. Stratford Green Condominium Ass’n*, 346 Ill. App. 3d 687, 691 (2004).

¶ 26 We find the circuit court’s summary judgment order cannot be affirmed on the basis that the City did not owe Clark a duty because she submitted evidence from which a reasonable jury could conclude the distraction exception to the open and obvious doctrine applies. First, as to actual distraction, Clark claims that her concern over tripping over the plates caused her to focus solely on the plates instead of any potential sidewalk defects. There is no dispute the plates were present or that it was reasonable for Clark to be concerned about tripping over them. Instead, the City contests the credibility of Clark’s account, given her general familiarity with the area and acknowledgement she had walked through it moments before, and argues her testimony supports the inference she was not actually distracted by the plates. On this record, summary judgment is inappropriate because the record provides for conflicting reasonable inferences over whether Clark was actually distracted (see *Bruns*, 2014 IL 116998, ¶ 22; *Williams*, 228 Ill. 2d at 417), and credibility challenges are not resolvable on summary judgment (see *Berglind v. Paintball Business Ass’n*, 402 Ill. App. 3d 76, 90 (2010)).

¶ 27 The City cites *Bruns* for the proposition that looking elsewhere is not a distraction. The *Bruns* court explained, “Here, the only distraction identified by the plaintiff is that her attention was fixed on the door and steps of the clinic,” but “the mere fact of looking elsewhere does not constitute a distraction.” *Bruns*, 2014 IL 116998, ¶ 22. This argument fails because Clark’s testimony is not that she was merely looking elsewhere as she walked on her accord; it was that she was focusing on the metal plates, a condition created by the City, because she was concerned about tripping over them.

¶ 28 Next, as to foreseeability, there is no dispute the City placed the plates on a sidewalk it already knew to be deteriorating, or that the plates themselves could constitute a tripping hazard. A reasonable jury could conclude, based on the above, that it was thus foreseeable to the City that a pedestrian might focus on the plates to navigate the area and, in doing so, fail to simultaneously appreciate the specific risk posed by stepping into the adjacent seam. As in *Sandoval*, the source of the distraction here originated with a condition of the City’s own making, not with an event the City had no reason to expect. A defendant who creates or has knowledge of a distraction may be charged with the foreseeability of a resulting injury. *Sandoval*, 357 Ill. App. 3d at 1030. The City’s citation to *Negron v. City of Chicago*, 2016 IL App (1st) 143432, ¶ 19, for the proposition that the metal plates could not be a reasonably foreseeable distraction because they are “commonplace” does not require a different result. While metal plates on a sidewalk may be commonplace, that does not change the fact that a pedestrian may need to account for their presence so as to not trip over them.

¶ 29 On this record, a reasonable factfinder, crediting Clark’s testimony, could find that Clark was actually distracted, and that this distraction was reasonably foreseeable to the City. It follows that the resolution of the City’s argument that it did not owe Clark a duty due to the open and obvious nature of the sidewalk condition requires a factfinder to make credibility determinations and choose between conflicting reasonable inferences, making it inappropriate to resolve this issue as a matter of law.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we reverse the circuit court’s order granting summary judgment, and remand for further proceedings consistent with this order.

¶ 32 Reversed and remanded.