

**FOURTH DIVISION
MCFADDEN, P. J.,
WATKINS and PADGETT, JJ.**

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September 16, 2026

In the Court of Appeals of Georgia

A26A1219. HOLSTON v. ABOEBARENSI, INC. et al.

MCFADDEN, Presiding Judge.

After tripping over an air hose and falling at a vehicle repair shop, Kristina Holston brought this action against the shop and its owner, asserting negligence claims grounded in premises liability, vicarious liability, and negligent training and supervision against the shop, its owner, and the owner of the real property on which the shop sits (hereinafter, the defendants). The trial court granted summary judgment to the defendants on all of Holston's claims and denied Holston's motion for sanctions based on the defendants' alleged spoliation of a surveillance video. Holston challenges both rulings on appeal.

As detailed below, the defendants were entitled to summary judgment on the premises liability claim because Holston testified that she saw the air hose before she tripped on it. Holston does not argue that summary judgment was improper on her other two claims. Finally, she has not shown that the trial court's decision against imposing sanctions fell outside that court's wide discretion. So we affirm.

1. *Facts*

Viewed in the light most favorable to Holston, the nonmovant, see *SMG Constr. Servs. v. Cook*, 322 Ga. 819, 820 (922 SE2d 76) (2025), the evidence shows that on August 12, 2021, Holston took her car to the shop. She parked the car and went into the shop's office. Not finding anyone there, she walked back outside, where a shop employee was changing a tire on a car in front of one of the service bays. Holston saw various tools and equipment scattered on the pavement near the employee, including an air hose that ran in a "wiggly jiggly" fashion across a sidewalk from the bay to the area where he was working.

Holston asked the employee if another mechanic was there. The employee told her that the mechanic was working in another service bay, and Holston began to walk

toward that bay. After taking a step forward, she tripped over the air hose and fell to the pavement, injuring herself.

2. Summary judgment

Holston challenges the trial court's grant of summary judgment to the defendants. As detailed below, she has not shown error.

(a) Premises liability claim

“Where an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.” OCGA § 51-3-1. “[T]he fundamental basis for an owner or occupier's liability [is] that party's superior knowledge of the hazard encountered by the plaintiff.” *Robinson v. Kroger Co.*, 268 Ga. 735, 736(1) (493 SE2d 403) (1997). “It is when the perilous instrumentality is known to the owner or occupant *and not known to the person injured* that a recovery is permitted.” *The Landings Ass'n v. Williams*, 291 Ga. 397, 399 (728 SE2d 577) (2012) (citation modified).

Accordingly, our Supreme Court has explained the analysis in a slip-and-fall or trip-and-fall action as follows:

[T]o recover for injuries sustained in a slip-and-fall [or trip-and-fall] action, an invitee must prove (1) that the defendant had actual or constructive knowledge of the hazard; and (2) that the plaintiff lacked knowledge of the hazard despite the exercise of ordinary care due to actions or conditions within the control of the owner/occupier. However, the plaintiff's evidentiary proof concerning the second prong is not shouldered until the defendant establishes negligence on the part of the plaintiff — i.e., that the plaintiff intentionally and unreasonably exposed [her]self to a hazard of which the plaintiff knew or, in the exercise of ordinary care, should have known.

Robinson, 291 Ga. at 748-49(2)(b). See also *Williams Inv. Co. v. Girardot*, 354 Ga. App. 762, 763-64 (841 SE2d 436) (2020).

The defendants do not challenge the existence of a genuine issue of material fact regarding their actual or constructive knowledge of the air hose. Instead, they argue that they are entitled to summary judgment because Holston had actual knowledge of the air hose equal to their own knowledge. We agree.

“A person has actual knowledge of a hazard where the evidence shows that [she] saw or was actually aware of the hazard at issue.” *SMG Constr. Servs. v. Cook*,

322 Ga. 819, 824 (922 SE2d 76) (2025). Holston’s undisputed deposition testimony that she saw the air hose before tripping over it establishes that she was actually aware of that hazard. See *Right Stuff Food Stores v. Gilchrist*, 279 Ga. App. 784, 786 (632 SE2d 405) (2006) (holding that a gas station was entitled to summary judgment on a premises liability claim where the plaintiff had first seen a gas hose lying on the ground and then tripped over it).

Although Holston attempts to minimize the impact of her knowledge on this case by arguing in her appellate brief that she did not see “the part of the hose that she tripped on,” and thus did not fully appreciate the danger the air hose presented, a “plaintiff’s misapprehension of the precise details of a known hazard does not negate [her] actual knowledge of that hazard.” *SMG Constr. Servs.*, 322 Ga. at 825-26. In addition, Holston has pointed to no evidence that, despite being aware of the air hose, her perception of it was impaired in a manner that would have caused her not to appreciate the risk it posed to her. Cf. *Cook v. SMG Constr. Servs.*, ___ Ga. App. ___, ___(2) (932 SE2d 648) (2026) (finding the existence of a genuine issue of material fact as to whether the plaintiff voluntarily assumed the risk of a hazard of which he had actual knowledge where there was evidence that he did not realize his proximity to the

hazard). Finally, given Holston’s actual knowledge of the air hose, we are not persuaded by Holston’s argument that the presence of a shop employee somehow creates a factual question regarding her exercise of ordinary care that precludes summary judgment. See *Milledgeville Manor Partners v. Lewis*, 328 Ga. App. 482, 484-85(1) (763 SE2d 723) (2014) (holding that, as a matter of law, a plaintiff who chose to walk across an area where she knew a hazard was located failed to exercise ordinary care and could not prevail on her premises liability claim). Under the circumstances of this case, because Holston “admitted to having actual knowledge of the hazard at issue[,]” she cannot show that the defendants had superior knowledge of the hazard, and the trial court did not err in granting them summary judgment on the premises liability claim. *Right Stuff Food Stores*, 279 Ga. App. at 786.

(b) *Other claims*

The trial court granted summary judgment to the defendants on Holston’s claims for vicarious liability and negligent training and supervision, holding that these claims were derivative of the premises liability claim. In her appellate brief, Holston provides no argument or citations of authority addressing these other two claims, apart from the premises liability argument that we reject above in Division 2(a). So to

the extent Holston intended her enumeration of error to encompass the grant of summary judgment on her vicarious liability and negligent training and supervision claims, she has not met her burden of showing error.

3. Sanctions

Holston challenges the trial court's denial of her motion for sanctions based on the defendants' alleged spoliation of evidence. Our Supreme Court has defined the term "spoliation" to mean "the destruction of or failure to preserve evidence that is relevant to contemplated or pending litigation." *Phillips v. Harmon*, 297 Ga. 386, 393(II) (774 SE2d 596) (2015) (quotation marks omitted). See *Silman v. Assocs. Bellemeade*, 286 Ga. 27, 28 (685 SE2d 277) (2009).

If a trial court has determined that spoliation has occurred, the court should weigh the following five factors when deciding the appropriate penalty: (1) whether the party seeking sanctions was prejudiced as a result of the destroyed evidence; (2) whether the prejudice could be cured; (3) the practical importance of the evidence; (4) whether the destroying party acted in good or bad faith; and (5) the potential for abuse if any expert testimony about the destroyed evidence was not excluded.

Murphy v. Janilink Corp., 274 Ga. App. 573, 575(1) (913 SE2d 420) (2025) (punctuation omitted). Accord *AMLIResidential Props. v. Ga. Power Co.*, 293 Ga. App. 358, 361(1) (667 SE2d 150) (2008); *R. A. Seigel v. Brown*, 246 Ga. App. 177, 180(2) (539 SE2d 873) (2000). “A trial court has wide discretion in adjudicating spoliation issues, and we will not disturb the trial court’s judgment absent an abuse of discretion.” *The Anthem Cos. v. Wills*, 305 Ga. 313, 315(2) (823 SE2d 781) (2019). As detailed below, Holston has not shown an abuse of discretion in this case.

Holston asserts that the defendants spoliated evidence by failing to preserve a surveillance video recording of the day of her fall. Citing undisputed record evidence that the surveillance cameras would not have captured the area of Holston’s fall and the repair shop owner’s sworn testimony that he had accidentally erased the recording while trying to view it, the trial court held that Holston had not demonstrated that any spoliation occurred, but that even if there had been spoliation, sanctions were not appropriate because there was no prejudice and no showing that the recording was destroyed in bad faith.

For purposes of our analysis we will assume that spoliation occurred. The defendants do not contend that they lacked notice of the litigation when the recording

was erased. See generally *Phillips*, 297 Ga. at 396(II) (holding that the duty to preserve evidence arises when litigation is pending or reasonably foreseeable to the party in control of the evidence). And although our Supreme Court has held that spoliation occurs when *relevant* evidence is destroyed, see *id.* at 393(II), the trial court did not expressly address relevance in his order; he held that “any finding of spoliation of video in this matter would be merely speculative.” We decline to address the relevance of the evidence in the first instance.

Instead, we will turn to the trial court’s alternative holding that even if spoliation occurred, it did not warrant sanctions. The trial court based this holding on the absence of any evidence in the record “that [d]efendants acted in bad faith or that any party is prejudiced by any potential spoliation[,]” factors that, as discussed above, the trial court was required to consider in exercising his discretion. See *Murphy*, 274 Ga. App. at 575(1).

Given the undisputed evidence that Holston had actual knowledge of the air hose before she tripped on it, the trial court was authorized to conclude that she had not shown she was prejudiced by the loss of the video recording. See *Wilson v.*

Mountain Valley Cmty. Bank, 328 Ga. App. 650, 652-53(2) (759 SE2d 921) (2014) (holding that to show prejudice from spoliation, the injured party must establish a causal link between the failure of the underlying claims and the spoliation); *Fred's Stores of Tenn. v. Davenport*, 307 Ga. App. 58, 59-60(2) (703 SE2d 700) (2010) (accord). Cf. *Baxley v. Hakiel Indus.*, 282 Ga. 312, 313-14 (647 SE2d 29) (2007) (holding, in a dram-shop liability case, that a video recording from an establishment at which a patron had consumed alcohol “could have contained information relevant to the critical issue of whether [the patron] would soon be driving, e.g., an image of her walking through [the establishment] with keys in hand or leaving with another person[,]” even though the recording would not have captured the area where the patron had been sitting when she consumed the alcohol). As explained above, the facts that Holston suggests the recording might have shown — “the position and movement of the hose, the conduct of the unidentified employee [who was present when she fell], and the conditions surrounding the incident immediately before the fall” — would not have made a difference to her claims, because Holston’s admission that she saw the air hose before tripping on it was dispositive.

Likewise, given the undisputed evidence that the erasure of the video recording was accidental, the trial court was authorized to conclude that the repair shop owner had not acted in bad faith. Where relevant evidence is lost through “mere negligence,” sanctions are not necessarily required or appropriate, because “information lost through negligence may have been favorable to either party, including the party that lost it, and inferring that it was unfavorable to that party may tip the balance at trial in ways the lost information never would have.” *Creek House Seafood & Grill v. Provatas*, 358 Ga. App. 727, 731(2) (856 SE2d 335) (2021) (citation modified).

For these reasons, Holston has not shown that the trial court abused his wide discretion in declining to impose sanctions for spoliation.

Judgment affirmed. Watkins and Padgett, JJ., concur.