State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: November 2, 2023 535719

BELKIS GUZMAN,
Appellant,
v MEMORANDUM AND ORDER

STATE OF NEW YORK,
Respondent.

Calendar Date: September 6, 2023

Before: Clark, J.P., Aarons, Reynolds Fitzgerald, Ceresia and Fisher, JJ.

Dell & Dean, PLLC, Garden City (*Nicholas S. Bruno* of *Mischel & Horn, PC*, New York City, of counsel), for appellant.

Letitia James, *Attorney General*, Albany (*Owen Demuth* of counsel), for respondent.

Clark, J.P.

Appeal from a judgment of the Court of Claims (James H. Ferreira, J.), entered June 23, 2022, upon a decision of the court following a bifurcated trial in favor of defendant on the issue of liability.

On October 6, 2018, claimant and her adult daughter were driving northbound on Interstate 87 when they stopped to use the restroom at a rest area located in the Town of Clifton Park, Saratoga County. As the two walked back to their vehicle, claimant alleged that she tripped and fell when she "stepped into a cracked, uneven, raised, depressed . . . portion of the ground in the parking lot." She then commenced the instant action, alleging that defendant was negligent in maintaining the parking lot and seeking to recover for

injuries sustained as a result of her fall. Following a bifurcated nonjury trial on the issue of liability, the Court of Claims found that claimant failed to establish the existence of an actionable dangerous condition and that defendant had not received notice of any such condition. Consequently, the court dismissed the action, and claimant appeals. We affirm.

"When reviewing a nonjury verdict, this Court has broad authority to independently review the probative weight of the evidence, but we generally defer to the trial court's credibility determinations and factual findings, as that court had the opportunity to observe the witnesses" (*McFadden v State of New York*, 200 AD3d 1357, 1357 [3d Dept 2021] [internal quotation marks and citations omitted]; *accord M.K. v State of New York*, 216 AD3d 139, 141 [3d Dept 2023]). As with any other landowner, the state "has a duty to maintain its property in a reasonably safe condition in view of all the circumstances" (*Murphy v State of New York*, 188 AD3d 1330, 1331 [3d Dept 2020]; *see Gonzalez v State of New York*, 60 AD3d 1193, 1194 [3d Dept 2009], *lv denied* 13 NY3d 712 [2009]). "In a [trip] and fall case such as this, [the] claimant has the burden of establishing a dangerous or defective condition that [the] defendant created or had knowledge (actual or constructive) of, and that such condition was a cause of the accident" (*Gonzalez v State of New York*, 60 AD3d at 1194 [citations omitted]; *see Roque v State of New York*, 199 AD3d 1092, 1094 [3d Dept 2021]; *Jackson v State of New York*, 51 AD3d 1251, 1252 [3d Dept 2008]). "[C]onstructive notice may be established by showing that the condition was apparent, visible and existed for a sufficient time prior to the accident so as to allow the defendant to discover and remedy the problem" (*Carter v State of New York*, 119 AD3d 1198, 1199 [3d Dept 2014] [internal quotation marks, brackets and citation omitted]; *see Carpenter v Nigro Cos., Inc.*, 203 AD3d 1419, 1420 [3d Dept 2022]).

At the trial, claimant and her daughter each testified that claimant tripped on a hole in the parking lot of the Clifton Park rest area, and each estimated that said hole was approximately three inches deep. However, they both also admitted that they did not measure the hole and, at most, briefly looked at it immediately following claimant's fall. Further, although claimant and her daughter both testified that the weather was dry and clear on the day of claimant's fall, the images and video admitted into evidence – taken by the daughter the following day – depicted a hole containing rainwater, which prevented the Court of Claims from conducting a proper visual examination of the hole. Under these circumstances, and deferring to the Court of Claims' credibility determinations, claimant failed to meet her burden of establishing that an actionable dangerous condition existed (*see Medina v State of New York*, 133 AD3d 943, 945 [3d Dept 2015], *lv denied* 27 NY3d 905 [2016]; *Gonzalez v State of New York*, 60 AD3d at

1194; *Grover v State of New York*, 294 AD2d 690, 691 [3d Dept 2002]; *Sullivan v State of New York*, 276 AD2d 989, 990 [3d Dept 2000]).[1] Thus, the Court of Claims properly dismissed claimant's action.

Aarons, Reynolds Fitzgerald, Ceresia and Fisher, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court

[1] Claimant called two Department of Transportation employees, each of whom denied having received any complaints about the hole prior to claimant's fall. These witnesses also testified about various roadwork performed on the highway section that includes the rest area, but neither could specify whether any work was performed at the rest area. Deferring to the Court of Claims' credibility determinations, we agree that claimant failed to establish that defendant caused the alleged dangerous condition, that it had actual notice of the condition or that the hole had existed for a sufficient period of time such that defendant could have been deemed to have had constructive notice of such (*see Harjes v State of New York*, 71 AD3d 1278, 1280 [3d Dept 2010]; *Mastroianni v State of New York*, 35 AD3d 674, 675 [2d Dept 2006]; *compare McKee v State of New York*, 75 AD3d 893, 896 [3d Dept 2010]).