2012 IL App (1st) 110328-U

SIXTH DIVISION
December 14, 2012

No. 1-11-0328

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LAWRENCE WOLFE and JOAN WOLFE,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellants,	)	Cook County.
	)	
v.	)	No. 09 L 2518
	)	
GUY WOLFE,	)	Honorable Marcia Maras,
	)	Judge Presiding.
Defendant-Appellee.	)	

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Lampkin concurred in the judgment.
Justice R. Gordon concurred in part and dissented in part of the judgment.

O R D E R

¶ 1 *Held:* (1) The circuit court erred in striking a party's affidavit; the affidavit did not contradict the party's deposition testimony. (2) The defendant was entitled to summary judgment as a matter of law. (3) The plaintiffs forfeited their contention that genuine issues of material fact precluded summary judgment. (4) The plaintiffs forfeited review of the circuit court's grant of an extension of time for the filing of the defendant's response to their request to admit facts; forfeiture aside, in the absence of a transcript, this court would presume that the circuit court heard sufficient evidence to support its decision to grant the defendant's motion and to deny the plaintiffs' motion to file a written response to the motion.

¶ 2 The plaintiffs Lawrence Wolfe (Lawrence) and his wife, Joan Wolfe (Joan), (collectively the plaintiffs), filed a personal injury complaint against defendant Guy Wolfe, seeking damages for injuries Lawrence sustained while on property owned by the defendant. The circuit court granted summary judgment to the defendant. The plaintiffs appeal, contending that: (1) the circuit court erred when it ordered Lawrence's affidavit stricken; (2) the defendant was not entitled to summary judgment as a matter of law; (3) the defendant's admissions in his deposition testimony raised genuine issues of material fact; and (4) the circuit court erred when it granted the defendant's motion to file a late response to the plaintiffs' request to admit facts.

¶ 3 BACKGROUND

¶ 4 The defendant was Lawrence's son by a prior marriage. The defendant owned residential property on Luna Avenue in Midlothian, Illinois, consisting of a house and a garage. Attached to the house was a porch with a roof over it. On October 14, 2008, the defendant and Steve Pasell were working on the porch roof. Lawrence arrived at the house and was preparing to enter the house through the back door when a portion of the porch roof gave way and collapsed on him. As a result, Lawrence sustained personal injuries.

¶ 5 On March 3, 2009, the plaintiffs filed a multicount complaint against the defendant seeking damages for personal injuries and loss of consortium under theories of strict liability in tort, negligence, and willful and wanton conduct. The strict liability in tort and willful and wanton conduct and corresponding loss of consortium counts were dismissed with prejudice for failure to state a cause of action. In the remaining negligence and loss of consortium counts, the plaintiffs alleged that the defendant was negligent in that he:

"a. Failed to warn *** the Plaintiff, LARRY WOLFE, that he would be or was in the process of demolishing, dismantling, and wrecking said porch.

b. Failed to place any warning signs in the vicinity of the said porch that he was demolishing, dismantling, and wrecking said porch.

c. Failed to secure the area around the said porch so that no one could enter the area under or in the vicinity of the said porch.

d. Failed to inspect the said porch to determine if the said porch could withstand the forces of demolishing, dismantling, and wrecking without the said roof of the said porch collapsing.

e. Failed to provide falsework [*sic*] or temporary supports for the said roof of the said porch so that the said roof would be secured with an independent support system while it was being demolished, dismantled, and wrecked.

f. Failed to maintain the 'premises' in good and safe condition for the Plaintiff, LAWRENCE WOLFE ***.

g. ***

h. Applied large concentrated forces to the said roof of the said porch.

i. Failed to exercise the degree of care required under the circumstances.

j. ***."[1]

¶ 6 At his deposition, Lawrence gave the following testimony. Prior to retirement, he had worked for Empire Roofing for over 20 years; 98% of his work was roofing. He also operated

[1]Subparagraphs g. and j. were stricken by the trial court.

his own roofing company at one time and considered himself an experienced roofer. The defendant learned the roofing trade by working for him. The two men had a falling out when Lawrence found deficiencies in the defendant's work. Nonetheless, they continued to work together on projects. The defendant had given Lawrence keys to his house and garage because they borrowed tools from each other.

¶ 7 Three or four years prior to the accident, Lawrence had helped the defendant re-roof the house, including the porch. He never noticed any structural problem with the porch roof.

¶ 8 In the 10 days prior to October 14, 2008, Lawrence had been to the defendant's house on at least 4 occasions to consult with him on a joint project they were doing. They were also doing work in the garage. In the four days prior to the accident, Lawrence never entered the house; no one was working on the porch roof, and there was no discussion about any work on the porch roof.

¶ 9 On October 14, 2008, Lawrence arrived at the defendant's house around 8 a.m. to continue the work in the garage. There was no arrangement for him to come to the house that day; he came because the work was not finished. He did not call ahead to tell the defendant that he was coming over to the house. He never looked in the direction of the porch and did not see the defendant or anyone else on the porch roof. He entered the garage but found no one there. He exited the garage and walked the 50 feet to the house. He did not hear any sounds coming from the porch roof and did not recall seeing a ladder, though he acknowledged that one was probably there. While nothing obstructed his view of the porch roof, Lawrence was looking down for the entire 50 feet to avoid stepping into any dog excrement left by the defendant's two

German Shepherds. As he stepped on to the porch, he called out a greeting but heard no response. He did not hear or see anything to indicate that the collapse of the porch roof was imminent.

¶ 10 Based on a conversation Joan had with the defendant after the accident, Lawrence understood that the defendant was dismantling the porch in order to put an addition on the house. He acknowledged that if he had been doing the work, he probably would not have taped off the porch area. Lawrence also acknowledged that the need for temporary supports would be determined while the work was being done.

¶ 11 After the accident, the defendant told Lawrence that the tapcons, the concrete anchors that secured the ledger board to the house, broke, causing the porch roof to partially collapse. The only criticism Lawrence had of the defendant's conduct was his failure to warn Lawrence that he would be working on the porch roof.

¶ 12 At his discovery deposition, the defendant gave the following testimony. He was employed as a foreman by USA Roofing and belonged to the Chicago Roofers Union.

¶ 13 The defendant bought the house on Luna Avenue in 2001. In 2007, he noticed that the plywood material on the porch roof had rotted away at the point where it met the house. The defendant planned to replace the deteriorated section of plywood in order to make the porch roof more water tight. Prior to October 14, 2008, he had not made any repairs to the porch.

¶ 14 In the week prior to the accident, Lawrence was at the house helping the defendant hang dry wall in the garage and move furniture. The defendant did not recall when he decided to repair the porch or if he mentioned to Lawrence that he planned to make repairs to the porch

roof. There was no pre-arrangement for Lawrence to work at the house on October 14, 2008. In general, Lawrence would just show up to work.

¶ 15 On the morning of the accident, the defendant conducted a visual inspection of all the supporting lumber for the porch roof. With his hand, he shook the 4 x 4 support and found it to be sound and intact. He visually checked the ledger board. Prior to commencing work on the roof, he tied up his two dogs and placed a 16-foot aluminum ladder against the porch. He acknowledged that there is a maximum load roofs are designed to carry, which, if exceeded, would cause the roof to collapse. While he did not know what the maximum load was for the porch roof, he maintained that it was strong enough to hold another person and himself as well as the materials. He acknowledged that he did not know strength of the force he would be using to remove the plywood or the strength rating for the tapcons.

¶ 16 Between 7 a.m. and 9 a.m., the defendant and Mr. Pasell began working on the porch roof. After the roofing material was removed, the defendant observed a section of plywood, eight feet by four feet, that had deteriorated. He used a pry bar to loosen one side of the plywood so it could be lifted up. As Mr. Pasell and he lifted the plywood up, he heard a popping sound, and the entire length of the porch roof where it met the house came down. There was no prior indication that the porch roof was going to give way.

¶ 17 The defendant was unaware that Lawrence was coming to the house that morning and had not seen him prior to the porch roof collapsing. After the collapse, Mr. Pasell told him that he thought someone was underneath the porch. The defendant heard a gasping sound and discovered Lawrence wedged between the collapsed-portion of roof and porch floor. He called

911 and requested an ambulance . The defendant did not recall telling the ambulance personnel that he was in the process of removing the porch when the roof collapsed. Later, he inspected the porch and discovered that the tapcon fasteners snapped causing the ledger board to break away from the wall of the house. When asked his opinion as to what caused the collapse, the defendant stated as follows:

> "I figured out that the Tapcon fasteners snapped away and the ledger board broke away from the wall.
>
> BY MR. BELMONTE (the plaintiffs' attorney):
>
> Q. Do you know what caused that to happen?
>
> A. Us being on the roof and tearing off and the fasteners failing. They snapped."

The defendant had seen tapcons snap when he was installing them; they would snap if over-torqued.

¶ 18 After cleaning up the debris, the defendant put stakes and string around the area to warn of nails and to keep the dogs away. He denied telling Joan that the stakes and strings marked a layout for an addition to the house. The defendant acknowledged that his two dogs left piles of excrement in the yard, and it was necessary to be careful where you stepped.

¶ 19 The defendant's answer to the plaintiffs' request to admit facts was due on August 24, 2010, but was not served on the plaintiffs until August 26, 2010. On September 28, 2010, pursuant to Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011), the defendant filed a motion for an extension of time to file his answer to the plaintiffs' request to admit, explaining that the late service was due to a clerical error. On October 6, 2010, the circuit court granted the motion and

denied the plaintiffs' request to file a written response to the motion.

¶ 20 On November 17, 2010, the defendant filed a motion for summary judgment. He maintained that there was no notice of a defective condition, that the accident was not reasonably foreseeable and that the plaintiffs were unable to prove that the defendant's conduct was a proximate cause of Lawrence's accident.

¶ 21 The plaintiffs filed a response to the motion for summary judgment, supported by their affidavits. In her affidavit, Joan averred that on October 25, 2008, she was at the defendant's house. He told her that he was putting an addition on the house where the porch had been. The defendant pointed out the wood stakes and attached string, explaining that it was the layout for the addition.

¶ 22 In his affidavit, Lawrence disputed the defendant's allegation in his motion for summary judgment that Lawrence's only allegation of negligent conduct was to the defendant's failure to warn. Lawrence averred as follows:

> "Furthermore, after reviewing Guy's deposition, which was given after my deposition *** I now realize that he was attempting to remove plywood from the stringers at the point where the plywood met the ledger board which was attached to his house and that the plywood at the point where it met the house was badly deteriorated. This indicates to me that Guy should have been aware that he was standing on and using a pry bar on a deteriorated plywood panel on the porch roof which was contiguous to the ledger board and tapcons and that the ledger board and tapcons were also most likely deteriorated, and that the deteriorated structural members were more susceptible to collapsing if he placed

> dynamic forces on them by using a device such as a pry bar or lifting the plywood panels from one end. Furthermore, with this knowledge of the deterioration to the structural members of the porch roof at the ledger board which was connected to the house Guy should have been standing outside the area of the porch roof when he was attempting to repair or dismantle it. Furthermore, I now realize that prior to commencing work on the roof, Guy did not know the maximum load bearing capacity of the roof and he did not know the size of the forces he was placing on the porch of the roof; this is truly careless. Furthermore, after reviewing Guy's deposition I now realize that he had enough sense to tie his German Shepherd dogs, who were always free to roam in his fenced in yard, to a tree prior to working on the roof of his porch so that if the porch roof collapsed they would not be injured."

¶ 23 On December 15, 2010, the plaintiffs' filed a motion *in limine*. *Inter alia*, the motion requested that the circuit court deem admitted the facts set forth in the plaintiffs' request to admit facts on the basis that the objections raised by the defendant in his response to the request to admit were improper and without foundation. The record does not contain an order ruling on the plaintiffs' motion *in limine*. On December 21, 2010, the defendant moved to strike the plaintiffs' affidavits in support of their response to his motion for summary judgment.

¶ 24 On January 6, 2006, the circuit court entered an order granting the defendant's motion to strike only as to Lawrence's affidavit and granting the defendant's motion for summary judgment. This appeal followed.

¶ 25 ANALYSIS

¶ 26 I. Lawrence's Affidavit

¶ 27 The plaintiffs contend that the circuit court erred when it granted the defendant's motion to strike Lawrence's affidavit filed in response to the motion for summary judgment.

¶ 28 A. *Standard of Review*

¶ 29 A circuit court's ruling on a motion to strike an affidavit in conjunction with a motion for summary judgment is reviewed *de novo*. *Collins v. St. Paul Mercury Insurance Co.*, 381 Ill. App. 3d 41, 46 (2008); see *Madden v. F.H. Panchen/S.N. Nielson, Inc.*, 395 Ill. App. 3d 362, 386 (2009); but see *American Service Insurance Co. v. China Ocean Shipping Co. (Americas), Inc.*, 402 Ill. App. 3d 513, 524 (2010) (applying the abuse of discretion standard to review of the striking of an affidavit in a summary judgment proceeding).

¶ 30 Additionally, we believe that the *de novo* standard is the proper standard to be applied in reviewing this issue. We will be reviewing the same documentary evidence, *i.e.*, Lawrence's affidavit and his deposition testimony, as did the circuit court. In such cases, our review is *de novo*. See *Independent Trust Corp. v. Hurwick*, 351 Ill. App. 3d 941, 952 (2004) (a trial court's determination based solely on documentary evidence is reviewed *de novo*).

¶ 31 B. *Discussion*

¶ 32 A party's submission of an affidavit inconsistent with that party's prior deposition testimony will not raise a disputed issue of fact or prevent the entry of summary judgment. *Morris v. Margulis*, 197 Ill. 2d 28, 37 (2001). "Admissions at pretrial depositions which are so deliberate, detailed and unequivocal, as to matters within the party's personal knowledge, will

conclusively bind the party-deponent, and he will not be heard to contradict the admissions at trial. *Chmielewski v. Kahlfeldt*, 237 Ill. App. 3d 129, 133 (1992).

¶ 33 In his motion to strike, the defendant argued that Lawrence's affidavit contradicted his deposition testimony. At his deposition, Lawrence was questioned by the defendant's attorney as as follows:

"Q. What is your criticism of Guy with regard to this accident of his conduct?

* * *

THE WITNESS: I don't know. He was taking down a porch.

Q. Okay. But, you know, you understand you're suing him and you are saying he was negligent, and I am trying to understand what it is you said that he did that you are critical of.

A. Well, I mean he could have let me know they were going to do it. I certainly wouldn't have walked underneath there knowing that they were going to do that.

Q. So he didn't tell you that they was [*sic*] going to do this work, correct?

A. Uhn-uhn. I was just going to the house to wake him up. I thought everyone was sleeping.

Q. Anything else beside the fact that he didn't tell you he was doing the work?

A. No."

¶ 34 In his affidavit, Lawrence averred that the defendant should have realized that the plywood and the tapcons and the ledger board were deteriorated and that using a pry bar and lifting up the plywood made the deteriorated structure members more susceptible to collapse. As

a result, the defendant should not have been standing on the porch roof in attempting to repair the roof. Lawrence also averred that the defendant was careless for failing to determine the maximum load-bearing capacity of the roof and the force he was placing on the roof.

¶ 35 "[A] witness' affidavit may expand and clarify opinions, estimates, inferences, and uncertain summary statements made in a prior deposition as long as the affidavit does not contradict deliberate testimony relating to concrete facts." *Wehde v. Regional Transportation Authority*, 237 Ill. App. 3d 664, 683 (1992). In *Wehde*, the reviewing court found that a witness' affidavit in which he stated that his memory of the existence of a crossing over railroad tracks was refreshed by conversations with his son, and another witness' affidavit in which he expanded the time frames in which he used the crossing, did not contradict his deposition testimony. *Wehde*, 237 Ill. App. 3d at 683.

¶ 36 We conclude that Lawrence's averments in his affidavit did not contradict his deposition testimony. Like the affidavit in *Wehde*, Lawrence's averments were based on information he learned after his deposition was taken and served to expand and explain his statements in his deposition. Therefore, the circuit court erred in striking Lawrence's affidavit.

¶ 37 In the alternative, the defendant argues that Lawrence's affidavit was properly stricken because the plaintiffs failed to disclose Lawrence as an expert witness in violation of Illinois Supreme Court Rule 213(f)(2)(3) (Ill. S. Ct. R. 213(f)(2)(3) (eff. Jan. 1, 2007)). We need not address the merits of the alternative argument since we conclude that summary judgment for the defendant must be affirmed.

¶ 38 II. Summary Judgment

¶ 39 The plaintiffs contend that the defendant was not entitled to summary judgment as a matter of law.

¶ 40 A. *Standard of Review*

¶ 41 The court reviews the granting of a motion for summary judgment *de novo*. *Prowell v. Loretto Hospital*, 339 Ill. App. 3d 817, 822 (2003).

¶ 42 B. *Applicable Principles*

¶ 43 "Summary judgment is proper if, and only if, the pleadings, depositions, admissions, affidavits and other relevant matters on file show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law." *Prowell*, 339 Ill. App. 3d at 822. Summary judgment is precluded where the material facts are disputed or where reasonable people might draw different conclusions from undisputed facts. *Prowell*, 339 Ill. App. 3d at 822. In determining whether a genuine issue of material fact exists, the pleadings, affidavits and depositions must be construed against the movant and liberally in favor of the opponent. *Prowell*, 339 Ill. App. 3d at 822.

¶ 44 C. *Discussion*

¶ 45 "The elements of a cause of action for negligence are: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty; and (3) an injury proximately caused by the breach." *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1051 (2010). If no duty is owed, there is no negligence. *American National Bank & Trust Co. of Chicago v. National Advertising Co.*, 149 Ill. 2d 14, 26 (1992). Whether a duty exists presents a question of law to be determined by

the court. *Wilfong*, 401 Ill. App. 3d at 1051. In determining whether a duty exists, the court considers the following factors: "(1) the reasonable foreseeability of injury; (2) the likelihood of injury; (3) the magnitude of the burden of guarding against injury; and (4) the consequences of placing that burden on the defendant." *Wilfong*, 401 Ill. App. 3d at 1051-52.

¶ 46 "[T]here is no liability for landowner for dangerous or defective conditions on the premises in the absence of the landowner's actual or constructive knowledge." *Tomczak v. Planetsphere, Inc.*, 315 Ill. App. 3d 1033, 1038 (2000). According to the evidence in this case, a portion of the porch roof collapsed because several of the tapcons securing the ledger board to the house snapped. There was no evidence that prior to the roof collapse, the defendant had actual knowledge that the tapcons were defective and were in danger of snapping while he was repairing the porch roof. To establish constructive notice, the plaintiffs had to establish that the defendant could or should have known that the tapcons would fail, causing a partial collapse of the porch roof. *Brzinski v. Northeast Illinois Regional Commuter Railroad Corp.*, 384 Ill. App. 3d 202, 205 (2008).

¶ 47 In opposing a motion for summary judgment, a party must present a factual basis which would arguably entitle him to a judgment. *Hornacek v. 5th Avenue Property Management*, 2011 IL App (1st) 103502, ¶ 25. In his deposition, Lawrence testified that he did not conduct any investigation to determine the cause of the collapse of the porch roof. He did not know of any reason for the roof collapse other than the defendant's explanation that while Mr. Pasell and he were on the porch roof pulling off the deteriorated plywood, the tapcons suddenly snapped. He did not have any information that the defendant knew that the tapcons would fail. Even as an

experienced roofer, if Lawrence had been examining the porch roof, he acknowledged that he would have been unable to discover the problem which led to the ledger board detaching from the house because it was hidden from view. See *Brzinski*, 384 Ill. App. 3d at 805-06 (defendant could not be charged with constructive notice of an admittedly undetectable sinkhole).

¶ 48 The plaintiffs' reliance on *Ortiz v. Jesus People, U.S.A.*, 405 Ill. App. 3d 967 (2010), is misplaced. In that case, the plaintiff was injured when the wind caused a large tree limb to fall, knocking her to the ground. The reviewing court upheld the denial of the defendant's motion for a judgment not withstanding the verdict. The court rejected the defendant's claim that it had no notice of the defect, noting that an urban property owner had a duty to inspect and maintain a tree adjacent to a public sidewalk, where a large limb overhung the sidewalk. The court concluded that the jury's determination that the defendant's inactivity, *i.e.*, failure to do any more than trim the low-hanging branches, was not so contrary to the evidence that the defendant was entitled to judgment in its favor. *Ortiz*, 405 Ill. App. 3d at 974-75. The analysis in that case is specific to the duty owed by landowners for physical harm caused by a natural condition of the land; in particular, the risk of harm arising from the condition of trees in urban areas. As the present case does not involve physical harm caused by a natural condition on the defendant's properly, *Ortiz* is clearly distinguishable.

¶ 49 The plaintiffs' reliance on *Reed v. Wal-Mart Stores, Inc.*, 298 Ill. App. 3d 712 (1998), is also misplaced. In reversing a jury verdict for the defendant, the reviewing court held that a plaintiff was not required to prove actual or constructive notice of a defective condition that was related to the defendant's business and created by the defendant. See *Reed*, 298 Ill. App. 3d at

716-17. Unlike in *Reed*, here there was no evidence that the defendant created the dangerous condition.

¶ 50 Finally, the plaintiffs cite *Calvetti v. Seipp*, 37 Ill. 2d 596 (1967). *Calvetti* involved a suit for negligence based on a collision between two vehicles and the subsequent jury trial. The supreme court upheld the appellate court's decision that the evidence so favored the plaintiff that the verdict for the defendant could not stand and remanded the case for a trial on damages. *Calvetti*, 37 Ill. 2d at 599. The plaintiffs maintain that *Calvetti* stands for the proposition that "a party cannot come to court with a 'hear no evil, see no evil, speak no evil' approach and expect to benefit from such an attitude." The plaintiffs then assert that this attitude some how enabled the defendant to have Lawrence's affidavit stricken and to have summary judgment entered in the defendant's favor. *Calvetti* does not support the plaintiffs' argument.

¶ 51 We conclude that in the absence of a factual basis that the defendant had actual or constructive notice that the tapcons would snap, the circuit court properly granted the defendant's motion for summary judgment. See *Nickel v. Hollywood Casino-Aurora, Inc.*, 313 Ill. App. 3d 925, 931 (2000) (questions of fact as to how the accident occurred or whether the defendant failed to use reasonable care to prevent it did not preclude summary judgment for the defendant where the plaintiff failed to present a factual basis that the defendant knew or should have known of the defective condition).

¶ 52 III. Genuine Issues of Material Fact

¶ 53 The plaintiffs contend that, based on the averments in the plaintiffs' affidavits and the defendant's admissions in his deposition, there are genuine issues of material fact precluding

summary judgment. The plaintiffs maintain that there are factual disputes or differing inferences from undisputed facts based on the following factors: (1) the jury would not find the defendant to be a credible witness; (2) the defendant tied up his two dogs prior to working on the porch roof; (3) the defendant had reason to believe that Lawrence would be entering the house while he was repairing/dismantling the porch roof; (4) the defendant admitted that he was standing on the portion of the porch roof that was badly deteriorated; (5) the defendant did not know the maximum load the porch roof was designed to carry; and (6) the defendant had an unfair advantage because Lawrence's deposition was taken first. We do not reach the merits of this issue for the reasons explained below.

¶ 54 Illinois Supreme Court Rule 341(h) (7) (eff. July 1, 2008) provides that an appellant's brief must contain argument,"which shall contain the contentions of the appellant, and the reasons therefor, with citation to authorities and the pages of the record relied on." Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011). This court may reject an argument solely on the basis that it does not comply with Rule 341(h)(7). *Hendry*, 409 Ill. App. 3d at 1019. Moreover, citations to authority that set forth only general propositions of law and do not address the issues presented do not constitute relevant authority for purposes of Rule 341(h)(7). See *Roe v. Jewish Children's Bureau of Chicago*, 339 Ill. App. 3d 119, 127 (2003) (argument forfeited on appeal where party cited only general authority and provided no authority addressing the specific issues raised).

¶ 55 The plaintiffs cite no authority in support of this issue. While the plaintiffs recite general

principles applicable to summary judgment, they failed to provide any case citations for those principles. " 'Contentions supported by some argument but by absolutely no authority do not meet the requirements of Supreme Court Rule 341(h)(7).' " *Vilardo v. Barrington Community School District 220*, 406 Ill. App. 3d 713, 720 (2010) (quoting *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991). Rather than a well-developed argument accompanied by citations to authority, the plaintiffs present a mixture of fact and conclusory statements with little or no argument and no supporting authority. As a reviewing court, we are entitled to have the issues clearly defined with pertinent authority cited; this court is not a depository where a party may dump the burden of argument and research. *Vilardo*, 406 Ill. App. 3d at 720; see *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 13 (the plaintiff forfeited her argument that a genuine fact issue precluded summary judgment where her argument consisted of one conclusory paragraph and no citations to authority).

¶ 56 In addition to lacking authority, certain of the factors the plaintiffs point to from the defendant's deposition testimony are not material to the cause of action. See *Leon v. Max E. Miller & Son, Inc.*, 23 Ill. App. 3d 694, 699 (1974) (the disputed factual issues must be material to the essential elements of the cause of action; even if sharply controverted, unrelated fact questions do not warrant the denial of summary judgment). Neither the defendant's credibility nor the plaintiffs' perceived unfairness in the order of the taking of the depositions is material to the elements of negligence in this case.

¶ 57 We conclude that the plaintiffs forfeited this issue for review.

¶ 58 IV. Request to Admit Facts

¶ 59 The plaintiffs contend that the circuit court erred when it granted the defendant's motion pursuant to Illinois Supreme Court Rule 183 (eff. Feb. 16, 2011) for leave to file a late response to their request to admit facts and denied them leave to file a written response to the defendant's motion.

¶ 60 A. *Standard of Review*

¶ 61 Whether there is good cause to grant an extension to respond to a Illinois Supreme Court Rule 216 (eff. Jan. 1, 2011) request to admit facts is within the sound discretion of the circuit court; absent an abuse of that discretion, the court's decision will not be disturbed. *Vision Point of Sale, Inc. v. Haas*, 226 Ill.2d 334, 353-54 (2007). An abuse of discretion will be found only if the circuit court acted arbitrarily, exceeded the bounds of reason and ignored recognized principles of law, or if no reasonable person would take the position adopted by the court. *Schmitz v. Binette*, 368 Ill. App. 3d 447, 452 (2006).

¶ 62 B. *Discussion*

¶ 63 In support of their argument, the plaintiffs rely on *Troyan v. Reyes*, 367 Ill. App. 3d 729 (2006), and *Szczeblewski v. Gossett*, 342 Ill. App. 3d 344 (2003). Neither case addresses the issue of the abuse of discretion in the granting an extension of time to file a response to a Rule 216 request. Rule 102 of the Illinois Rules of Evidence (eff. Jan. 1, 2011), also relied on by the plaintiffs, is a general statement of the purpose of the evidence rules, *i.e.*, to promote fairness, eliminate delay, expense, and to ascertain truth.

¶ 64 As we previously observed in this case, citations to authority which set forth only general

propositions of law and do not address the issues presented do not constitute relevant authority for purposes of Rule 341(h)(7). See *Roe*, 339 Ill. App. 3d at 127. Accordingly, the plaintiffs have forfeited this issue for review. Forfeiture aside, we find no abuse of discretion.

¶ 65 Rule 183 allows a court, upon "good cause shown" to grant a party an extension of the time to file a pleading or to do any act required by the rules to be done within a limited period "either before or after the expiration of the time." Ill. S. Ct. R. 183 (eff. Jan. 1, 1967). In their reply brief, the plaintiffs cite *Vision Point of Sale, Inc.* in support of their claim that they were entitled to file a written response to the defendant's Rule 183 motion. The plaintiffs rely on the following language from that case:

> "[U]nder this line of case law, unless the party can present evidence separate and apart from mistake, inadvertence, or attorney neglect to support an argument that there was good cause for the initial delay in compliance, the extension will not be granted. Because Rule 216 provides that failing to respond to a request to admit deems the requested facts admitted (citations), in most instances this result may prove fatal to the case of the delinquent party." *Vision Point of Sale, Inc.*, 226 Ill. 2d at 349-50.

¶ 66 However, the supreme court went on to hold as follows:

> "The circuit court has the sound discretion to consider all objective, relevant evidence presented by the delinquent party with respect to why there is good cause for its failure to comply with the original deadline and why an extension of time should now be granted. The circuit court may receive evidence with respect to whether the party's original delinquency was caused by mistake, inadvertence, or attorney neglect, but may not

> engage in an open-ended inquiry which considers conduct unrelated to the causes of the party's original noncompliance. We decline, however, to specifically define what constitutes good cause within this context, as that determination is fact-dependent and rests within the sound discretion of the circuit court." *Vision Point of Sale, Inc.*, 226 Ill. 2d at 353.

Vision Point of Sale, Inc. holds that, in an exercise of its discretion, a trial court may extend time for responding to a Rule 216 request even on the basis of a mistake or inadvertence. There is no requirement that the opposing party be allowed to file a written response or that it is an abuse of discretion to deny such a request by the opposing party.

¶ 67 In any event, the plaintiffs have not furnished this court with a transcript of the proceedings in which the circuit court granted the defendant's Rule 183 motion and denied their motion to file a written response. As the appellants, the plaintiffs bear the burden of presenting an adequate record for determination of the issues they raise on appeal. *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 330 (2008). In the absence of the transcript, the reviewing court has no basis for holding that a trial court's ruling was an abuse of discretion. *Compton*, 382 Ill. App. 3d at 330-31. Unless the record indicates otherwise, the reviewing court must assume that the trial court heard sufficient evidence to support its decision. *Compton*, 382 Ill. App. 3d at 333. The record before us does not indicate that an abuse of discretion occurred.

¶ 68 In his Rule 183 motion, the defendant explained that the two-day delay in filing his response was due to a clerical error. The circuit court's order states that the defendant's motion was granted over the objection of the plaintiffs. In the absence of a transcript, we must assume

that the trial court heard sufficient evidence to support its determination that the defendant had shown good cause for the extension of time to file his response to the plaintiffs' request to admit facts and to deny the plaintiffs' motion to file a written response.

¶ 69 We conclude that the circuit court did not abuse its discretion in granting the defendant's motion for an extension of time to file his response to the request to admit facts and denying the plaintiffs' request to file a written response to the motion.

¶ 70 CONCLUSION

¶ 71 The judgment of the circuit court is affirmed.

¶ 72 Affirmed.

¶ 73 Justice R. Gordon, concurring in part and dissenting in part:

¶ 74 I concur only with the portions of the majority's holding which hold: (1) that the trial court erred by striking Lawrence's affidavit; and (2) that the trial court did not abuse its discretion by granting defendant a two-day extension to file a response to plaintiff's' request to admit facts. However, I cannot agree with the majority's ultimate holding, which affirms the trial court's grant of summary judgment. As a result, I must respectfully dissent.

¶ 75 I. Striking Lawrence's Affidavit

¶ 76 As a preliminary matter, I do concur with the majority's holding that it was error for the trial court to strike Lawrence's affidavit. The trial court struck Lawrence's affidavit on the ground that the affidavit allegedly conflicted with Lawrence's prior deposition testimony. As the majority correctly observes, Lawrence's affidavit did not contradict his prior testimony; but rather, it expanded on statements made in the prior deposition. In his deposition, Lawrence

offered an opinion about the ways in which defendant had been negligent. However, this opinion was offered prior to defendant's deposition. In defendant's subsequent deposition, defendant provided more information about how the porch roof appeared to him immediately prior to its collapse and about the specific actions that he had taken immediately prior to its collapse. After defendant's deposition, Lawrence submitted his affidavit which expanded on the ways in which defendant had been negligent, in light of the new information provided by defendant in his deposition. Thus, I concur with the majority's holding that the trial court erred by striking his affidavit.

¶ 77 I also concur with the majority's holding that the trial court did not abuse its discretion by granting defendant's motion for a two-day extension of time to file its response to plaintiff's request to admit facts. As the majority observes, the timing of discovery matters is generally left to the sound discretion of the trial court. *Supra* ¶¶ 63, 64 (quoting Ill. S. Ct. R. 183 (eff. Jan. 1, 1967), and *Vision Point of Sale, Inc. v. Haas*, 226 Ill. 2d 334, 353 (2007)).

¶ 78 II. Grant of Summary Judgment

¶ 79 However, I must dissent from the majority's holding which affirms the trial court's grant of summary judgment. The majority affirms on two grounds: (1) that plaintiff failed to provide sufficient case authority in its appellate brief to merit our review; and (2) that there was no material issue of fact concerning defendant's actual or constructive notice of the defective condition. For the reasons explained below, I do not agree with either ground.

¶ 80 III. Forfeiture

¶ 81 The majority finds that plaintiff has forfeited appellate review of the trial court's grant of

summary judgment by failing to provide sufficient case law concerning summary judgment. The law concerning summary judgment is well established, and we do not need multiple citations to support well-established principles of law. Having read plaintiff's brief to this court, I do not find it is so lacking in case law as to warrant a dismissal by this court on the ground of forfeiture. This forfeiture issue was raised *sua sponte* by the majority; it was not raised in the opposing party's brief and, as a result, it was not briefed by either party. Although there may be an appellate brief that is so utterly lacking in legal authority as to warrant a *sua sponte* dismissal of the entire appeal by this court, plaintiffs' brief does not merit this action. As I result, I must dissent from the majority's finding of forfeiture in the case at bar.

¶ 82 IV. Notice or Knowledge

¶ 83 The majority also affirms the trial court on the ground that there was no material issue of fact concerning notice or knowledge. The majority states its holding as follows: "We conclude that in the absence of a factual basis that the defendant had actual or constructive notice that the tapcons would snap, the circuit court properly granted the defendant's motion for summary judgment." *Supra* ¶ 49. In this holding, the majority concludes: (1) that there was no factual issue concerning notice; (2) that notice was required; and (3) thus, summary judgment was proper. I must dissent because I would hold, as I explain further in the sections below: (1) that there was a factual issue concerning notice (which is relevant only to the extent that plaintiff asserts a premises liability claim); (2) that notice was not required for plaintiff's negligence claim; and (3) that there were issues of material fact, relating to the elements of plaintiff's negligence claim, which precluded the entry of summary judgment.

¶ 84 A. Issues Concerning Notice or Knowledge

¶ 85 First, there was a material issue of fact concerning notice and knowledge. Plaintiff alleges that defendant, a professional roofer, had actual or constructive notice or knowledge that his acts in removing the plywood from the roof would cause a defective condition, namely, the collapse of the roof. The facts supporting notice and knowledge are contained in defendant's affidavit. In his affidavit, Lawrence, who is also a professional roofer, related, first, the facts supporting constructive notice or knowledge:

> "[A]fter reviewing Guy's deposition, which was given after my deposition *** I now realize that he was attempting to remove plywood from the stringers at the point where the plywood met the ledger board which was attached to his house and that the plywood at the point where it met the house was badly deteriorated. This indicates to me that Guy should have been aware that he was standing on and using a pry bar on a deteriorated plywood panel on the porch roof which was contiguous to the ledger board and tapcons and that the ledger board and tapcons were also most likely deteriorated, and that the deteriorated structural members were more susceptible to collapsing if he placed dynamic forces on them by using a device such as a pry bar or lifting the plywood panels from one end."

Concerning actual notice or knowledge, Lawrence stated:

> "Furthermore, after reviewing Guy's deposition I now realize that he had enough sense to tie his German Shepherd dogs, who were always free to roam in his fenced in yard, to a tree prior to working on the roof of his porch so that if the porch roof collapsed they would not be injured."

The facts stated in Lawrence's affidavit created genuine issues of material fact concerning notice and knowledge. Even if notice was an element of plaintiff's claims, as the majority holds, then summary judgment should not have been granted. However, as I explain below, notice is not an element of plaintiff's negligence claim, under the law as made or provided. *Supra* ¶ 43 (quoting *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1051 (2010) (listing the three elements of a negligence claim)).

¶ 86 B. Notice Was Not Required

¶ 87 The majority holds that notice was an element of plaintiff's negligence claim and quotes the following case: " 'there is no liability for [a] landowner for dangerous or defective conditions on the premises in the absence of the landowner's actual or constructive knowledge.' " *Supra* ¶ 44 (quoting *Tomczak v. Planetsphere, Inc.*, 315 Ill. App. 3d 1033, 1038 (2000)). However, as the majority observes, a plaintiff is not required to prove actual or constructive notice of a defective condition that the defendant "created." *Supra* ¶ 47 (citing *Reed v. Wal-Mart Stores, Inc.*, 298 Ill. App. 3d 712, 716-17 (1998)). The majority finds that this rule of law does not apply to the case at bar because "here, there was no evidence that the defendant created the dangerous condition." *Supra* ¶ 47. The dangerous condition was created when defendant pulled out the plywood on the

roof at the point where the roof met the house, and there is absolutely no dispute that defendant created this condition. Defendant testified at his deposition that he himself was the one up on the porch roof, pulling out the plywood that was located where the porch roof met the house. Since there is absolutely no dispute that defendant created the defective condition, plaintiff was under no obligation to show notice or knowledge. Even if there was a dispute that defendant created the defective condition, which there is not, it would be a factual issue not subject to summary judgment. 735 ILCS 5/2-1005 (2010) (summary judgment is appropriate only if "there is no genuine issue as to any material fact").

¶ 88 C. Elements of Negligence

¶ 89 I find that there is a material issue of fact relating to the elements of negligence. As the majority observes, the " 'elements of a cause of action for negligence are: (1) a duty owed by the plaintiff to the defendant; (2) a breach of that duty; and (3) an injury proximately caused by the breach.' " *Supra* ¶ 43 (quoting *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1051 (2010)). There seems to be no dispute that defendant suffered an injury and that the injury was caused by the collapse of the porch roof. There also seems to be no dispute that defendant took the actions which caused the roof to collapse, and that plaintiff, who is defendant's father, would just show up, unannounced, at his son's house to help his son with work on his son's garage. Defendant testified at his deposition that he and his father had no pre-arrangement for work and that his father would just show up. *Supra* ¶ 14.

¶ 90 As the majority observes, in considering whether a defendant in a negligence action owed the plaintiff a duty, a court must consider " 'the reasonable forseeability of injury.' " *Supra* ¶ 43

(quoting *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1051-52 (2010)). In the case at bar, there is a material issue of fact concerning whether defendant, a professional roofer, should have reasonably forseen that his actions would cause the collapse of the porch roof, or whether defendant was deliberately trying to take the roof down; and whether defendant should have reasonably forseen that his father might be under the roof at the time when plaintiff took his actions.

¶ 91 I find that these genuine issues of material fact preclude the entry of summary judgment, and therefore I must respectfully dissent.