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2018 IL App (5th) 170091-U

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).

NO. 5-17-0091

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JANIS BAIRD,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Christian County.
)	
v.)	No. 14-L-8
)	
PARK GLEN APARTMENTS and PACIFIC)	
MANAGEMENT CORPORATION,)	Honorable
)	Allan F. Lolie,
Defendants-Appellees.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Presiding Justice Barberis and Justice Overstreet concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's entry of summary judgment in favor of defendants is reversed and the cause remanded where the question regarding whether the incident giving rise to plaintiff's injury was reasonably foreseeable is a question of fact reserved for a jury determination.

¶ 2 This appeal arises from a two-count complaint filed by plaintiff, Janis Baird, against defendants, Park Glen Apartments and Pacific Management Corporation, alleging negligence in relation to an incident in which plaintiff was injured as she was exiting an apartment building owned by defendants. The trial court entered summary judgment in favor of defendants after concluding plaintiff's injury was not reasonably foreseeable as a

matter of law, and plaintiff appealed. For the following reasons, we reverse the court's order granting summary judgment in favor of defendants and remand this cause for a jury trial as to whether the incident giving rise to plaintiff's injury was reasonably foreseeable.

¶ 3

BACKGROUND

¶ 4 The relevant facts of this case are as follows. On October 14, 2012, plaintiff was injured as she was exiting an apartment building owned by defendants when a gust of wind blew the entranceway mat outside of the building causing plaintiff to fall. Plaintiff bumped her head and landed on her shoulder as a result of the fall. The mat was lying flat on the ground and was not secured to anything at the time of the incident. Defendants were not aware of a prior incident where the mat had blown due to wind.

¶ 5 On March 14, 2014, plaintiff filed a two-count complaint alleging negligence against defendants. The complaint asserted defendants owed a duty to the public to provide a safe means of ingress and egress from its premises. The complaint further asserted plaintiff was lawfully on defendants' premises at the time of the incident, and alleged defendants breached its duties by the following acts or omissions: (1) failed to properly secure the mat; (2) failed to properly warn the mat was not secure; and (3) failed to remove the mat during inclement weather. As a direct and proximate result of one or more of defendants' acts or omissions, plaintiff alleged she sustained severe and permanent injuries to her body; has in the past and will in the future sustain pain and suffering; has in the past and will in the future incur medical expenses; has in the past and will in the future sustain loss of enjoyment of life; and has in the past lost wages.

¶ 6 Defendants filed an answer and affirmative defenses on January 15, 2015, denying plaintiff's allegations. Defendants admitted it owed a duty to exercise ordinary care in providing a safe means of ingress and egress from the building, but denied any breach of that duty, and further denied the mat was not properly secure. Defendants' first affirmative defense asserted contributory negligence, arguing the contributory fault of plaintiff was more than 50% of the proximate cause of the alleged injuries and damages for which recovery was sought. Defendants' second affirmative defense gave notice that defendants intended to rely on such other defenses as may become available during discovery proceedings. Defendants demanded a trial by jury on these affirmative defenses.

¶ 7 Plaintiff filed an answer to defendants' affirmative defenses on January 15, 2015, denying the allegations of defendants' first affirmative defense. Plaintiff also moved to strike defendants' second affirmative defense, arguing no affirmative defenses were listed and it is appropriate to reserve the right to raise and assert such defenses at that time.

¶ 8 Defendants filed a motion for summary judgment and a memorandum of law in support thereof on October 12, 2016, arguing the high winds which blew the entranceway mat causing plaintiff to fall were an "Act of God and outside the control of Defendants." Defendants argued the incident was not foreseeable despite defendants' exercise of reasonable and ordinary care. Plaintiff filed a memorandum and response to defendants' motion for summary judgment on December 9, 2016, alleging the Act of God defense does not apply because securing the mat could have prevented plaintiff's injury. Defendants filed a reply to plaintiff's response to summary judgment on February 10,

2017, arguing there is no evidence to show defendants failed to exercise ordinary care and, therefore, defendants are entitled to summary judgment as a matter of law.

¶ 9 Following a hearing, the trial court entered an order granting defendants' motion for summary judgment on February 16, 2017. The court concluded plaintiff's injury was not reasonably foreseeable as a matter of law "[d]ue to the strange nature of this event," and found defendants committed no act or omission to cause plaintiff's injury.

¶ 10 This appeal followed.

¶ 11 ANALYSIS

¶ 12 This case is before us on appeal from the trial court's order granting summary judgment in favor of defendants. Plaintiff alleges the trial court (1) erred in finding as a matter of law that the failure to secure the mat was not a defect in the mat; (2) erred in finding as a matter of law that summary judgment was appropriate because defendants had no actual knowledge or notice of a defect in the mat; and (3) erred in finding as a matter of law that summary judgment was appropriate because the incident giving rise to plaintiff's injury was not reasonably foreseeable.

¶ 13 The disposal of a case by summary judgment is an expeditious procedure. *Finch v. Illinois Community College Board*, 315 Ill. App. 3d 831, 835 (2000). However, it is a drastic means of disposing of litigation which is appropriate only where the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12; *Irvington Elevator Co. v. Hesper*, 2012 IL App (5th) 110184, ¶ 10. This court construes pleadings, depositions,

admissions, exhibits, and affidavits strictly against the movant and liberally in favor of the opponent. *Morris v. Union Pacific R.R. Co.*, 2015 IL App (5th) 140622, ¶ 23. The disposal of a case by summary judgment should only be allowed where the right of the moving party is clear and free from doubt. *Finch*, 315 Ill. App. 3d at 835.

¶ 14 In order to withstand a motion for summary judgment, a plaintiff need not prove her case, but she must present a factual basis that would arguably entitle her to a judgment. *Bruns*, 2014 IL 116998, ¶ 12. A plaintiff in a negligence action must plead and prove the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and injury proximately resulting from the breach. *Bruns*, 2014 IL 116998, ¶ 12. If a genuine issue of material fact exists, the moving party is not entitled to summary judgment as a matter of law and summary judgment must be overturned. *Finch*, 315 Ill. App. 3d at 835-36. Where reasonable persons can draw different inferences from the facts presented, an issue of fact is considered to exist and summary judgment must be denied. *Unzicker v. Chambers*, 8 Ill. App. 3d 992, 996 (1972). Our review of a trial court's order granting summary judgment is *de novo*. *Hassebrock v. Deep Rock Energy Corp.*, 2015 IL App (5th) 140105, ¶ 38.

¶ 15 In this case, the trial court focused on foreseeability in granting defendants' motion for summary judgment. As the court stated, "[d]ue to the strange nature of this event, the court finds as a matter of law that such injury was not reasonably foreseeable." The court further concluded defendants committed no act or omission to cause plaintiff's injury. After careful consideration, we find the court erred in making such a determination, as

the question of whether this incident was reasonably foreseeable is not a question of law for the court to decide. Rather, it is a question of fact for a jury to decide.

¶ 16 Our supreme court has observed that when a person invites another upon his premises, Illinois law imposes a duty upon that person to exercise reasonable care for his visitor's safety and to warn the visitor of any defects not readily apparent. *Blue v. St. Clair Country Club*, 7 Ill. 2d 359, 363 (1955). It is well settled that while the existence of a duty presents a question of law for the court to decide, the issues of foreseeability, breach of duty, and causation are questions of fact reserved for a jury determination, assuming there is evidence in the record creating a genuine issue for trial. *Morris v. Union Pacific R.R. Co.*, 2015 IL App (5th) 140622, ¶ 36. Because the elements of negligence are distinct, it is essential at the summary judgment stage to keep the legal question of duty separate from the factual questions of foreseeability, breach, and causation to ensure the court does inappropriately decide factual issues that should be submitted to the jury. *Morris*, 2015 IL App (5th) 140622, ¶ 36.

¶ 17 Here, a genuine issue of material fact exists regarding the foreseeability of the wind that caused the mat to rise and injure plaintiff. This is a question of fact reserved for a jury determination. Thus, the trial court improperly concluded as a matter of law that this incident was not reasonably foreseeable. Accordingly, we reverse and remand this cause for a jury trial to determine whether this incident was reasonably foreseeable. In light of our disposition, we need not address plaintiff's remaining contentions regarding whether the court erred in finding as a matter of law that the failure to secure the mat was not a defect in the mat and whether the court erred in finding as a matter of law that

summary judgment was appropriate because defendants lacked actual knowledge or notice of a defect in the mat.

¶ 18

CONCLUSION

¶ 19 In sum, the question of whether this incident was reasonably foreseeable is a question of fact reserved for a jury determination. Accordingly, we reverse the trial court's order entering summary judgment in favor of defendants and remand this cause for a jury trial.

¶ 20 Reversed and remanded.