

No. 1-13-3369

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

DAVID A. PAUL AND KRISTINA PAUL,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	Cook County
)	
v.)	No. 10 L 4113
)	
UNITED AIRLINES, INC.,)	Honorable
)	William E. Gomolinski,
Defendant-Appellee.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Neville concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's grant of summary judgment is affirmed where the complaint did not allege sufficient facts to support a claim that plaintiff David fell on an unnatural accumulation of ice while walking on a tarmac to board defendant's airplane.

¶ 2 Plaintiffs, David and Kristina Paul, appeal the order of the circuit court granting summary judgment in favor of defendant, United Airlines, Inc., on plaintiffs' first amended complaint. On appeal, plaintiffs contend that the circuit court erred in granting summary judgment because a genuine issue of material fact exists over whether David slipped and fell on an unnatural

accumulation of ice. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On January 4, 2010, David was scheduled to take an early morning United Airlines' flight from Chicago-O'Hare airport to Harrisburg, Pennsylvania. At approximately 6:20 a.m. David began walking down the jet bridge and onto the tarmac to board the flight. The walkway was 50 feet long and the path was lit by artificial light. While nearing a luggage rack, 15-20 feet from the plane, David fell backward on asphalt which resulted in injuries to his back and neck.

¶ 5 In plaintiffs' first amended complaint they alleged a claim for negligence against United on the basis that United owed David a duty to properly maintain the tarmac at the gate and breached that duty by allowing " 'black ice,' ice or slippery conditions" to remain on the tarmac.¹ Plaintiffs alleged that United permitted a dangerous condition to exist on the tarmac, failed to remove the ice and failed to warn plaintiff of the dangerous condition. David claimed that his fall resulted in spinal disc injuries as well as bruises and radiating pain in his arms, legs, feet and hands. Plaintiffs alleged that as a result of the fall, David, a self employed management consultant, could not work for several days and lost a business contract which would have employed him for seven months. Kristina, David's wife, also alleged a claim for loss of consortium against United seeking damages for loss of society, service, support and consortium.

¹ The amended complaint also contained claims against four additional defendants: the City of Chicago, J.S. Reimer Corp., Aero Snow Removal Corp. and Rohar Trucking, Inc. Plaintiffs' original appeal from the August 2012 order was dismissed without prejudice because these defendants were still parties to the litigation and the summary judgment order was an interlocutory ruling. After mandate, the remaining defendants were dismissed from this action and plaintiffs timely filed a second notice of appeal on October 28, 2013. None of these additional defendants are parties to this appeal.

Kristina alleged that David's injuries negatively affected their relationship.

¶ 6 United moved for summary judgment on the grounds that: (1) David could not identify what proximately caused his injuries; (2) if David could establish that ice caused him to fall, United had no duty to remove the natural accumulation of ice; and (3) there was no evidence that United created an unnatural accumulation of ice.

¶ 7 In response, plaintiffs argued that there was sufficient evidence in the record to establish the requisite elements of their claims and present genuine issues of fact for the jury to consider.

¶ 8 The parties supported their opposing briefs on the motion for summary judgment with the depositions of David and a United employee. At David's deposition, he testified that he arrived at the airplane gate before dawn on a very cold January morning. While walking on the tarmac, he stopped to drop off his carry-on bag at the luggage cart, a short distance from the airplane. He fell backwards while approaching the luggage cart, landing on his head and buttocks. He did not see any ice on the tarmac but believes that ice caused his fall because it was cold outside. He did not see plow trucks or anyone shoveling or salting the tarmac and if there was ice on the tarmac, he doesn't know how long it might have been there. He also did not recall seeing snow on the tarmac, but rather in a different location along a fence separating the airport from the highway. Approximately 30 or so passengers boarded the plane before him and took the same path to the plane and luggage cart that he did. He did not see any of the other passengers have trouble with their footing or fall.

¶ 9 After his fall, two people which he believes were ramp employees, lifted David back to his feet. David felt "dazed, dizzy." He did not look behind him to see if any ice was on the ground but heard a third woman, who was wearing a blue jumpsuit, yell out to the ramp

employees, "I thought I told you guys to clear all this ice out of here." David then boarded the plane unassisted. Upon arrival to Pennsylvania, David told a United employee that he couldn't move. Several people helped David exit the airplane and placed him in a wheelchair. David was taken to a local hospital, was discharged eight hours later and took a return flight home. The purpose of his trip to Pennsylvania was to begin a business relationship with a subcontractor. David's involvement on the project was cancelled due to his injuries.

¶ 10 When David returned to Chicago, he went to Provena Medical Center in Joliet because of back pain and numbness. He was prescribed pain medication and physical therapy. His doctor has suggested surgery to correct the injury.

¶ 11 Scott Lyons, a 12-year United lead ramp serviceman, worked at the gate at the time of David's accident. As part of Lyons' duties, he performs an inspection of the walkway before passengers are led to board a plane. If there is snow or ice on the walkway, he is responsible for cleaning it. On several occasions prior to David's accident Lyons has cleaned this tarmac of snow. He did not salt or shovel snow off the tarmac the morning of David's accident. He could not recall whether the earlier shift had salted or shoveled the tarmac.

¶ 12 At 6:20 a.m. on January 4, 2010, it was generally dark outside but the tarmac had lights about 10 or 15 feet apart that illuminated the walkway. The lights were working properly and there was no problem in seeing the ground. He is confident that there was no ice on the tarmac when David fell. The tarmac is made of smooth concrete and did not slope or have grooves. He denied that any melting snow would slope toward the area where David fell. In his experience a luggage cart does not drip melted snow creating an icy area on the tarmac.

¶ 13 After hearing, the circuit court granted the motion for summary judgment on David and

Kristina's' claims against United. This appeal followed.

¶ 14

ANALYSIS

¶ 15 Plaintiffs contend that the circuit court erred in granting defendant's motion for summary judgment because David has established that an unnatural accumulation of ice caused him to slip, fall and suffer injuries due to defendant's negligence and because a genuine issue of material fact exists as to whether United had notice of the unnatural accumulation of ice. The circuit court held a hearing on the motion, however, the record does not contain any transcripts of the hearing, nor does it contain a substitute report of proceedings pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Without such material, we cannot know the arguments presented at the hearing or the reasoning of the circuit court in making its ruling. In such a circumstance, we must presume that the trial court acted in conformity with the law and had a sufficient basis in the record for its judgment. *Foutch v. O' Bryant*, 99 Ill. 2d 389, 391-92 (1984). However, because the common law record contains the parties' briefs on the motion at issue and we may "affirm a grant of summary judgment on any basis appearing in the record, regardless of whether the lower court[] relied upon that ground" (*Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005)), we will review the merits of David's appeal.²

¶ 16 Summary judgment is proper where the pleadings, depositions and admissions and affidavits on file, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). We construe the

² Plaintiffs also argue that the circuit court erred in entering summary judgment against Kristina on her loss of consortium claim, however, plaintiffs fail to develop this argument or cite any authority to support this claim of error. Therefore, this argument is waived on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Housing Authority of Champaign County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009); *Fink v. Banks*, 2013 IL App (1st) 122177, ¶ 15.

evidence in the light most favorable to the nonmoving party and review the circuit court's grant of summary judgment *de novo*. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). Where the plaintiff fails to establish an element of a cause of action, summary judgment for the defendant is proper. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007); *USF Holland, Inc. v. Rodogno*, 2014 IL App (1st) 131727, ¶ 51.

¶ 17 In the first amended complaint, plaintiffs alleged that United permitted ice to form on the tarmac and that ice caused David's fall and related injuries. No other witness could corroborate David's belief that he slipped on ice. David testified that he did not see any ice, plow trucks or snow on the tarmac. He only believes that he slipped on ice because it was a cold morning. Of the 30 passengers who walked the same path ahead of him, none of them slipped or had trouble with their footing. Scott Lyons, the United ramp supervisor assigned to that gate, testified that he did not see ice or snow on the tarmac that morning. The tarmac is made of smooth concrete and there is no reason any melted water would drip in that area and cause an accumulation of ice. Nonetheless, plaintiffs suggest that the luggage cart might have contained water from melted snow, which might have dripped on the ground, later becoming ice, and created the condition upon which David fell. However, no witnesses have testified that this was the case. Rather, both witnesses testified that they did not see ice on the tarmac at all.

¶ 18 Although a plaintiff does not need to prove his case at the summary judgment stage, a plaintiff must present some facts sustained by evidence to support the elements of the causes alleged. *Flight v. American Community Management, Inc.*, 384 Ill. App. 3d 540, 543 (2008). In order to survive summary judgment in a slip-and-fall case, such as this, David must present some facts to show that there was a dangerous condition, in this instance the ice, which allegedly

caused him to fall, and he must also present facts to show that the ice accumulation was unnatural or caused by defendant. *Finn v. Dominick's Finer Foods, Inc.*, 244 Ill. App. 3d 278, 281 (1993) (summary judgment was proper where plaintiff could not prove that there was any ice or water in the area where she fell and could only speculate as to the cause of her fall); See *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325, 332 (1992).

¶ 19 Here, plaintiffs provide no evidence to support the claim that there was ice on the tarmac and that David fell on the ice. David's testimony does not support these allegations and although David argues that other persons witnessed the fall, he has not presented a witness to corroborate his allegations. David merely speculates that there was ice on the tarmac because it was a cold, January morning, and further speculates that ice must have caused his fall. However, a claim for negligence cannot be based on speculation or conjecture as to the cause of the injury (*Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813, 817 (1981)) and mere speculation is not sufficient to withstand summary judgment (*Carlson v. Chicago Transit Authority*, 2014 IL App (1st) 122463, ¶ 23).

¶ 20 Plaintiffs also argue that the circuit court erred in granting summary judgment because a reasonable jury could find that United caused an unnatural accumulation of ice. However, as discussed above, David's negligence claim necessarily fails because he cannot show that a dangerous condition caused his fall and therefore, David cannot show a direct link between that cause and United's actions. See *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App. 3d 288, 294 (1992). No liability can exist unless the alleged negligence is the cause of David's injuries, and by failing to establish proximate cause, he has not sustained the burden of making a *prima facie* case for negligence. *Kimrough*, 92 Ill. app. 3d at 817. Therefore, we find the circuit court did

1-13-3369

not err in granting United's motion for summary judgment.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm judgment of the circuit court.

¶ 23 Affirmed.