Circuit Court for Montgomery County
Case No. 478240V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0204

September Term, 2021

TRACEY LENHARDT MCQUAID

v.

STEVE KANE, et al.[1]

Beachley,
Wells,
Adkins, Sally D.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, J.

Filed: January 24, 2022

[1] Somehow, the appellees' surnames got switched in the caption. We use the proper surnames.

In a complaint filed in the Circuit Court for Montgomery County, appellant, Tracey Lenhardt McQuaid, alleged that she slipped, fell, and sustained injuries at the home of the appellees, Steve Kane and Anita Iverson ("the Homeowners"), during a "puppy playdate." Ms. McQuaid sued the Homeowners for negligence on a theory of premises liability, alleging that they failed to warn her of the black ice and wet moss that she contends caused her fall. The Homeowners moved for summary judgment, arguing that they owed Ms. McQuaid no duty to inspect, and that being bumped by one or both dogs was the cause in fact of her fall and injuries. The circuit court granted the Homeowners' motion for summary judgment.

On appeal, Ms. McQuaid raises two questions which we distill to two primary issues:[2]

1. Whether there was a genuine dispute as to the Homeowners' knowledge of the slippery patch.

2. Whether a juror could reasonably conclude that the slippery patch was the cause in fact of Ms. McQuaid's injuries.

For the reasons that follow, we reverse the circuit court's grant of summary judgment.

FACTUAL BACKGROUND

[2] Ms. McQuaid's verbatim questions presented read:

1. Do the undisputed facts establish as a matter of law that the Appellees did not owe any duty to Ms. McQuaid to either remedy the hazard posed by the slippery patch of stone or to warn Ms. McQuaid of the danger?

2. Do the undisputed facts establish as a matter of law that the slippery patch of stone was not a proximate cause of Ms. McQuaid's fall and resulting injuries?

On March 26, 2017, Ms. McQuaid brought her niece's dog to the home of the Homeowners for a puppy playdate with the Homeowners' dog. This was not the first time that Ms. McQuaid and the Homeowners had organized a puppy playdate. According to Ms. McQuaid, the puppy playdates normally occurred at her home due to the "larger size" of her backyard. Thus, Ms. McQuaid avers that she was "not aware of or knowledgeable of the level of upkeep or maintenance of the backyard or the patio area" of the Homeowners' home.

The Homeowners' backyard is divided into two distinct areas: a grassy area and a stone patio. According to Ms. McQuaid, at one point during the puppy playdate, she was walking back to the stone patio after being "drag[ged]" by the Homeowners' dog into the grassy area, when she was "bumped" by one or both dogs on her left leg. At the time of the bump, Ms. McQuaid maintains that she was standing on a "slippery patch of moss and black ice" that she later approximated was "the size of . . . a sheet of legal paper[,]" around eight and a half by eleven inches. At the time she was bumped, she states she was standing at "the edge of the patio, closest to the grass." Either due to "the slippery patch alone, or a combination of the slippery patch and the impact of the dog," Ms. McQuaid slipped and fell, and the back of her head struck the ground. According to Ms. McQuaid, Mr. Kane helped her up and then stated that that area "can get slippery" and that he had "been meaning to clean that patch up." Ms. McQuaid suffered a spinal fracture and a "serious concussion" and subsequently sued the Homeowners for negligence.

In December 2020, the Homeowners moved for summary judgment, arguing that because Ms. McQuaid was merely a social guest, they had no duty to inspect the premises

for the existence of ice patches, and furthermore, the slippery patch was not the proximate cause of her injury. On March 16, 2021, the circuit court held a hearing on the Homeowners' summary judgment motion. After hearing arguments, the court granted summary judgment in the Homeowners' favor based on its findings that: 1) the Homeowners did not owe Ms. McQuaid a duty to inspect; 2) there was no evidence suggesting Mr. Kane knew about the slippery patch on the day of the incident; 3) if there was a slippery condition, it was "there in plain view in the daylight to be seen"; and 4) there was no dispute that the actual cause of Ms. McQuaid's fall and resulting injuries was being bumped by one of the dogs and not due to the slippery patch. Ms. McQuaid filed this timely appeal.

STANDARD OF REVIEW

Maryland Rule 2-501(f) states that a court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." A material fact is a fact that is "necessary to resolve the controversy as a matter of law." *D'Aoust v. Diamond*, 424 Md. 549, 575 (2012) (quoting *Lynx, Inc. v. Ordnance Products, Inc.*, 273 Md. 1, 8 (1974)). "In reviewing the grant of summary judgment, appellate courts ask whether it was legally correct without deference to the trial court." *Rogers v. Home Equity USA, Inc.*, 453 Md. 251, 263 (2017) (citing *Hamilton v. Kirson*, 439 Md. 501, 522 (2014)).

As an appellate court, we review the record "in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-

ple[]d facts against the moving party." *Id.* (quoting *Hamilton*, 439 Md. at 522). We must also conduct our review of the summary judgment grant only on "the grounds upon which the trial court relied in granting summary judgment." *D'Aoust*, 424 Md. at 575 (quoting *River Walk Apartments, LLC v. Twigg*, 396 Md. 527, 541–42 (2007)). To defeat a motion for summary judgment, the opposing party must present "admissible evidence upon which the jury could reasonably find for" the non-moving party. *Rogers*, 435 Md. at 263 (quoting *Hamilton*, 439 Md. at 522–23).

DISCUSSION

A *prima facie* case of negligence contains four elements: duty, breach, damages, and causation. *Macias v. Summit Mgmt., Inc.*, 243 Md. App. 294, 315 (2019). Under a theory of premises liability, a *prima facie* case of negligence is established by showing:

> (1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty.

Id. at 316. The circuit court granted summary judgment, finding no genuine dispute as to any material fact and that Ms. McQuaid failed to supply sufficient evidence on which a

jury could reasonably find for her on both the second and fourth elements, breach and causation. Accordingly, we will focus our analysis on those two elements.[3]

I. The Existence of a Genuine Dispute as to Whether the Homeowners Had Knowledge of the Hazardous Conditions Precludes an Award of Summary Judgment

A. Parties' Contentions

Ms. McQuaid argues that the circuit court erred by granting summary judgment for the Homeowners when a genuine dispute of material fact existed as to whether the Homeowners "knew or had reason to know about the slippery patch of stone." Ms. McQuaid offers her testimony during her deposition as sufficient evidence to create a genuine dispute as to the fact of whether the Homeowners, Mr. Kane specifically, knew about the slippery patch. According to Ms. McQuaid, a jury could reasonably infer from Mr. Kane's statement that he knew about the slippery patch and therefore had a duty to either remedy the slippery patch or to warn Ms. McQuaid of the danger it posed.

The Homeowners argue that the trial court was correct in granting summary judgment because Ms. McQuaid, as a social guest, "[t]akes the [p]roperty as the [h]ost [u]ses [i]t." Because Ms. McQuaid, per her status, takes the property as the host uses it, the Homeowners argue that they were not required "to inspect or to safeguard their

[3] Although the circuit court granted summary judgment ostensibly on the "glaring issues" of "the duty owed" and the "cause of the accident", we think that it is clear that the first element at issue is breach, not duty. The circuit court makes much of the fact that the Homeowners had no duty to inspect. Yet the issue was not what class of entrant Ms. McQuaid occupied, but rather whether the Homeowners had knowledge of the slippery condition on the day of the incident—which would be dispositive as to breach. Our attention is thus directed not to the element of duty, which is not in dispute, but rather whether the Homeowners breached that duty.

premises against potential natural hazards . . . ." While the Homeowners concede that they owed a duty to warn Ms. McQuaid of any *known* dangers, the Homeowners submit that the record "does not support [Ms. McQuaid]'s assertion that [the Homeowners] knew of any actual hazard being present *on the day in question prior to the accident.*" (Emphasis supplied). Moreover, the Homeowners argue that the undisputed facts "do not establish any reason to believe" that Ms. McQuaid could not "equally discover whatever outdoor conditions" that existed at the time, which would also preclude her from recovery. Finally, the Homeowners argue that even if Ms. McQuaid slipped on a patch of ice, she would still not be able to make a *prima facie* case because such conditions are "naturally occurring[,]" for which the Homeowners are not liable.

B. Analysis

We begin by classifying Ms. McQuaid's status at the time of her injury. Maryland adheres to the "general common-law classifications" of invitee, social guest, and trespasser. *Macias*, 243 Md. App. at 317 (citing *Howard Cnty. Bd. of Educ. v. Cheyne*, 99 Md. App. 150, 155 (1994)). At the time of the injury, Ms. McQuaid's status was that of a social guest, also known as a licensee by invitation. *Id.* at 322. A social guest is the intermediate status, being owed a higher duty of care than a trespasser, but a lower duty of care than an invitee. *Id.* A social guest enters the premises of another at the "express or implied" invitation of the host. *Paquin v. McGinnis*, 246 Md. 569, 572 (1967). Where an invitee is "invited or permitted to enter or remain on another's property for purposes connected with or related to the owner's business," *Bramble v. Thompson*, 264 Md. 518, 521 (1972), a social guest enters the premises of the host for the guest's "own benefit and

convenience, and the hospitality the guest receives is bestowed gratuitously." *Paquin*, 246 Md. at 572. A social guest thus "takes the premises as [the] host uses them and the host must exercise reasonable care to make the premises safe for [the] guest or [the host] must warn [the guest] of known dangerous conditions that cannot reasonably be discovered by the guest." *Macias*, 243 Md. App. at 321 (internal quotation marks and ellipsis omitted).

In *Paquin*, the Court of Appeals adopted Section 342 of the Restatement (Second) of Torts regarding liability to a licensee. 246 Md. at 572. Section 342 provides:

> A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,
>
> (a) The possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and
>
> (b) [The possessor] fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
>
> (c) The licensees do not know or have reason to know of the condition and the risk involved.

Accordingly, a host will be liable for known dangers if the host fails to remedy or warn the guest of the danger, and a social guest will likewise be precluded from recovery if the guest knows or has reason to know of the danger.

In granting summary judgment to the Homeowners, the trial court first stressed the distinction between the duty owed to an invitee versus a social guest. The trial court then stated:

> So I think that the information that this – the homeowner had knowledge about situations in the past where, following a snowstorm or an

> ice storm, that there may have been icy patches on his patio doesn't impose on him the duty to inspect the patio on this particular day to see if there was any ice on the patio.
>
> . . .
>
> There's no information – there's no evidence been supplied in any of these exhibits that [Mr. Kane] knew that an icy patch existed on the day that this happened.

We disagree with the trial court's view that there is no evidence showing that Mr. Kane had knowledge of the slippery patch. In her deposition, Ms. McQuaid said that after she fell, Mr. Kane remarked that the "area can get slippery. I've been meaning to clean that patch up." In our view, and in viewing the facts in the light most favorable to Ms. McQuaid, the non-moving party, we think this statement meets the threshold sufficient to overcome a motion for summary judgment. A reasonable interpretation of Mr. Kane's statement is that the Homeowners knew that an area of the patio had posed a hazard during inclement weather in the past, but they had not done anything yet to remedy the problem. The Homeowners argue that the record does not support Ms. McQuaid's assertion that the Homeowners knew of the hazard being present specifically on the day of the incident. Again, we disagree. We conclude that a jury could reasonably interpret Mr. Kane's statement that he had "been meaning to clean" the patch of ice up as imputing knowledge of the ice on the day of the incident.

At the very least, the question of whether Mr. Kane was aware of the icy patch on the day of the injury presents a genuine dispute as to a material fact, especially when the facts are viewed in the light most favorable to the non-moving party, Ms. McQuaid. Whether Mr. Kane's statement suggests knowledge, and whether that knowledge existed on the day of the incident, are questions best left for a jury to decide.

The Homeowners further contend that the "undisputed facts" suggest "no reason to believe that [Ms. McQuaid] could not equally discover whatever outdoor conditions existed" at the time of the injury because "[s]he lives in the same neighborhood, which is subject to the same season conditions, and arrived in [the Homeowners'] backyard in broad daylight." The trial court similarly emphasized the apparent conspicuousness of the icy patch as evidence that there was no breach of duty. The trial court noted:

> [I]f there was an icy patch there of moss and ice on the patio in the daylight, it was there to be seen. The fact that [Ms. McQuaid] didn't see it or saw it and didn't interpret it as such doesn't relieve [Ms. McQuaid] of the responsibility of taking care of her own actions.

To reiterate, under Section 342 of the Restatement (Second) of Torts, a social guest may not recover from a host if the guest knows or has reason to know "of the condition and the risk involved." If Ms. McQuaid could have seen, or could have reasonably discovered the icy patch, she will be barred from recovery.

Ms. McQuaid asserts that she slipped on "a sheet of wet moss and black ice" on the Homeowners' patio. And she asserts that she "did not see [the] hazard prior to her fall." Viewed in the light most favorable to Ms. McQuaid, this presents a genuine dispute of material fact as to whether Ms. McQuaid saw or could have reasonably discovered the icy patch. Again, the trial court stated that if there was an icy patch, "it was there to be seen." However, Ms. McQuaid avers that the ice was "black ice." Black ice, by its nature, is not readily perceptible. *See Thomas v. Panco Mgmt. of Md., LLC*, 423 Md. 387, 391 n.1 (2011) (discussing the unique danger posed by 'black ice' in "reflect[ing] less light than regular

ice" (citing American Meteorological Society, *Glossary of Meteorology* 88 (2d ed. 2000))); *Poole v. Coakley & Williams Const., Inc.*, 423 Md. 91, 118–19 (2011) (noting the same).

We are guided by the reasoning in *Gast, Inc. v. Kitchner*, where the Court of Appeals noted that it could not say that "as a matter of law that ice is always visible upon reasonable inspection" and that such a question is "properly a question for the jury to consider." 247 Md. 677, 687 (1967).[4] Indeed, the Court in *Gast, Inc.* simply referred to "ice" in general, and did not mention black ice, which is inherently less conspicuous than regular ice. Consequently, viewed in the light most favorable to Ms. McQuaid, a jury could reasonably find that Ms. McQuaid did not, nor could she reasonably have discovered the patch of ice.

The Homeowners further contend that even under a higher duty of care than the duty they owed to Ms. McQuaid, they are not liable for the mere presence of natural hazards. The Homeowners cite *New Highland Recreation, Inc. v. Fries*, 246 Md. 597 (1967) and *Langley Park Apartments, Sec. H., Inc. v. Lund*, 234 Md. 402 (1964) for support. In *New Highland*, a pedestrian slipped and fell on a public sidewalk that abutted appellant's property. 246 Md. at 600. The Homeowners direct our attention to the portion of the opinion that states that a landowner is not liable in clearing the public sidewalk of snow and ice "unless through [the landowner's] negligence a new element of danger or hazard,

[4] In *Gast, Inc.*, the plaintiff's status was that of a "business invitee," 347 Md. at 682, whereas here, Ms. McQuaid was merely a social guest. However, a property owner will similarly be free from liability if a social guest is injured by an open and obvious danger. *Compare Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 389 (1997) ("[T]he owner or occupier of land ordinarily has no duty to warn an invitee of an open, obvious, and present danger." (citation omitted)), *with Laser v. Wilson*, 58 Md. App. 434, 442 (1984) ("[I]f the condition 'should be obvious' to the [social] guest, the host need not warn him.").

other than one caused by natural forces, is added to the use of the sidewalk by a pedestrian." *Id.* at 601. According to the Homeowners, they cannot be liable for a danger "caused by natural forces," and thus they cannot be held liable for Ms. McQuaid's injuries that may have been caused by ice or wet moss—purely natural phenomena.

The critical distinction, however, between *New Highland* and the present case is that the area of injury in *New Highland* was on a public sidewalk whereas the injury here occurred on the Homeowners' property. The crux of the rule in *New Highland* is that a property owner owes no duty to pedestrians crossing on a *public* sidewalk abutting the property unless the property owner negligently adds an element of danger or hazard that is not otherwise naturally occurring. *Id.* at 601–02. Thus, the dispositive question before the Court of Appeals was whether the evidence showed that the appellant had "negligently cleared a path through snow on the sidewalk so as to add a new element of danger of hazard." *Id.*

The standard here however imposes liability on a property owner, even if the danger may be naturally occurring, if the property owner is aware of the danger, the danger is not discoverable to a social guest, and the property owner fails to warn the social guest. The fact that the danger here is naturally occurring is thus of no consequence.

The Homeowners also direct our attention to *Langley Park*, a case where a tenant was injured on a concrete walkway in front of the apartment building where snow had accumulated. 234 Md. at 404. The Homeowners quote the portion of the opinion where the Court noted that where the "danger was equally apparent to both landlord and tenant," the "mere fact that snow has accumulated" will not impute liability to the landlord, "for

that would make him virtually an insurer." *Id.* at 409–10. The Homeowners' reliance on *Langley Park* is misplaced because the Court ended up sustaining the action for negligence, holding that "an accumulation of ice or snow upon the common approaches to tenement houses or multi-family apartment buildings may result in imposing on the landlord liability for injuries due to it, *provided he knew*, or in the exercise of reasonable care should have known, of the existence of a dangerous condition and failed to act within a reasonable time thereafter to protect against injury by reason of it." *Id.* at 410 (emphasis added). The emphasized portion of the sentence from the opinion illustrates the material fact in genuine dispute in the present case—whether the Homeowners knew about the slippery patch—thereby precluding a grant of summary judgment.

Because we conclude that Ms. McQuaid has provided sufficient evidence to allow a jury to reasonably infer that Mr. Kane was aware of the slippery patch on the day of the incident and failed to warn Ms. McQuaid of its existence, we reverse the trial court's grant of summary judgment as to breach. Next, we address the trial court's grant of summary judgment as to causation.

II. Summary Judgment is Inappropriate Where a Genuine Dispute of Material Fact Exists as to the Actual Cause of Ms. McQuaid's Injuries

A. Parties' Contentions

Ms. McQuaid contends that the circuit court improperly concluded that one or both of the dogs was the sole factual cause of her injuries. Instead, Ms. McQuaid submits that the court "should have recognized that while there is some evidence that a dog may have contributed to the incident, there is a genuine dispute of fact over whether the slippery

patch was itself a factual cause of" her injures. Ms. McQuaid relies on her answers in her deposition where she repeatedly asserts that the cause of her injuries was her "slipping" on the icy patch after being bumped by one or both dogs. Ms. McQuaid maintains that under both the substantial factor and the but-for causation tests, summary judgment was inappropriate. She argues that under the substantial factor test, a jury could find that the slippery patch was a substantial factor in producing her injures, and that at the very least, there is a genuine dispute as to a material fact that should be left to a jury. Likewise, under the but-for test, "a jury could readily find that the impact of the dog would not have caused Ms. McQuaid to fall *but-for* the slipperiness of the ground beneath her." (Emphasis in original).

The Homeowners rebut by arguing that the evidence Ms. McQuaid presented is "not legally sufficient to establish that [the Homeowners'] conduct was a substantial factor in producing" her injuries. In the Homeowners' view, the impact by one or both of the dogs was the sole factual cause of her fall. The Homeowners also raise the fact that in none of the histories Ms. McQuaid gave to her treating physicians, did she state that her fall was caused by anything other than being tripped by one or both of the dogs, and thus any testimony that states otherwise is inadmissible. The Homeowners further argue that even if Ms. McQuaid is permitted to assert that the condition of the Homeowners' patio was a contributing factor, it still was "only one of two evenly balanced probable causes[,]" which does not rise to the level needed to establish that it was a substantial factor.

B. Analysis

A successful negligence action must establish that the alleged negligence was the proximate cause of the plaintiff's injuries. *Pittway v. Collins*, 409 Md. 218, 243 (2009). To proximately cause an injury, the negligence must be: "1) a cause in fact, and 2) a legally cognizable cause." *Id.* (quoting *Hartford Ins. Co. v. Manor Inn*, 355 Md. 135, 156–57 (1994)). Regarding cause in fact:

> Two tests have developed to determine if causation-in-fact exists, the but for test and the substantial factor test. The "but for" test applies in cases where only one negligent act is at issue; cause-in-fact is found when the injury would not have occurred absent or "but for" the defendant's negligent act. When two or more independent negligent acts bring about an injury, however, the substantial factor test controls. Causation-in-fact may be found if it is "more likely than not" that the defendant's conduct was a substantial factor in producing the plaintiff's injuries.

Id. at 244 (internal citations omitted). The Court of Appeals has further adopted the substantial factor test as outlined in the Restatement (Second) of Torts. *Id.* (citing *Eagle-Picher Indus., Inc. v. Balbos*, 326 Md. 179, 208–09 (1992)). Section 431 states that an "actor's negligent conduct is a legal cause of harm to another if (a) [his or her] conduct is a substantial factor in bringing about the harm, and (b) there is no rule or law relieving the actor from liability because of the manner in which [his or her] negligence has resulted in the harm." Section 433 further provides factors to consider in making this assessment:

> The following considerations are in themselves or in combination with one another important in determining whether the actor's conduct is a substantial factor in bringing about harm to another:
>
> (a) the number of other factors which contribute in producing the harm and the extent of the effect which they have in producing it;

(b) whether the actor's conduct has created a force or series of forces which are in continuous and active operation up to the time of the harm, or has created a situation harmless unless acted upon by other forces of which the actor is not responsible;

(c) lapse of time.

In announcing the grant of summary judgment, the trial court noted that it believed Ms. McQuaid provided two conflicting accounts of the incident. Specifically, the court stated:

> At one point she says she never stood on the icy patch, she was never near the icy patch before she fell, and in another point, another apparent part in the deposition, she says she was standing on this, on this icy patch before she was bumped by the dog.
>
> So if you accept the first version – that she was never on the icy patch – then, of course, the icy patch couldn't have caused her to fall; it was the dog. If you accept her second version – that she actually, while moving around the patio, ended up on the icy patch and didn't slip – well, then obviously it wasn't the icy patch that caused her to slip; it was the dog bumping into her that caused her to slip. So there's clearly a causation issue here that's fairly clear from her own words – that she was caused to fall because she was struck by the dogs, not because of any condition that existed on the patio.

The court concluded by stating:

> [T]he facts of this case that are undisputed are that she fell when she was struck by the dogs that were running around on the patio. And so therefore the legal conclusion would be that she didn't fall because of an ice patch that she either wasn't standing on or was previously standing on but that she fell because she was hit by the dogs.

Simply put, the trial court granted summary judgment on causation because it found that the ice patch played no role in causing Ms. McQuaid's injuries. In the court's view, the *sole cause* of her injuries was being bumped by one or both dogs. Accordingly, we will focus our attention on cause in fact, the first prong of causation, and we will analyze

both the but-for and the substantial factor tests.[5] *See Rehn v. Westfield America*, 153 Md. App. 586, 592 (2003) ("In reviewing the circuit court's grant of summary judgment, we evaluate 'the same material from the record and decide the same legal issues as the circuit court.'" (alterations and citations omitted)). The judgment of the trial court will be affirmed if there is no genuine dispute as to a material fact as to actual cause and the Homeowners are entitled to summary judgment as a matter of law. Again, Ms. McQuaid will meet her burden to overcome the grant of summary judgment if she presents "admissible evidence upon which the jury could reasonably find" in her favor. *Rogers*, 435 Md. at 263 (quoting *Hamilton*, 439 Md. at 522–23).

On numerous occasions during her deposition, Ms. McQuaid referenced the fact that she "slipped," which caused her fall. She similarly corrected opposing counsel multiple times when he asked whether the dogs were the cause of the fall. For example, when the Homeowners' attorney asked Ms. McQuaid if it was accurate that she "felt a dog or two dogs run into the back of your legs causing you to fall[,]" she replied "No[,]" and that the dogs were not the cause. Shortly thereafter, the attorney for the Homeowners asked:

> [COUNSEL FOR THE HOMEOWNERS]: Was it all one sequence of events where you were bumped from behind by the dogs and you fell?
>
> [MS. MCQUAID]: No. They bumped into the side of my leg and I lost my footing on the patio. I slipped and that's when my legs went up in the air and I came down on my head.

[5] Both parties address the issues of "superseding" and "intervening" causes in their briefs. However, because the trial court did not discuss foreseeability and awarded summary judgment simply based on actual cause, we will limit our review to that prong of causation. *See Yonce v. Smithkline Beecham Clinical Labs., Inc.*, 111 Md. App. 124, 140 (1996) ("An intervening force is a superseding cause if the intervening force was foreseeable at the time of the primary negligence.").

Further, when asked if she was tripped by one or two dogs, she noted that she "fell because I slipped." When explaining what happened to her body after the "dogs came in contact with your left leg[,]" Ms. McQuaid asserted that she "slipped" and that she "lost my footing with both feet and my feet went up into the air and I came down on my head."

Starting with the but-for test and viewing the facts in the light most favorable to Ms. McQuaid, we conclude that a jury could reasonably find that but for the Homeowners' negligence in failing to remedy or warn Ms. McQuaid of the slippery patch, she would not have slipped after being bumped by one or both dogs and suffered her injuries. The fact that a dog bumped her does not necessitate the inference that it was the sole cause of her fall. In other words, even if it were true that Ms. McQuaid's having been bumped by one or both dogs was a but-for cause of her fall, it does not mean that the icy patch could not also be a but-for cause. In our view, a jury could conclude that Ms. McQuaid would not have fallen after being bumped by one or both dogs because she would not have slipped and lost her footing. Of course, at this stage, Ms. McQuaid is not required to prove definitively that the Homeowners' negligence was a but-for cause of her injuries. She is merely required to offer evidence that could lead a jury to reasonably conclude so, when the facts are viewed in light most favorable to her. We think that she has met this minimal burden with her deposition testimony.

The Homeowners argue that Ms. McQuaid initially blamed only the dogs for her fall, as evidenced by the fact that she told her physicians that the dogs caused her to fall. And, further, she texted Ms. Iverson on the day of the incident writing that it was Ms. McQuaid's puppy who "took me out!" Indeed, this evidence may be favorable for the

Homeowners, but it is seemingly conflicting evidence for a jury to weigh and resolve. *See Wheeler Transp. Co. v. Katzoff*, 242 Md. 431, 436 (1965) ("[T]he weight and credibility of the conflicting evidence of opposite parties is a jury question[.]") The question of proximate cause is "ordinarily a jury question," *Kiriakos v. Phillips*, 448 Md. 440, 470 (2016), and if the facts admit "of but one inference . . . the determination of proximate cause . . . is for the jury." *Pittway*, 409 Md. at 253 (quoting *Caroline v. Reicher*, 269 Md. 125, 133 (1973)); *see also Lashley v. Dawson*, 162 Md. 549, 562 (1932) ("The true rule is that what is proximate cause of an injury is ordinarily a question for the jury."). Here, we have two inferences: the first, that one or both dogs bumped into Ms. McQuaid and that force independently caused her fall; and the second, that one or both dogs bumped into Ms. McQuaid which caused her to slip on a slippery patch which then caused her to lose her footing and fall. By granting summary judgment, the circuit court disregarded a genuine dispute on the question of the but-for cause.

Regarding the substantial factor test, we likewise hold that Ms. McQuaid has proffered sufficient evidence that could lead a jury to reasonably conclude that the negligence of the Homeowners was a substantial factor in causing Ms. McQuaid's injuries. A jury could reasonably conclude that by not warning her about the slippery patch, the Homeowners permitted a dangerous condition that was in "continuous and active operation up to the time of the harm." Restatement (Second) of Torts § 433(b). Further, we conclude that the alleged negligence did not create a "situation harmless unless acted upon by other forces for which the actor is not responsible." *Id.* It cannot be said, as a matter of law, that a patch of black ice is not harmless unless acted on by another force. Indeed, black ice

presents a unique danger that has the potential to independently cause harm because it is "not perceivable or knowable until the moment of experience[.]" *Poole*, 423 Md. at 119. Thus, we think at this stage, summary judgment was inappropriate because a jury could find that it was "more likely than not" that the Homeowners' negligence was a substantial factor in producing Ms. McQuaid's injuries. *Pittway*, 409 Md. at 244. The determination of substantial factor causation is properly within the province of a jury and is certainly not ripe to be decided as a matter of law. Thus, we reverse the grant of summary judgment as to causation.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS REVERSED. APPELLEE TO PAY THE COSTS.