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2018 IL App (4th) 170679-U

NO. 4-17-0679

FILED
June 7, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

TYLER SCOTT, a Minor, By and Through Her Guardian and Next Friend, THOMAS VAN HOOK; WAYNE JOHNSON, Individually; SKYLAR HASHMAN, a Minor, By and Through His Parent and Next Friend, JOE HASHMAN; and JOE HASHMAN, Individually,	)	Appeal from the Circuit Court of Logan County No. 15L3
Plaintiffs-Appellants,	)	
v.	)	Honorable
MCC NETWORK SERVICES, LLC,	)	William G. Workman,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Turner and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in granting summary judgment in favor of defendant.

¶ 2 In April 2015, plaintiffs, Tyler Scott, a minor, by and through her guardian and next friend, Thomas Van Hook; Wayne Johnson; Skylar Hashman, a minor, by and through his parent and next friend, Joe Hashman; and Joe Hashman filed a four-count complaint against defendant, MCC Network Services, LLC (MCC), seeking damages resulting from a motor-vehicle accident that injured Tyler and Skylar and resulted in the death of Misty Johnson. MCC filed a motion for summary judgment. In April 2017, the trial court granted MCC's motion. The court later denied plaintiffs' motion to reconsider.

¶ 3 On appeal, plaintiffs argue the trial court erred in granting summary judgment in

favor of MCC. We affirm.

¶ 4 I. BACKGROUND

¶ 5 This case concerns a single-vehicle accident in rural Logan County on the night of December 24, 2013. The accident occurred on an S-curve at the intersection of 600th Avenue and 2100th Street. Misty was operating a 1992 Ford F-150 truck, and her children, Tyler and Skylar, were passengers. No one was wearing a seatbelt. At the time of the accident, Misty had a blood-alcohol concentration of 0.155. An enclosed utility trailer owned by MCC sat unattended on the east side shoulder of 600th Avenue but slightly encroached over the road. A barricade and orange cones surrounded the trailer. After passing the trailer, Misty's vehicle left the road on the west side and rolled over several times. The accident claimed the life of Misty, and Tyler and Skylar were injured.

¶ 6 In April 2015, plaintiffs filed a complaint against MCC, alleging two counts of negligence (counts I (Tyler) and II (Skylar)) and two counts involving the Rights of Married Persons Act (750 ILCS 65/15 (West 2014) (commonly known as the Family Expense Act) (counts III (Tyler) and IV (Skylar)). In counts I and II, plaintiffs alleged MCC was under a duty to act with reasonable care for the safety of others but, despite that duty, negligently and carelessly stopped, parked, and/or left standing its utility trailer in violation of the Illinois Vehicle Code. See 625 ILCS 5/11-1301, 11-1304 (West 2014)). Plaintiffs also alleged MCC negligently and carelessly failed to provide visible signs, warning lights, or sufficient lighting to warn approaching motorists.

¶ 7 In count III, plaintiffs alleged Wayne Johnson is the stepparent and custodial guardian of Tyler and MCC's acts obligated him to satisfy the medical bills and other expenses incurred by Tyler. In count IV, plaintiffs alleged Joe Hashman is the biological parent of Skylar

and MCC's acts obligated him to satisfy the medical bills and other expenses of his son.

¶ 8 In its May 2015 answer, MCC admitted its employees left a utility trailer unattended east of the roadway north of the intersection of 600th Avenue and 2100th Street. While denying the trailer was parked on the roadway, MCC admitted the trailer "may have slightly encroached over the road."

¶ 9 In March 2016, MCC filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (735 ILCS 5/2-1005 (West 2016)). In contending it was not negligent as a matter of law, MCC argued plaintiffs could not show it was the proximate cause of the accident. Even if MCC's trailer was parked illegally, MCC argued it was not the proximate cause of the accident or plaintiffs' injuries and, at most, the location of the trailer arguably furnished a condition by which the injuries were made possible. MCC contended it "could not have reasonably anticipated there would be a drunk driver, driving too fast for conditions, who would swerve near its plainly visible trailer only slightly encroaching on a roadway with more than sufficient width for motorists to pass by." MCC attached several discovery depositions to its motion.

¶ 10 In her discovery deposition, Tyler testified she was 11 years old. On the night of the accident, she sat in the middle of the truck between her mother and Skylar. Tyler stated Misty "was going as fast as she could," and when Tyler looked at the speedometer, she said Misty was going "80" miles per hour. Tyler then told her to "slow down."

¶ 11 Skylar testified he was 15 years old. While they were driving home, Skylar remembered telling his mother to slow down. Misty was "sitting there like dancing and hitting the steering wheel like, you know, just messing around with the steering wheel, just like tapping on it and singing." Skylar told her to turn down the radio, and she told him "to 'shut the hell up'

and 'This ain't my first rodeo.' " The accident occurred shortly thereafter.

¶ 12 Wayne Johnson testified the accident occurred at approximately 10:35 p.m. on Christmas Eve. Misty had been drinking wine and champagne during the late afternoon and evening. On their way home, Wayne followed Misty on 600th Avenue. When Misty arrived at the curve, Wayne was "less than a quarter mile, around an eighth" of a mile behind her. He did not know how fast she was driving when she approached the S curve, but when he arrived at the curve, he was traveling at approximately 58 miles per hour. Wayne saw Misty's brake lights illuminate when she reached the curve. She then started swerving "just before the trailer." Wayne stated Misty's truck flipped over "several" times.

¶ 13 Logan County sheriff's deputy Jeremy Burdick testified he was dispatched to a rollover accident. At the scene, he noticed skid marks that began "just north of the intersection." The trailer had a barricade and cones around it, and Burdick stated it would have been visible to motorists traveling north on 600th Avenue. Also, "[t]here was room for motor vehicles to pass around the trailer."

¶ 14 Logan County sheriff's deputy Jason Kuhlman testified he had traveled through the curve at approximately 7:58 p.m. on the evening of the crash and noticed the trailer. He also observed a traffic barricade that "either had knocked over or blown over" and "was partially in the roadway." Kuhlman had no problems seeing the trailer as he approached it. He repositioned the barricade, moved out a cone with reflective silver tape around the top of it," and lined up the other cones "all around the trailer." When he arrived at the accident scene later on that evening, the cones and the barricade appeared to be in the same place where he had repositioned them earlier. Kuhlman saw skid marks north of where the curve ended.

¶ 15 Sean Kindred, a lieutenant with the Logan County sheriff's department, testified

the MCC trailer was on the right side of the road "with the tongue pointing to the north." The right side of the trailer was in a grassy area in the ditch and the left side "would have been right on the edge of the roadway." Kindred noted there were cones and a barricade around the trailer on the night of the accident. When asked if a motorist traveling northbound would have had room to drive around the trailer and still remain on the roadway, Kindred responded in the affirmative. On the night of the accident, Kindred stated the "air was clear," "visibility was good," and there was "no rain or fog."

¶ 16 Logan County sheriff's deputy Ryan Anderson testified he spoke with Wayne after the accident. When asked if he saw Misty apply her brakes at any time while going through the set of curves on 600th Avenue, Wayne stated he never saw brake lights.

¶ 17 Illinois State Police trooper Anthony Kink testified he was a certified accident reconstructionist and arrived at the accident scene at approximately 12:54 a.m. He found the first skid mark began after the curve ended in the roadway. He did not see evidence that Misty lost control when she would have passed the trailer. The distance between the beginning of the first tire mark and where Misty left the roadway was 286 feet. The distance from where Misty left the roadway to where the truck came to rest was 262 feet. Although he did not measure the distance between the trailer and the beginning skid marks, Kink agreed the trailer was a considerable distance to the south. Based on his examination, Kink opined "the driver's side tires would have left the roadway, and then she would have come back on the roadway and then *** jerked the wheel or overcorrected and then would have caused her to lose control of the vehicle." Kink also opined Misty's truck left the roadway as she was traveling "at a higher rate of speed, unable to negotiate the last curve, and then that is what caused her to go off the roadway and then overcorrect and eventually overturn."

¶ 18 When asked if it was possible that Misty swerved to miss the trailer, left the roadway, and reentered the roadway, Kink stated it was a possibility. However, Kink did not believe Misty swerved to miss the trailer, based on his "observations that night and the distance between the trailer and the initial going off the roadway." Kink ruled out the possibility of Misty swerving to miss the trailer because, if she had, "her tire marks would have started closer to the trailer than what they did."

¶ 19 In April 2016, plaintiffs filed a response to MCC's motion for summary judgment, arguing a triable issue of material fact existed as to whether MCC's actions in abandoning the trailer partially on the roadway and partially on the shoulder constituted a proximate cause of plaintiffs' injuries.

¶ 20 Plaintiffs attached a letter from Nathan Shigemura, an accident reconstructionist, to their response. The letter noted 600th Avenue is comprised of oil and chip, has no artificial lighting, and has a speed limit of 55 miles per hour. Northbound and southbound traffic on 600th Avenue encounter an S curve, and 2100th Street intersects 600th Avenue approximately in the middle of the curve. The roadway first curves to the left, becomes straight for a short distance, and then transitions into a right-hand curve. Upon a northbound approach to the S curve, a yellow-and-black, diamond-shaped sign warns motorists of the curve. Closer to the intersection, a series of three rectangular yellow-and-black chevron signs point left and warn of the curve. North of the intersection, three rectangular yellow-and-black chevron signs point to the right.

¶ 21 Shigemura's letter indicated the MCC trailer sat approximately 75 feet north of the intersection on the shoulder of the northbound lane. A plastic cone and a barricade were positioned several feet south of the rear of the trailer. Several cones were located along the side

and north of the trailer. Approximately 16 inches of the left side of the trailer encroached onto the roadway. The letter then stated as follows:

> "The Ford had negotiated the left curve and was approaching the intersection. Mr. Johnson stated that before the Ford reached the trailer the brake lights of the Ford came on and the Ford swerved to the left. These actions are consistent with Ms. Johnson['s] attempt to avoid colliding with the unattended, parked cargo trailer encroaching in the northbound lane.
>
> The Ford cleared the trailer but went wide to the left as it entered the right curve and partially drove off the roadway onto the southbound shoulder. The Ford then swerved to the right in an attempt to [reestablish] itself on the roadway. The Ford [reentered] the roadway but overcorrected and swerved to the left. The Ford began to rotate counterclockwise and left the roadway on the west side. The Ford continued through the southbound shoulder and drainage ditch and entered the farm field. Once in the farm field the Ford overturned and came to final position in the field on its roof."

¶ 22 Shigemura stated the first tire mark started approximately 357 feet north of the intersection. Based on a mathematical analysis, Shigemura stated the truck was traveling at approximately 49 to 53 miles per hour "at the beginning of the rollover event." Shigemura opined the "left curve would have affected the Ford driver's view of the area of the trailer and barricade" and "would reduce the time and distance available (as compared to an approach on a

straight roadway) to detect and recognize the hazard of the trailer parked in the roadway."

> "As the Ford approached the left curve and entered the left curve the headlights would not have illuminated the area of the trailer. The headlight beam patterns shine heavier to the right as compared to the left, thus the barricade and trailer would not be sufficiently illuminated until the Ford was oriented more in line with the trailer and barricade. Additionally, since the headlights would not have been shining in a relative perpendicular orientation to the reflective barricade, the effectiveness (advanced warning aspect) of the reflectivity would have been lost. This, too, would have reduced the time and distance available (as compared to an approach on a straight roadway) to detect and recognize the hazard of the trailer parked in the roadway."

¶ 23 Shigemura stated additional warning devices should have been utilized and located further south of the trailer and into the curve to provide earlier warning to approaching motorists. Shigemura concluded as follows:

> "The trailer, being parked where it was, in an "S" curve, in the roadway, unlit, with inadequate warning devices, created a hazardous situation and violated Ms. Johnson's expectations. This caused her to brake and swerve to avoid the trailer and subsequently have a crash. Had more effort been given to locating a safe spot where the trailer could have been parked completely off the roadway and to deploying additional warning equipment and

devices at more effective locations on 600th Avenue, this crash could have been prevented."

¶ 24 In May 2016, MCC filed a reply brief in support of its motion for summary judgment and argued there was "no evidence of a connection between the presence of the MCC trailer and Plaintiffs' accident." MCC noted the undisputed facts indicated Misty was legally intoxicated at the time of the accident; the trailer was plainly visible; Misty's truck never made contact with the trailer; the tire marks from Misty's truck began a "considerable distance past the trailer"; and, according to Lieutenant Kindred, the trailer was parked no more than 50 feet north of the intersection, yet Misty's truck left 600th Avenue 800 feet north of the intersection. While plaintiffs could argue the trailer created a condition which made the accident possible, MCC contended it was not enough to establish negligence or proximate cause.

¶ 25 MCC also filed a motion to strike Shigemura's letter, claiming it was improper and insufficient to raise a genuine issue of material fact. Along with it being unsworn, MCC argued the letter violated Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013) because it did not attach any of the documents upon which it relied; lacked foundation; and was conclusory, full of speculation, conjecture, and guesswork.

¶ 26 Thereafter, plaintiffs filed a supplemental response to MCC's motion for summary judgment and attached an affidavit signed by Shigemura. Therein, Shigemura set forth similar facts and conclusions as in his letter. He also opined to a reasonable degree of scientific certainty the trailer created an unreasonable hazard to the motoring public, the trailer was the cause of the crash, the crash would not have occurred had reasonable warning been given of the trailer's presence, and MCC's actions "were the cause of this single vehicle traffic crash."

¶ 27 In April 2017, the trial court issued its written order on MCC's motion for

summary judgment. Based on the undisputed facts, the court found "no evidence of a connection between the presence of the MCC trailer and Plaintiffs' accident." The court stated, at most, plaintiffs could argue the trailer created a condition which made the accident possible, "but even that is not enough to establish negligence or proximate cause." The court noted Misty's view of the trailer was unobstructed and she did not make contact with the trailer. The court also found Shigemura's letter was improper and insufficient to raise a genuine issue of material fact, as his opinions were based purely on speculation, conjecture, and guesswork. As no genuine issue of material fact existed in the case, the court granted summary judgment in favor of MCC.

¶ 28 Plaintiffs filed a motion to reconsider, arguing the trial court erred in granting summary judgment in favor of MCC because the court drew improper conclusions of fact, failed to consider all facts in the record, and misapplied the law. Plaintiffs claimed the court failed to consider the facts contained in Shigemura's affidavit and genuine issues of material fact existed. In August 2017, the court denied the motion to reconsider. This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. Summary Judgment

¶ 31 Plaintiffs argue the trial court erred in granting summary judgment in favor of MCC, claiming a genuine issue of material fact exists concerning whether MCC's actions were the proximate cause of plaintiffs' injuries. We disagree.

¶ 32 1. *Standard of Review*

¶ 33 "Summary judgment is appropriate where 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 201, 902 N.E.2d 645, 648 (2008)

(quoting 735 ILCS 5/2-1005(c) (West 2000)). "Summary judgment is a drastic remedy and should be allowed only when the right of the moving party is clear and free from doubt." *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291, 730 N.E.2d 1119, 1127 (2000). "Accordingly, where reasonable persons could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact." *Jackson v. TLC Associates, Inc.*, 185 Ill. 2d 418, 424, 706 N.E.2d 460, 463 (1998). "On appeal from a trial court's decision granting a motion for summary judgment, our review is *de novo*." *Bowles v. Owens-Illinois, Inc.*, 2013 IL App (4th) 121072, ¶ 19, 996 N.E.2d 1267.

¶ 34 2. *Negligence and Summary Judgment*

¶ 35 "To state a cause of action for negligence, a plaintiff must establish that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the plaintiff incurred injuries proximately caused by the breach." *Chandler v. Illinois Central R.R. Co.*, 207 Ill. 2d 331, 340, 798 N.E.2d 724, 728 (2003). Whether the defendant owes a duty to the plaintiff is a question of law for the court to decide. *Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 114, 649 N.E.2d 1323, 1326 (1995). However, "[t]he issues of breach and proximate cause are factual matters for a jury to decide, provided there is a genuine issue of material fact regarding those issues." *Espinoza*, 165 Ill. 2d at 114, 649 N.E.2d at 1326.

¶ 36 "Although the issue of proximate cause is generally a question of fact, at the summary judgment stage the plaintiff must present some affirmative evidence that it is 'more probably true than not true' that the defendant's negligence was a proximate cause of the plaintiff's injuries." *Johnson v. Ingalls Memorial Hospital*, 402 Ill. App. 3d 830, 843, 931 N.E.2d 835, 847 (2010); see also *Raleigh v. Alcon Laboratories, Inc.*, 403 Ill. App. 3d 863, 871,

934 N.E.2d 530, 537 (2010) (stating "summary judgment is proper as a matter of law when the plaintiff fails to present affirmative evidence that the defendant's negligence was arguably a proximate cause of the plaintiff's injuries").

¶ 37 Proximate cause consists of both "cause in fact" and "legal cause." *Lee v. Chicago Transit Authority*, 152 Ill. 2d 432, 455, 605 N.E.2d 493, 502 (1992).

> "Cause in fact exists where there is a reasonable certainty that a defendant's acts caused the injury or damage. [Citation.] A defendant's conduct is a cause in fact of the plaintiff's injury only if that conduct is a material element and a substantial factor in bringing about the injury. [Citation.] A defendant's conduct is a material element and a substantial factor in bringing about an injury if, absent that conduct, the injury would not have occurred. [Citation.] 'Legal cause,' by contrast, is essentially a question of foreseeability. [Citation.] The relevant inquiry here is whether the injury is of a type that a reasonable person would see as a likely result of his or her conduct." *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 258, 720 N.E.2d 1068, 1072 (1999).

If the plaintiff fails to establish an element of the negligence action, summary judgment in favor of the defendant is appropriate. *Espinoza*, 165 Ill. 2d at 114, 649 N.E.2d at 1326.

¶ 38 In *Galman*, 188 Ill. 2d at 254, 720 N.E.2d at 1070, Howard Dobson illegally parked his tanker truck in the street and 41 feet from the intersection. May Phillippart attempted to cross the street mid-block and in front of Dobson's truck, but she was struck by a car driven by Angela Galman. *Galman*, 188 Ill. 2d at 254, 720 N.E.2d at 1070. Dobson and the trucking

company argued the illegally parked truck was not a proximate cause of Phillippart's injuries, noting "Illinois courts draw a distinction between a condition and a cause." *Galman*, 188 Ill. 2d at 257, 720 N.E.2d at 1071. The supreme court stated, in part, as follows:

> "Indeed, if the negligence charged does nothing more than furnish a condition by which the injury is made possible, and that condition causes an injury by the subsequent, independent act of a third person, the creation of the condition is not the proximate cause of the injury. [Citations.] The test that should be applied in all proximate cause cases is whether the first wrongdoer reasonably might have anticipated the intervening efficient cause as a natural and probable result of the first party's own negligence." *Galman*, 188 Ill. 2d at 257, 720 N.E.2d at 1071.

¶ 39 The supreme court first considered whether the illegally parked truck was a cause in fact of Phillippart's injuries. *Galman*, 188 Ill. 2d at 259-60, 720 N.E.2d at 1073. Asking whether, absent the defendant's conduct, that injury still would have occurred, the court found that, had Dobson not illegally parked his truck on the street, "Phillippart's injuries almost certainly would not have occurred." *Galman*, 188 Ill. 2d at 260, 720 N.E.2d at 1073. While she may have still chosen to cross in the middle of the block, the court found "she would have had an unobstructed view of the roadway and presumably would have timed her crossing to avoid a collision with oncoming traffic." *Galman*, 188 Ill. 2d at 260, 720 N.E.2d at 1073.

¶ 40 The supreme court then considered whether Dobson's truck was the legal cause of Phillippart's injuries and noted "[t]he relevant inquiry *** is whether the injury is of a type that a reasonable person would see *as a likely result* of his or her conduct." (Emphasis in original.)

Galman, 188 Ill. 2d at 260, 720 N.E.2d at 1073.

> "The question is whether it was reasonably foreseeable that violating a 'no parking' sign at mid-block would likely result in a pedestrian's ignoring a marked crosswalk at the corner, walking to mid-block, and attempting to cross a designated truck route blindly and in clear violation of the law. Clearly, it would not. May Phillippart's decision to jaywalk, while undeniably tragic and regrettable, was entirely of her own making." *Galman*, 188 Ill. 2d at 261, 720 N.E.2d at 1073.

Thus, the court found Dobson's illegally parked truck was not a proximate cause of Phillippart's injuries. *Galman*, 188 Ill. 2d at 261, 720 N.E.2d at 1074.

¶ 41 In the case *sub judice*, it is questionable whether MCC's placement of its trailer on the side of the road was the cause in fact of plaintiffs' injuries. As the supreme court did in *Galman*, we ask whether, absent MCC's conduct, the injuries would have occurred. Given the speed at which Misty was driving and her level of intoxication, it is entirely possible the same result would have occurred even in the absence of MCC's trailer.

¶ 42 Even assuming, *arguendo*, MCC's acts were a cause in fact of the crash, MCC could not have reasonably anticipated the independent acts of Misty which caused the accident. "If a defendant's negligence does nothing more than furnish a condition by which injury is made possible, that negligence is not the proximate cause of injury." *Thompson v. County of Cook*, 154 Ill. 2d 374, 383, 609 N.E.2d 290, 294 (1993). It cannot be said, in the exercise of reasonable diligence, MCC could have anticipated, as a natural and probable result of its conduct in the placement of the trailer alongside the road, an intoxicated motorist driving above the speed limit

would fail to see the plainly visible and easily passable trailer with the cones and barricade around it, run off the road well beyond the trailer, lose control, and roll the vehicle into a field. Thus, as a matter of law, the proximate cause of plaintiffs' injuries cannot be MCC's conduct with reference to its trailer.

¶ 43 We find support for this conclusion in the case law. In *Jeanguenat v. Zibert*, 78 Ill. App. 3d 948, 949, 397 N.E.2d 1235, 1237 (1979), the plaintiff was riding as a passenger in a vehicle driven by the defendant, Mark Mills, when the vehicle collided with the car of Sharon Zibert. Zibert's car was parked parallel to the flow of traffic in a no-parking zone. *Jeanguenat*, 78 Ill. App. 3d at 950, 397 N.E.2d at 1237. At the time of the collision, the road was wide, and visibility was "good and unobstructed." *Jeanguenat*, 78 Ill. App. 3d at 950, 397 N.E.2d at 1237. Mills, who had consumed in excess of 10 to 15 beers, was turned toward the plaintiff and talking with him. *Jeanguenat*, 78 Ill. App. 3d at 950, 397 N.E.2d at 1237. Mills admitted the collision could have been avoided had he been paying attention. *Jeanguenat*, 78 Ill. App. 3d at 950, 397 N.E.2d at 1237. The trial court directed a verdict in favor of Zibert "on the theory that the action of parking her auto illegally furnished only a condition and was not the proximate cause of plaintiff's injury." *Jeanguenat*, 78 Ill. App. 3d at 950, 397 N.E.2d at 1238.

¶ 44 On appeal, the Third District noted "the negligence of defendant Mills, characterized as total inattention to the direction of travel, was a contributing cause to the collision." *Jeanguenat*, 78 Ill. App. 3d at 950, 397 N.E.2d at 1238. In affirming the trial court's directed verdict in favor of the defendant Zibert, the appellate court concluded "total and unexplained inattention to the roadway while driving an automobile is conduct so outrageously negligent and reckless that in the exercise of reasonable diligence it could not be anticipated." *Jeanguenat*, 78 Ill. App. 3d at 951, 397 N.E.2d at 1239.

¶ 45 Here, the trailer was plainly visible, and nothing indicates an approaching driver's view of the trailer was obstructed. No traffic was approaching Misty's truck from the opposite direction. Further, according to the evidence, drivers had plenty of room on the roadway to pass the trailer, and there is no indication anyone had trouble navigating that stretch of roadway near the trailer.

¶ 46 Plaintiffs rely in large part on *Kinsch v. Di Vito Construction Co.*, 54 Ill. App. 2d 149, 203 N.E.2d 621 (1964), and *Smith v. Armor Plus Co.*, 248 Ill. App. 3d 831, 617 N.E.2d 1346 (1993). We find those cases distinguishable.

¶ 47 In *Kinsch*, 54 Ill. App. 2d at 153, 203 N.E.2d at 623, a construction company placed a 10-ton cement block, which was four by eight feet and eight inches thick, along the side of the road, approximately three to four feet from the edge of the street. The block remained in the location for two to four weeks and was unaccompanied by any warning lights or signs. Early one morning, the plaintiff was traveling approximately 30 to 35 miles per hour in foggy conditions, such that the driver could not "see more than five feet ahead although his headlights were on." *Kinsch*, 54 Ill. App. 2d at 153, 203 N.E.2d at 623. The plaintiff lost control of the car and struck the block. *Kinsch*, 54 Ill. App. 2d at 153, 203 N.E.2d at 623.

¶ 48 In affirming the jury verdict in favor of the plaintiff, the First District addressed the issue of whether the defendant's negligence proximately caused the plaintiff's injuries and found as follows:

> "We think that there is sufficient evidence to support the jury's conclusion that the defendant's negligence was the proximate cause of the injuries. It is common knowledge that careful drivers must occasionally use the shoulder of a road as a part of the public

> highway in emergency and other situations. We think that any prudent man would foresee that by placing a massive obstruction on the shoulder of a road within 3 or 4 feet of the edge of the roadway, without illuminating it or erecting signs warning of its presence, injury might result to those who, in emergency situations or otherwise, might stray from the roadway itself onto the shoulder." *Kinsch*, 54 Ill. App. 2d at 155, 203 N.E.2d at 624.

¶ 49 In *Smith*, 248 Ill. App. 3d at 833, 617 N.E.2d at 1348, the driver of a disabled truck stopped the truck on the shoulder of the interstate. In the midst of a winter storm, the driver then abandoned the truck without placing warning flares behind the truck as required by Illinois law. *Smith*, 248 Ill. App. 3d at 833, 617 N.E.2d at 1348. During the snowstorm, Joshua Block, the driver of a vehicle carrying the decedent, had his view obscured by snow thrown onto the windshield. *Smith*, 248 Ill. App. 3d at 836, 617 N.E.2d at 1350. Unable to see, Block veered from the road and onto the shoulder, colliding with the abandoned truck. *Smith*, 248 Ill. App. 3d at 846, 617 N.E.2d at 1350.

¶ 50 The trial court granted summary judgment in favor of the defendants. *Smith*, 248 Ill. App. 3d at 839, 617 N.E.2d at 1352. The Second District reversed, finding a triable issue of material fact existed "as to whether defendants' actions in abandoning the truck on the shoulder during serious weather conditions without the use of statutorily required warning devices constituted a proximate cause of the collision." *Smith*, 248 Ill. App. 3d at 840, 617 N.E.2d at 1353. The court found the defendants could have "reasonably anticipated that during weather conditions impairing visibility a vehicle might for some reason temporarily stray across the line of the shoulder and strike an unlighted truck parked in proximity to the lane of traffic." *Smith*,

248 Ill. App. 3d at 841, 617 N.E.2d at 1353.

> "It is a reasonable inference that Block may have driven differently had he received any warning of the truck's presence so near the edge of the highway, and that such a change in his driving would have avoided the accident. Although the cause of Block's driving off the road is not entirely discernible from the record of the summary judgment proceedings, it is not clear that the accident was the result of any unforeseeable or extraordinarily careless behavior on his part. The weather conditions were poor; there had been numerous accidents previously; and whether Block was intoxicated at the time of the accident is debatable." *Smith*, 248 Ill. App. 3d at 843, 617 N.E.2d at 1355.

¶ 51 In contrast to plaintiffs' cases, the weather on Christmas Eve was clear, not foggy or snowing. Unlike in *Smith*, the MCC trailer was plainly visible, Misty's truck did not strike the trailer, and the trailer had devices warning of its presence. Moreover, whether Misty was intoxicated at the time of the accident is not in dispute.

¶ 52 "A genuine issue of fact exists where the material relevant facts in the case are disputed, or where reasonable persons could draw different inferences and conclusions from undisputed facts." *PNC Bank, National Ass'n v. Zubel*, 2014 IL App (1st) 130976, ¶ 13, 24 N.E.3d 869 (citing *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1257 (2004)). While issues of fact may have existed with regard to Johnson's testimony about the speed of Misty's truck and the location she may have swerved, the material relevant facts fail to show MCC's trailer was the proximate cause of the crash. See *Moore v. Kickapoo Fire*

Protection District, 210 Ill. App. 3d 736, 738, 569 N.E.2d 214, 215-16 (1991) (stating the reviewing court "must determine whether the case contains a genuine issue of fact sufficiently material to require the reversal of the trial court's order granting summary judgment"). As plaintiffs cannot establish MCC was the proximate cause of their injuries, we find the trial court did not err in granting MCC's motion for summary judgment.

¶ 53 B. Shigemura's Affidavit

¶ 54 Plaintiffs argue the trial court erred in denying its motion to reconsider, claiming the court failed to consider Shigemura's affidavit. We disagree.

¶ 55 As noted, plaintiffs attached a letter from Shigemura to their April 2016 response to MCC's motion for summary judgment. In May 2016, MCC filed a motion to strike the letter, arguing it was unsworn and was "conclusory and full of speculation, conjecture and guesswork." That same month, plaintiffs supplemented their previous response with Shigemura's affidavit, which contained similar facts as well as opinions to a reasonable degree of scientific certainty. In its April 2017 order, the trial court referenced Shigemura's letter but found it did not create a triable issue of fact. Instead, the letter consisted of opinions "based purely on speculation, conjecture and guesswork," and several of the opinions were "in direct conflict with the testimony and evidence submitted." Although no transcript of the hearing on plaintiffs' motion to reconsider is included in the record, plaintiffs admit the court indicated it considered Shigemura's affidavit.

¶ 56 Whether the trial court referenced Shigemura's letter or considered the substantially similar affidavit, the result is the same. Illinois Supreme Court Rule 191(a) (eff. Jan. 4, 2013) states an affidavit in opposition to a motion for summary judgment "shall not consist of conclusions but of facts admissible in evidence."

> "In general, an expert cannot base opinions on mere conjecture or guess. [Citation.] In other words, experts cannot base opinions on what may have occurred or what the expert believed might have happened in a particular case. [Citation.] Further, an inference of negligence cannot be established on inferences that are themselves speculative in nature." *Schuler v. Mid-Central Cardiology*, 313 Ill. App. 3d 326, 335, 729 N.E.2d 536, 544 (2000).

"Expert opinions based on guess, speculation, or conjecture as to what the witness believed might have happened are inadmissible." *Perona v. Volkswagen of America, Inc.*, 2014 IL App (1st) 130748, ¶ 51, 24 N.E.3d 806. Moreover, as the purpose of summary judgment is to determine whether a triable issue of fact exists, "[a] plaintiff cannot create a triable issue of fact by the conclusory affidavit." *Kreczko v. Triangle Package Machinery Co.*, 2016 IL App (1st) 151762, ¶ 31, 53 N.E.3d 1070; see also *Northrop v. Lopatka*, 242 Ill. App. 3d 1, 9, 610 N.E.2d 806, 812 (1993) (stating a "[p]laintiff cannot create a trial issue of fact by the conclusory affidavit of its expert").

¶ 57 In his affidavit, Shigemura claimed the trailer was approximately 75 feet north of the intersection, but he offered no explanation for that conclusion. He also claimed a mathematical analysis indicated Misty's truck was traveling at approximately 49 to 53 miles per hour at the beginning of the rollover event. However, Shigemura offered no basis for this conclusion, and it does not establish how fast Misty was traveling when she approached the trailer. While Shigemura relied on Wayne's testimony stating he was driving 58 miles per hour when Misty was passing the trailer, it cannot be inferred Misty was traveling at a reasonable

speed. Instead, the only evidence of Misty's speed came from her children, both of whom were concerned with her rate of travel.

¶ 58 Along with his facts, Shigemura also opined to a reasonable degree of scientific certainty the trailer "was the cause of this single[-]vehicle traffic crash," Misty "might have reacted differently if she had received reasonable warning of the trailer's presence," and MCC's actions "were the cause of this single vehicle traffic crash." Shigemura's opinions are based on speculation and conjecture about what might have occurred in this case. "Unsupported assertions, opinions, and self-serving or conclusory statements do not comply with the rule governing summary judgment affidavits." *Gassner v. Raynor Manufacturing Co.*, 409 Ill. App. 3d 995, 1005, 948 N.E.2d 315, 325 (2011). As Shigemura's affidavit, like his letter, failed to create a genuine issue of material fact, the trial court did not err in denying plaintiffs' motion to reconsider.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the trial court's judgment.

¶ 61 Affirmed.