2019 IL App (3d) 180028-U

Order filed January 29, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

LINDA TAFT,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellant,	)	Peoria County, Illinois.
	)	
v.	)	Appeal No. 3-18-0028
	)	Circuit No. 16-L-177
SMG HOLDINGS, INC., d/b/a Peoria	)	
Civic Center,	)	Honorable
	)	Jodi M. Hoos,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: Summary judgment in favor of a venue owner was affirmed because the patron failed to present evidence to establish a material issue of fact regarding a causal connection between any negligence by the venue and the patron's fall.

¶ 2 The plaintiff, Linda Taft, appealed the grant of summary judgment in favor of the defendant venue owner, SMG Holdings Inc., d/b/a Peoria Civic Center, in a slip and fall case.

¶ 3 FACTS

¶ 4 The plaintiff went to a concert at the Peoria Civic Center, which was owned or maintained by the defendant, SMG Holdings, Inc. The plaintiff alleged that she was injured when she fell down metal stairs on her way to her seat. The defendant filed a motion for summary judgment, arguing that the plaintiff did not know why she fell and could not establish a *prima facie* case of negligence because she could not establish probable cause. The plaintiff responded that she could prove that the lighting caused her injury, not the stairs. The stairs were unlit in a darkened arena, defendant knew about the risk of harm from descending the cement to the metal stairs in the dark, and no usher was present to assist the plaintiff.

¶ 5 The plaintiff testified in her discovery deposition that she and her son went to a concert at the Peoria Civic Center on February 19, 2016. They arrived before the concert, but they were not able to get to their seats before the performance began due to heightened security at the venue, and the house lights had been dimmed before the plaintiff fell. The plaintiff testified that she and her son walked down an aisle where there was no usher, then down stairs from the mezzanine level to the arena floor, where their seats were located. She could tell when she got to the metal steps because she felt a shimmy but there were no lights on the steps. It was dark in the arena, and there were strobe lights on the stage. The plaintiff walked down about two of the metal steps before she fell. The plaintiff testified that she did not know what caused her to fall, but she did know that she did not miss a step. She believed that she cut her leg on the edge of one of the metal steps. She was transported to the hospital and received 32 staples for a laceration on her shin.

¶ 6 In his discovery deposition, Gerald Knappenburger, the supervisor for the ushers and security at the Peoria Civic Center, testified that the plaintiff fell on the metal steps that were part of retractable metal platforms of additional seating. There were no lights on the retractable metal

platforms. Knappenburger took his flashlight out to check the general area right after the plaintiff was injured and could not find any blood or defect in the stairs to indicate where the plaintiff fell. He also went back after the show as over and the house lights were on and could not find any blood or trace of an injury.

¶ 7 The trial court granted the defendant's motion for summary judgment. The court found that it was undisputed that the steps were hard to see because they were not lit and there were strobe lights on the stage. However, the plaintiff did not provide any causal connection between the lack of lighting and her fall. The plaintiff stated that she did not know why she fell, only that she did not miss a step or trip over something. The plaintiff did not allege or testify that she fell because she missed a step or tripped on an object that she could not see because of the lack of lighting. The plaintiff appealed.

ANALYSIS

¶ 8 The plaintiff argues that a number of different inferences can be made regarding the cause of the plaintiff's fall, but those inferences were not merely speculation. The plaintiff contends that she can establish proximate cause through circumstantial evidence, specifically, that she successfully navigated those steps numerous times while employed as an usher at the Civic Center, with the aid of a flashlight, and would not have fallen but for the absence of lighting in this case. Thus, she contends that the trial court erred in granting summary judgment on the basis that there was no genuine issue of material fact as to whether the defendant's negligence proximately caused the plaintiff's injury. The defendant argues that the plaintiff could not establish proximate cause because she did not know what caused her to fall.

¶ 9 Summary judgment is proper when "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." 735 ILCS 5/2-1005(c) (West 2016). To recover damages for the defendant's negligence, the plaintiff must prove that the defendant owed a duty of reasonable care to the plaintiff, that the defendant breached that duty, and that the breach was the proximate cause of the plaintiff's injury. *Majetich v. P.T. Ferro Construction Co.*, 389 Ill. App. 3d 220, 224 (2009). Proximate cause is ordinarily a question of fact in a negligence action, but it may be determined as a matter of law by the court where the facts as alleged show that the plaintiff would never be entitled to recover. *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257-58 (2004). We review *de novo* an order granting summary judgment. *Schultz v. Illinois Farmers Insurance Co.*, 237 Ill. 2d 391, 399 (2010).

¶ 10 Proximate cause is made up of two distinct requirements: cause in fact and legal cause. *Abrams*, 211 Ill. 2d at 258. A defendant's conduct is a cause in fact if that conduct is a material element and a substantial factor in bringing about the injury, *i.e.*, the injury would not have occurred absent the conduct. *Id.* Legal cause is a question of foreseeability; whether the injury is such that a reasonable person would see it as the likely result of her conduct. *Id.* Evidence of " 'proximate cause cannot be established by speculation, surmise, or conjecture.' " *Pommier v. Jungheinrich Lift Truck Corp.*, 2018 IL App (3d) 170116, ¶ 44 (quoting *Majetich*, 389 Ill. App. 3d at 224). "Absent affirmative and positive evidence that defendant proximately caused plaintiff's injuries, a plaintiff fails to establish the existence of a genuine issue of material fact." *Majetich*, 389 Ill. App. 3d at 224.

¶ 11 In *Majetich*, the parking lot of the shopping plaza was under construction and the old pavement had been removed. *Id.* at 221. There was a one- to two-foot step up from the parking lot to the sidewalk. *Id*. The patron fell as she approached the shop, and she later died as the result of head injuries. *Id.* No one witnessed the fall. *Id.* In a negligence action against the owners of

the shopping plaza, the owners filed a motion for summary judgment, arguing that the plaintiff could not prove proximate cause. *Id.* at 223. The motion was granted and affirmed on appeal. The court found that, while the plaintiff could rely on circumstantial evidence to establish proximate cause to defeat a motion for summary judgment, that evidence must make the conclusion probable rather than merely possible. *Id.* at 225. The court found that there was insufficient evidence to determine whether the plaintiff lost her balance due to her medical conditions or tripped for any one of countless reasons that people fall, or fell because of the defendants' negligence. *Id.* The plaintiff could only present evidence that the fall was merely possibly related to the negligence of the defendants. *Id.*

¶ 12 In *Berke v. Manilow*, the court also granted summary judgment on the issue of proximate cause. *Berke v. Manilow*, 2016 IL App (1st) 150397, ¶ 41. No one saw the apartment guest fall in the lobby, and he had no memory of the fall. *Id.* ¶ 1. The plaintiffs alleged that the guest fell because the threshold was too high and the door closed too fast. *Id.* ¶ 36. Even if the threshold and the door created a dangerous condition, the conclusion that it caused the guest's fall was pure speculation and that was not sufficient to establish a causal connection between the defendants' negligence and the guest's fall. *Id.* ¶ 41.

¶ 13 In this case, the plaintiff recalls her fall, but she could not say what caused it. She did not miss a step and did not trip on a foreign object on the stairs. It may well have been that she would not have fallen with the aid of lighting or a railing, but the fact that the lack of either caused her fall was just a possibility. It was equally probable that she was in a hurry and tripped.

¶ 14 The plaintiff argues that the defendant failed to provide any evidence that affirmatively showed that the plaintiff fell due to her own fault or that she would have fallen even with adequate lighting. However, while the plaintiff does not have a duty to try her case in opposing

summary judgment, she does have to provide a factual basis that arguably entitled her to judgment. See *Costello v. Illinois Farmers Insurance Co.*, 263 Ill. App. 3d 1052, 1054 (1993). Since she has only presented circumstantial evidence that her fall was possibly caused by the defendant's negligence, summary judgment was proper.

¶ 15 CONCLUSION

¶ 16 The judgment of the circuit court of Peoria County is affirmed.

¶ 17 Affirmed.