FOURTH DIVISION
August 11, 2011

2011 IL App (1st) 102675 - U
No. 1-10-2675

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOYCE STENTZ, Plaintiff-Appellant, v. REHABILITATION INSTITUTE OF CHICAGO, a Corporation, and THE FITNESS FORMULA, LTD., Defendants-Appellees.	)))))))))))	Appeal from the Circuit Court of Cook County No. 06 L 004387 Honorable Mary Ellen Brewer, Judge Presiding.

JUSTICE STERBA delivered the judgment of the court.
Presiding Justice Lavin and Justice Pucinski concurred in the judgment.

ORDER

HELD: The circuit court erred in granting summary judgment in defendants' favor because a genuine issue of material fact exists concerning the cause of plaintiff's fall and whether she tripped over a pole. Statements allegedly made by defendant's employee were not admissions against interest where the employee did not make the statements directly to the plaintiff and concerned matters outside the scope of her employment. The premises' landlord and the business that taught the class plaintiff participated in before she fell owed her a duty to ensure a safe means of egress.

¶ 1 Plaintiff Joyce Stentz appeals the circuit court's granting of summary judgment in favor of defendants, Rehabilitation Institute of Chicago (RIC) and Fitness Formula, Ltd., regarding her premise liability claim against each defendant. On appeal, Stentz contends that a genuine issue of material fact exists about whether defendants were the proximate cause of her injury when they allegedly allowed a round pole to rest outside of a slotted box in a room where she attended a class conducted by an RIC instructor at a Fitness Formula location, causing her to trip and fall. Stentz also contends that RIC's instructor's statement that Stentz tripped over a pole was an admission against interest. Stentz further contends that RIC owed her a duty to ensure that the room used for an exercise class did not pose an unreasonable risk and that RIC and Fitness Formula were required to ensure a safe means of ingress and egress. For the reasons that follow, we reverse.

¶ 2 Stentz participated in a pain management class called Feldenkrais provided by RIC at a Fitness Formula multiplex located at 1030 N. Clark Street in Chicago, Illinois. After the class, when Stentz was pulling a chair from inside to outside of the exercise room, she tripped and fell injuring herself.

¶ 3 On April 27, 2006, Stentz filed a two count complaint raising one count of negligence against RIC and another count for negligence against Fitness Formula. The complaint alleged that RIC:

> (a) Improperly operated, managed, maintained and controlled the aforesaid premises, so that as a direct and proximate result thereof, the Plaintiff was injured.
>
> (b) Allowed and permitted a round pole to be sticking out onto the floor and not in the

rack with the other round poles.

(c) Failed to properly and adequately store the round pole in its storage rack causing it to stick out of the rack.

(d) Failed to make a reasonable inspection of the aforesaid premises and said poles storage rack, when the Defendant knew, or should have known, that said inspection was necessary to prevent injury to the Plaintiff.

(e) Failed to warn the Plaintiff of the dangerous condition of the poles rack, when the Defendant knew, or in the exercise of ordinary care should have known, that said warning was necessary to prevent injury to the Plaintiff."

¶ 4 Stentz alleged that based on RIC's actions, she tripped on the round pole and fell to the floor injuring herself. Stentz made similar allegations against Fitness Formula in count II of the complaint. RIC and Fitness Formula separately filed affirmative defenses, and RIC filed an amended affirmative defenses and Fitness Formula filed a second amended affirmative defenses. The affirmative defenses claimed, in part, that Stentz "failed to observe the obvious presence of objects in the exercise room, namely the box and exercise poles which Plaintiff alleged caused her to trip." The affirmative defenses also alleged that Stentz was contributorily negligent because she "was under a duty to act with due care for her own safety and in a manner so as not to injure or cause damage to herself." During the proceedings in the circuit court, discovery depositions were taken of Stentz, Deborah Darr and Karen Labadie.

¶ 5 Stentz participated in a discovery deposition on her own behalf. Stentz's physician recommended that she enroll in a pain clinic due to the pain she had in her back. The clinic

would help Stentz become stronger and accept the pain she was experiencing, as well as provide her with a variety of therapy. Stentz was 65 years old when she attended therapy sessions at the pain clinic. As part of her therapy, Stentz participated in a Feldenkrais class, which is a movement re-education class. Stentz took the class approximately four times before the day of her injury, and the classes were held in the large gym at Fitness Formula. On the day of the incident, Stentz participated in a group physical therapy session before participating in the Feldenkrais class. Stentz did not perform the exercises in the Feldenkrais class on the floor because her physical therapist told her to bring a chair into the room and do the exercises while sitting down. The chair that Stentz retrieved was located outside the gym's door. At the end of the Feldenkrais class, the participants who used chairs during the class returned the chairs to where they obtained them. When Stentz was returning her chair, she stated that she "got just about to the doorway and then I was on the floor in severe pain. I had tripped over a pole." Stentz walked forward as she pulled the chair behind her holding the chair from its top. During Stentz's deposition, the following colloquy took place:

> Q. Okay. If you can explain to me how it - I mean did you know you were falling? Did you only realize it afterwards what happened?
>
> A. It was suddenly I felt my feet tangled up and the next thing I know I was on my shoulder with severe pain.
>
> Q: Your right shoulder?
>
> A. Yes.
>
> Q. And when you were walking to pull your chair back out to the reception area, which

way were you looking or where were you looking?

A. In front of me.

Q. Okay. In front of you straight ahead, up, down?

A. Straight ahead.

Q. Okay. When did you first realize that you had tripped on something?

A. When I heard Debbie, the instructor, telling the physical therapist or the nurse or doctor, whoever asked her, I heard her saying.

Q. You heard her say what?

A. She said - to the best of my recollection, she said she tripped on this pole. It was sticking out like this, and she pulled it out, and she put it back in and says, I put it back.

Q. Prior to the time Debbie said that you had tripped on this pole, did you ever see that pole?

A. I might have known there was a container sitting there, but it wasn't anything that was in your way and you didn't really notice it.

* * *

Q. Okay. Did you - at any point did you ever see the pole sticking out?

A. No."

Stentz further testified that she did not touch the pole before or after her fall. Stentz did not see what was tangled in her feet, but she experienced the feeling of being entangled and then falling. The incident happened quickly, which prevented Stentz from bracing herself before falling. Stentz also does not remember falling into Karen Labadie, another class participant. Stentz

acknowledged that the class instructor described what happened to the physical therapist, nurse or doctor who arrived after the incident, and not to her directly.

S¶ 6tentz telephoned Labadie to discuss with her the incident, and Stentz prepared a summary of the telephone conversation. Labadie stated that she tripped over the pole but caught herself on the door. Labadie did not see Stentz fall. Stentz's understanding is that Labadie heard the instructor state that the pole was sticking out of the bottom of a container.

¶ 7 On cross-examination, Stentz stated that her physical therapist told her not to get on the floor that day and to take a chair into the class. Stentz believed the bottom of the pole stuck out through a slatted box instead of being in the box upright. Stentz did not notice the pole when she entered into the exercise room. When Stentz was returning the chair outside of the exercise room, she was walking forward pulling the chair backwards and was walking at a slight angle.

¶ 8 Stentz called Deborah Darr to participate in a discovery deposition. Darr was a contract employee for RIC in July 2005. RIC hired Darr to teach a Feldenkris class. Darr recalls Stentz using a chair during class on the day of the incident. Darr read into the record the occurrence report that she completed following Stentz's fall. The report stated:

> "Patient was leaving the exercise room after her Feldenkris class. She was hauling her chair backward and tripped on the exercise pole that was resting outside of the pole box by the door. I had my back to her helping another patient when I heard the fall so I did not actually see it happen. She had fallen through the doorjamb onto her right side. I asked her to not try to move until we could assess her condition. Dr. Plasteris happened to be passing just as she fell and he came to quickly assess. She said she was all right

> except for right shoulder pain especially with active range of motion 'that's AROM - "Tim Zepolack" - I think is his name - PT, came with a sling and ice pack and helped her to the pain program waiting room. She will be examined by Dr. Joseph. Patient was also seen by Linda Tolby, the nurse, at the site of the injury. Ambulated independently down the stairs with no assistance and no symptoms beyond shoulder pain."

Darr stated that the pole was set outside of the metal lip of the box standing upright. The box of poles was placed near the door. Darr did not see Stentz fall, but heard her fall. Darr did not recall if she said anything regarding the pole after Stentz fell, but she did remember seeing the pole outside of the box. Darr did not know whether Stentz tripped on the pole, and no one told her that the pole caused Stentz to fall. Darr testified on cross examination that she told Stentz not to move the chair. Darr noticed Stentz walking backwards with the chair and told Stentz not to move the chair because it was heavy. Darr stated that the box and poles were always located in the same location right by the door. Darr said that she would not recommend to a participant of her class that they pull or carry a chair out of the class that weighed roughly 15 pounds. Darr stated that the pole itself did not fall to the ground, and if Stentz tripped over the pole, the pole remained in the same position after the fall. Darr assumed that Stentz hauled the chair backwards when she fell because she was hauling it backwards initially. Darr also assumed that Stentz tripped on the pole because the pole was near the door. Darr's belief that Stentz tripped on the pole was not based on the fact that she actually saw her trip on the pole or that someone told Darr that Stentz tripped on the pole.

¶ 9 Karen Labadie participated in a discovery deposition. Labadie had suffered a stroke that

affected her short term memory. Labadie did not have an independent recollection of Stentz's fall on July 21, 2005. Labadie spoke with Stentz regarding the fall in February 2006, and Stentz wrote a summary of that telephone conversation. Labadie also wrote a letter to Stentz's attorney dated January 15, 2007 regarding Stentz's fall. In the letter, Labadie indicated that she wrote notes regarding Stentz's fall after the Feldenkrais class on July 21, 2005. The letter stated, in part, that:

> "There was a holder on wheels that had poles and other supplies in it. I tripped forward into the door after hitting the pole that was sticking out of holder near the floor. I was still holding on the door when Joyce fell into me and she hit the floor on her shoulder. The instructor was helping some class members that were still lying on the floor. The instructor came over immediately and then other staff members from RIC came to help. The Feldenkrais instructor said that the pole was sticking out of the container and that is what Joyce tripped over. She (instructor) said that it should not have been there and put the pole back into the container and pushed the container back away from the door area."

¶ 10 On May 24, 2010, RIC filed a motion for summary judgment alleging that Stentz failed to establish that it was the proximate cause of her injury and that it did not owe a duty to Stentz. Fitness Formula subsequently joined in that motion. On June 29, 2010, Stentz filed a response to the motion for summary judgment. RIC filed a reply on July 20, 2010. On August 10, 2010, the trial court entered an order granting summary judgment as to all defendants and dismissed all counts of Stentz's complaint with prejudice. Stentz timely appealed.

ANALYSIS

¶ 11 Stentz contends on appeal that the circuit court erred in granting summary judgment because a reasonable inference was that the pole protruding outside of a box caused her to fall. Stentz contends that because RIC acknowledged that the pole was protruding out from the box, a triable issue of material fact exists regarding causation. Stentz maintains that RIC's alternative causes of the fall, including that she tripped over a lip in the doorway and that her shoulder condition caused her to fall, were not reasonable causes for her to fall and amounted to mere speculation not sufficient to support a granting of summary judgment in its favor.

¶ 12 In response, RIC claims that Stentz lacked independent knowledge that she tripped over the pole, and no witnesses observed her tripping over the pole. RIC also claims that no circumstantial evidence exists supporting Stentz's claim that she tripped over a pole because no pole was found on the floor near her after she fell, and the pole's proximity to the door was insufficient to establish the pole as the proximate cause of her fall. RIC further claims that Darr only assumed that Stentz tripped over the pole and such an assumption does not create a genuine issue of material fact.

¶ 13 Fitness Formula responds that Stentz failed to present facts establishing that its actions were the proximate cause of her fall. Fitness Formula claims that the class Stentz participated in was conducted by and under the exclusive control of RIC. Fitness Formula also claims that it was likely another class participant who dislodged the pole causing it to protrude outside of the box creating a tripping hazard.

¶ 14 To prevail on a premise liability negligence claim, a "plaintiff must present sufficient factual evidence to establish the existence of a duty of care owed by the defendant to the plaintiff,

a breach of that duty, and an injury proximately caused by that breach." *Keating, Jr. v. 68th and Paxton, LLC*, 401 Ill. App. 3d 456, 470 (2010). The existence of a duty is a question of law decided by a court. *Id.* Breach of the duty and proximate cause of an injury are questions of fact. *Id.* at 470-71. Proximate cause may be a question of law when plaintiff's alleged facts indicate that he would never be entitled to recover. *Id.* at 472. Summary judgment should be granted when a plaintiff fails to present evidence that defendant was the proximate cause of her injuries. *Id.* Proximate cause is established when a plaintiff "affirmatively and positively" demonstrates that the defendant's "alleged negligence caused the injuries for which the plaintiff seeks to recover." *Id.* at 473. A plaintiff, however, may not establish proximate cause based "upon speculation, surmise, or conjecture." *Id.* Circumstantial evidence may be used to establish proximate cause. *Id.* More specifically, proximate cause "may be established by facts and circumstances which, in light of ordinary experience, reasonably suggest that the defendant's negligence operated to produce the injury." *Id.*

¶ 15 A circuit court grants a summary judgment motion "where the pleadings, depositions, and admissions on file, together with any affidavits, when viewed in the light most favorable to the nonmovant, reveal there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." *Midwest Trust Services, Inc. v. Catholic Health Partners Services*, 392 Ill. App. 3d 204, 209 (2009). The movant of a summary judgment motion is not required to prove its case or disprove its opponent's case. *Keating, Jr.*, 401 Ill. App. 3d at 472. Also, the non-moving party is not required to prove its case at the summary judgment stage, but must present "evidence that arguably would entitle him to recover at trial." *Id.* This court reviews a

circuit court's ruling on a summary judgment motion *de novo*. *Midwest Trust Services, Inc.*, 392 Ill. App. 3d at 209.

¶ 16 As an initial matter, Stentz claims that Fitness Formula, in its brief, agreed that there was sufficient evidence that the pole protruding into the doorway was the proximate cause of her fall. Fitness Formula, however, made no such concession. Fitness Formula instead stated that "the undisputed fact may support her claim that she tripped over the pole, but those same undisputed material facts do not establish and would not establish at trial that Fitness Formula, by some unidentified act or omission, proximately caused the pole to protrude out of the front of the box." Thus, Fitness Formula essentially asserts that even assuming *arguendo* that Stentz tripped over the pole, Fitness Formula was not the proximate cause of the pole protruding from the box. Despite Stentz's contention, Fitness Formula did not expressly agree with Stentz that sufficient evidence existed to establish that she tripped over the pole.

¶ 17 Nevertheless, Stentz's testimony raises a triable issue of fact regarding the cause of her fall. In Stentz's deposition, she testified that when the Feldenkrais class ended, she was returning a chair back to where she previously obtained it from outside of the gym, but tripped before reaching her intended destination. Stentz stated that she "got just about to the doorway and then I was on the floor in severe pain. I had tripped over a pole." RIC maintains that no one saw her fall and the mere presence of a pole protruding from outside of a box near the door does not create a reasonable inference that Stentz fell over the pole.

¶ 18 RIC's reliance on *Barker v. Eagle Food Centers, Inc.*, 261 Ill. App. 3d 1068 (1994) and *Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813 (1981) to support its position that no

genuine issue of material fact exists regarding the cause of Stentz's fall is misplaced. In *Barker*, the plaintiff slipped and fell in a grocery store's produce department on a carpet placed around produce bins. *Barker*, 261 Ill. App. 3d at 1071. The plaintiff asserted that produce departments routinely spray their fruits and vegetables, which makes the floor wet. *Id.* at 1070. In her deposition, the plaintiff stated that "she assumed the floor was wet, '[o]therwise, I wouldn't have slipped." *Id.* This court concluded that the circumstantial evidence presented by the plaintiff was insufficient to raise a genuine issue of material fact because it was not a reasonable inference that "the floor was wet at the time and place of plaintiff's fall or that the fall in fact resulted from plaintiff's contact with that wetness." *Id.* at 1072. *Barker* is distinguishable because in the instant case, Stentz presented affirmative facts establishing that a pole was protruding from outside of the box when she fell. Here, Darr testified that she saw a pole leaning against the outside of the box and to the right side of the box. Darr saw the pole in that position after Stentz's fall, but the pole itself did not fall to the ground. In a letter dated January 15, 2007, Labadie stated that she "tripped forward into the door after hitting the pole that was sticking out of the holder near the floor." After her fall, Stentz saw Darr move the pole to put it back in the box. Thus, Stentz presented evidence consistently establishing that a pole was in fact protruding outside of a box before and after she fell. Unlike in *Barker* where it was uncertain if water was present when the plaintiff fell, Stentz presented evidence establishing the fact that a pole was protruding from outside of a box when she fell.

¶ 19 In *Kimbrough*, this court affirmed the granting of summary judgment because the plaintiff repeatedly stated that she did not know why she fell and she failed to present evidence that a

defect on the ramp caused her to fall. *Kimbrough*, 92 Ill. App. 3d at 817. During plaintiff's deposition in *Kimbrough*, she stated that she did not know what she fell on, she did not look to see what she might have fallen on and as of the date of the deposition, she still did not know what she might have fallen on. *Id.* at 815-16. The plaintiff in *Kimbrough* stated that she saw grease spots on the ramp where she fell, but she did not know what kind of grease the spots were or if the spots were wet. *Id.* at 816. The plaintiff also stated that she never touched the grease and did not know if her foot actually touched the grease before she fell. At the end of her deposition, the plaintiff reiterated "that she had no idea why she fell." *Id.* This court affirmed the granting of summary judgment in *Kimbrough* because the plaintiff admitted that she did not know what caused her to fall and failed to identify other known witnesses who could present evidence as to what caused her to fall. *Id.* at 817. Unlike the plaintiff in *Kimbrough*, Stentz identified the cause of her fall in her deposition when she stated that "I was pulling my chair, and I got just about to the doorway and then I was on the floor in severe pain. I had tripped over a pole." Stentz unequivocally stated that she "tripped over a pole." Thus, she identified the cause of her fall, unlike the plaintiff in *Kimbrough*.

¶ 20 RIC also relies on *Brett v. F.W. Woolworth Co.*, 8 Ill. App. 3d 334 (1972), to establish that Stentz failed to present sufficient circumstantial evidence that she fell on the pole. In *Brett*, the plaintiff tripped and fell after entering defendant's store while walking on rugs. *Id.* at 336. When the plaintiff attempted "to step off the rug with her left foot, her right foot became caught in the rug, causing her to fall forward." *Id.* During her testimony, the plaintiff in *Brett* testified that her foot became caught in the rug, but she had no knowledge what specifically about the rug

made her fall. *Id.* Plaintiff did not present evidence demonstrating that a depression in the rug existed when she fell. *Id.* This court concluded that plaintiff's theory that she tripped over a depression in the rug was not supported by any evidence, and affirmed the trial court's entry of judgment *n.o.v. Id.* at 337. This court reasoned that the location of the plaintiff's body after her fall in close proximity to the alleged depression in the rug was "too ambiguous an inference upon which to predicate a causal connection." *Id.* Unlike in *Brett* where the evidence did not establish that a depression existed in the rug on the day that the plaintiff fell, Stentz presented evidence establishing that a pole was protruding outside of the box on the day that she fell. Apart from Stentz's own testimony, Stentz presented evidence that moments before she fell, Labadie also tripped over the pole. As such, the pole cannot be excluded as a proximate cause of Stentz's injuries. See *Housh v. Swanson*, 203 Ill. App. 3d 377, 381 (1990) (concluding that an antenna wire found wrapped around the plaintiff's legs presented sufficient circumstantial evidence to raise a genuine issue of material fact regarding proximate cause).

¶ 21 We are mindful of the purpose underlying the review of a circuit court's ruling on a summary judgment motion, which is not to decide a question of fact, but, instead, to determine whether such a question exists. *Perbix, Jr. v. Verizon North, Inc.*, 396 Ill. App. 3d 652, 657 (2009). Here, Stentz met her burden of presenting evidence raising a genuine issue of material fact. Stentz established a causal connection between the pole located outside of the box and her fall based not only on her testimony, but also on facts stated by Labadie indicating that she too tripped over the protruding pole. The connection between the protruding pole and Stentz's fall created the required inference of fact sufficient to withstand a motion for summary judgment and

amounted to more than mere conjecture, speculation or surmise as to what happened to cause her fall. When ruling on a summary judgment motion, the pleadings, depositions, and affidavits must be strictly construed against the movant and liberally in favor of the opponent. *Bellerive v. Hilton Hotels Corp.*, 245 Ill. App. 3d 933, 935 (1993). In doing so in the instant case, it is evident that material facts are in dispute and defendants' right to end the pending litigation by the granting of a summary judgment motion is not free from doubt. *Id.* Although defendants may argue that Stentz made contradictory statements regarding her knowledge of why she fell, the undisputed facts remain that a pole was protruding outside of a box and that at one point during her deposition Stentz unequivocally stated that she "tripped over a pole." A summary judgment motion "is not intended to be used as a means of weighing conflicting issues of fact." *Allstate Ins. Co. v. Tucker*, 178 Ill. App. 3d 809, 812 (1989). The existence of conflicting statements by a witness is not a sufficient basis to grant summary judgment as "[i]t is not within the province of the trial court to weigh these conflicting statements." *Id.* at 813. As such, the circuit court erred in granting summary judgment in defendants' favor on the basis that there was insufficient circumstantial evidence to raise a genuine issue of material fact regarding causation. We, however, render no opinion regarding the likelihood that Stentz will succeed at trial on the merits of her claims, and instead conclude that she presented a genuine issue of material fact for the trier of fact to decide.

¶ 22 Stentz next contends on appeal that in RIC's affirmative defenses, it admitted that Stentz tripped over a pole that was negligently left protruding out of a box causing her injuries. Stentz relies on the following allegation in the first affirmative defense to claim that RIC admitted that

she tripped over the pole:

> "(d) Failed to observe the known and obvious presence of exercise equipment in the room, namely, the exercise pole over which Plaintiff alleges she tripped."

Stentz maintains that the assertion above demonstrates RIC's admission that she tripped over a pole. Stentz claims that RIC's admission created a question of fact concerning whether she tripped over the pole thereby precluding summary judgment in RIC's favor. Stentz similarly contends that RIC's contract employee, Darr, made a statement following the incident that Stentz overheard stating that Stentz tripped over a pole that was protruding outside of the box and that should not have been there. Stentz maintains that Darr's statement was an admission against RIC's interest.

¶ 23 Stentz's contention that RIC admitted in its pleading that she tripped over a pole negligently protruding out from a box is wholly without merit. In its pleading, RIC asserted that Stentz failed to observe the known and obvious presence of exercise equipment, which included the pole. Stentz stated during her deposition that she was aware of the box containing exercise equipment in the gym, and there is no dispute that a box containing exercise equipment was in the gym. RIC did not concede that Stentz tripped over the exercise equipment, but merely recites Stentz's allegation that she tripped over the pole. RIC specifically stated that Stentz "alleges" she tripped over the pole and did not make a factual assertion that Stentz tripped over the pole. Accordingly, RIC did not make an admission against its interest in its affirmative defenses.

¶ 24 RIC contends that Stentz waived her contention that Darr's statements and the incident report were admissions against its interest because Stentz did not raise this contention in the

circuit court. Although Stentz did not separately raise a claim of admission against interest in its complaint, Stentz relied on Darr's statement and the occurrence report in her response to RIC's motion for summary judgment to establish RIC as the proximate cause of her injury. As such, the merits of Stentz's contention will be addressed.

¶ 25 Not all statements are admissible as evidence. "Hearsay is an out of court statement offered to prove the truth of the matter asserted and is inadmissible unless it falls within one of the recognized exceptions to the rule." *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1064 (2001). An exception to hearsay is an admission made by a party opponent, which is a statement "made by a party or on his behalf that is relevant to a trial issue." *Vojas v. KMART Corp.*, 312 Ill. App. 3d 544, 547 (2000). As an exception to hearsay, an admission against the interest of a party is admissible as evidence against the party. *Pavlik*, 323 Ill. App. 3d at 1064. The modern trend in Illinois is that "a statement is a party admission if it is made during the existence of the employment relationship and concerning matters within the scope of the employment." *Vojas*, 312 Ill. App. 3d at 547; see also *Pavlik*, 323 Ill. App. 3d at 1065.

¶ 26 Darr completed the occurrence report and allegedly made the statements to the nurse or physical therapist during her employment relationship with RIC as a contract employee. RIC claims that Darr's verbal and written statements are not admissions against an interest because the statements were made after the Feldenkrais class that she taught ended. No dispute exists that Darr made those statements after the class she taught concluded. However, even though Darr was not instructing the class at the time Stentz fell, she was providing assistance to a class participant immediately after the class concluded. Accordingly, Darr is deemed to have been

acting pursuant to her employment relationship with RIC. Regarding the scope of her employment, the facts are undisputed that the poles were not used in the Feldenkrais class. Thus, matters concerning the poles were outside the scope of her employment. Moreover, Darr did not make any statement to Stentz directly regarding the cause of her fall. In fact, Darr testified that she did not recall specifically what she would have said regarding Stentz's fall. Also, Darr testified, "I had my back to her . . . so I did not actually see it happen." The cases Stentz relies on, in part, to support her position that Darr's statements were admissions against interest are distinguishable because in these cases, the employee's statements were made directly to the plaintiff post-occurrence. See *Vojas*, 312 Ill. App. 3d at 547 (a store clerk told the plaintiff that "I thought they cleaned that up.") and *Halleck v. Coastal Building Maintenance Co.*, 269 Ill. App. 3d at 887, 890 (janitor told the plaintiff that "I'm sorry. I didn't know you would be leaving the fur salon."). Here, Stentz fails to make a similar claim that Darr told "her" that she tripped over a pole that should not have been outside of a box. In fact, Darr did not make any statements to Stentz after her fall.

¶ 27 Stentz also claims that Darr's written statement in the occurrence report establishes an admission against interest. In the occurrence report, Darr stated that Stentz "was hauling her chair backward and tripped on the exercise pole that was resting outside of the pole box by the door." Darr also wrote that she "had her back to her helping another patient when she fell, so I did not actually see it happen." Darr indicated when an incident occurs, the protocol was to complete an occurrence report and provide that report to a supervisor. Darr did not recall who provided her the form to complete nor to whom she returned the completed form. Even if we

were to accept as true Stentz's contention that Darr's completion of the form fell within the scope of her employment, the assertions in the occurrence report do not give rise to an admission against interest. The report states that Stentz was "hauling her chair backward and tripped on the exercise pole that was resting outside of the pole box by the door." The report does not indicate that RIC had prior notice of the pole resting outside of the box nor that the placement of the pole that was resting outside of the box was negligence *per se*. Nothing in the report gives rise to an admission against RIC's interest. Rather, the occurrence report simply states that Stentz was hauling her chair backward when she fell on a pole resting outside of the pole box. The report does not indicate that the pole was protruding outside of the pole box or that it was lying carelessly on the floor. Furthermore, Darr stated in the report that, "I did not actually see it happen." Again, no admission against interest arises from the contents of the occurrence report.

¶ 28 Stentz's remaining contention on appeal is that RIC had a duty to protect her from unreasonable harm while attending the class and RIC and Fitness Formula were required to provide her with a reasonably safe means of egress from the class. Stentz claims that even assuming RIC was a licensee and not a possessor of the exercise room, it still had control over the exercise room because Darr conducted a class in the room. Stentz contends that RIC and Fitness Formula had a duty to ensure that the doorway that participants used to enter and exit the class was free from obstructions to prevent a tripping hazard. Stentz claims that RIC's duty arose from its control over the classroom by conducting a class in the gym and Fitness Formula's duty arose from its status as the premises' landlord.

¶ 29 RIC responds that Stentz failed to present facts supporting her contention that RIC owed

her a duty to keep the classroom free from unreasonable risks and to provide a safe means of egress, especially considering that it was not the premises' owner, but a licensee. RIC claims that it did not control the pole that Stentz allegedly tripped over. RIC also responds that it had no notice that a dangerous condition existed by the pole protruding outside of the box, or that it was protruding outside of the box for an extended period of time.

¶ 30 An invitee entering onto a premises is entitled to have the premises in a reasonably safe condition consistent with the purpose for which the invite goes upon the premises, and the invitee must receive adequate and timely notice of concealed dangers known to the premises' owner, but not to the invite. *McDonald v. Frontier Lanes, Inc.*, 1 Ill. App. 3d 345, 350-51 (1971). An invitee is also entitled to a reasonably safe means of ingress and egress. *Id.* at 351. The duty to provide a safe means of ingress and egress is not limited to an owner of a premises, but also extends to the occupant of the premises. *Id.* at 350-51; see *Bloom v. Bistro Restaurant Ltd Partnership*, 304 Ill. App. 3d 707, 712 (1999) (restaurant operator that was not the landowner owed a duty to patrons to provide a safe means of ingress and egress from its premises.)

¶ 31 As a procedural matter, RIC's summary judgment motion addressed both the elements of proximate cause and duty. The circuit court granted Fitness Formula's motion to join RIC's summary judgment motion as to proximate cause. Fitness Formula did not file a separate summary judgment motion. Fitness Formula's brief on appeal addresses the proximate cause element of a premise liability claim, but does not address the duty element. As such, consideration of the issue is based on the contentions raised by Stentz. Generally, a premises' owner bears the duty of providing a safe means of ingress and egress. *McDonald*, 1 Ill. App. 3d

at 350-51. Fitness Formula's duty, as the premises' owner, to provide Stentz with a safe means of egress from the gym was not abrogated by RIC's use of the room to conduct a class. The facts in this case indicate that both RIC and Fitness Formula used the gym, although not concurrently. Under these facts, Fitness Formula, as owner of the premises, owed Stentz a duty of providing a safe means of egress.

¶ 32 RIC, as a business operator, also owed Stentz a duty to provide a safe means of egress and to ensure that the room was free of unreasonable risks. *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 42 (2009); see *Gerwig v. Bruere*, 181 Ill. App. 3d 609, 614 (1989), quoting *Olinger v. Great Atlantic & Pacific Tea Co.*, 21 Ill. 2d 469, 473 (1961) (stating that a business establishment's owner/operator "owes a business invitee 'the duty of exercising ordinary care in maintaining the premises in a reasonably safe condition.' ") On the day that Stentz fell, she participated in a class offered by RIC and taught by an RIC instructor. Stentz was not a member of Fitness Formula, but was on the premises to receive physical therapy provided by RIC and to participate in RIC's class. Stentz was RIC's business invitee. Stentz's relationship with RIC as its business invitee does change on the basis that Stentz attended a RIC class held at a location other than at RIC itself. As such, RIC owed Stentz, its business invitee, a duty to ensure a safe means of egress from the gym in which it conducted its class, and that the room was free of unreasonable risks. See *Olinger*, 21 Ill. 2d at 473 (stating the rule that a business owner owes it business invitee a duty of exercising ordinary care in maintaining the premises in a reasonably safe condition is a familiar rule). Under the facts of this case, both Fitness Formula and RIC owed Stentz a duty of providing a safe means of egress from the gym.

¶ 33 Accordingly, the judgment of the circuit court is reversed.

¶ 34 Reversed.