2012 IL App (2d) 110858-U
No. 2-11-0858
Order filed September 7, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

LYNNE S. SWEIG, Plaintiff-Appellant, v. BT McHENRY, LLC, THE CITY OF McHENRY, PM ENTERPRISES OF ILLINOIS, INC., d/b/a APOLLO COMMERCIAL MAINTENANCE, COMCAST OF CALIFORNIA/COLORADO/ ILLINOIS/INDIANA/MICHIGAN, LP, and ADVANCED COMMUNICATIONS, INC., Defendants-Appellees.	)	Appeal from the Circuit Court of McHenry County. No. 07-LA-347 Honorable Thomas A. Meyer, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Burke and Hudson concurred in the judgment.

ORDER

Held: Where defendants established that there was no genuine issue of material fact and they were entitled to judgment as a matter of law, the trial court's entry of summary judgment in their favor was affirmed.

¶ 1 Plaintiff, Lynne S. Sweig, appeals from the trial court's order granting summary judgment in defendants' favor. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Plaintiff filed a three-count fifth amended complaint against BT McHenry, LLC (BT), the City of McHenry (the City), PM Enterprises of Illinois, Inc., d/b/a Apollo Commercial Maintenance (PM), Comcast of California/Colorado/Illinois/Indiana/Michigan, LP (Comcast), and Advanced Communications, Inc. (Advanced). Plaintiff alleged defendants' negligence in connection with injuries she sustained when she fell from her wheelchair near a public sidewalk in McHenry, Illinois. BT was the owner of the mall adjacent to where plaintiff fell, and PM was its property manager. Comcast and Advanced had done some work in a utility easement at the site.

¶ 4 According to plaintiff's deposition testimony, she used a motorized wheelchair because she had multiple sclerosis. Plaintiff, who had her wheelchair for seven or eight years, never had any problems with it; the wheelchair was stable. Plaintiff usually rode the wheelchair at one speed, about halfway on the speed dial. During the summer of 2007, prior to the incident at issue, plaintiff had traveled in her wheelchair two or three times from her home by public sidewalk to the nearby Sears store at the corner of Route 31 and McCullom Lake Road in McHenry. The sidewalk on McCullom Lake Road ended in a ramp to facilitate access by handicapped persons. There was a pothole in front of the sidewalk in the driveway leading to the mall parking lot. Plaintiff had maneuvered her wheelchair each time to avoid the pothole.

¶ 5 Plaintiff testified that, on August 30, 2007, she went to Sears in her wheelchair on the same path she had before and successfully maneuvered around the pothole. After shopping, plaintiff began the trip home using the same route and her normal speed. As she came down the parking lot's driveway, she began turning her wheelchair to maneuver around the pothole to reach the sidewalk. She did not know how far she was from the pothole when she started turning. Plaintiff denied being

distracted or in a rush. When asked what happened next, plaintiff replied, "I gather my wheel on the wheelchair hit the edge of the pothole and threw me out." Plaintiff stated, "I don't recall exactly what happened, but I supposedly was thrown out of the wheelchair, rolling down into the street." Plaintiff explained, "The wheel must have hit and I flipped out." She "assum[ed]" that it was the wheel on the left side and "assume[d] it was a rear wheel. When asked how she fell, plaintiff responded, "I assume I was on the side, but again, a lot of this is assumption. This is two years ago." Plaintiff did not remember the actual fall. The last thing plaintiff remembered was attempting to avoid the pothole. She did not remember a bump or "anything like that." Plaintiff did not see the wheel hit the pothole, explaining, "but I'm pretty sure that's how it happened because I was near nothing else and there [we]re no other things in the vicinity that would have caused it."

¶ 6 Plaintiff testified that the next thing she remembered was a group of four to five people standing over her. No one attempted to move her. Plaintiff heard someone say they should call an ambulance because she was bleeding heavily. Plaintiff's daughter arrived while plaintiff was in the ambulance. No one at the hospital asked how the accident happened. When asked if she had told her family that the pothole caused the wheelchair to tip, plaintiff replied, "Yes, I feel it did." Plaintiff testified, "They claim I hit a curb. I was nowhere near a curb."

¶ 7 Plaintiff identified a photograph of the area where she fell. She marked the path she attempted to take and the spot where she believed her wheel hit the pothole. Because it was difficult for plaintiff to write, PM's attorney, with plaintiff's permission, drew a circle on the photo in the driveway at the curb near the street indicating where plaintiff said she had landed after falling.

¶ 8 Plaintiff acknowledged that she currently took medication for a seizure condition, but denied having epilepsy. She did not "go blank" when she had a seizure and did not have seizures very often.

Plaintiff testified that she did not think she had begun having seizures at the time of her accident but that she "could be wrong" and did not "know for sure."

¶ 9 On September 24, 2007, plaintiff filed a complaint against BT in which she alleged that, while she was traversing BT's parking lot to reach the sidewalk, "a wheel on her wheel chair became entangled in a pothole immediately in front of the sidewalk, and caused her to topple over." According to the complaint, BT was negligent in allowing potholes to accumulate, failing to warn of the dangerous condition of the parking lot and sidewalk, causing the potholes to exist, failing to maintain the parking lot, and violating provisions of the city's ordinances. Plaintiff subsequently amended her complaint five times, adding the remaining defendants and clarifying the location of her fall. Each complaint alleged substantially the same negligence on the part of each defendant. Plaintiff further alleged that the City, Comcast, and Advance conducted construction and trenching activities that created a dangerous and defective condition, and failed to properly restore the utility easement to its original condition upon completion of construction.

¶ 10 Ultimately, BT, the City, and PM filed motions for summary judgment, each attaching plaintiff's deposition transcript and arguing that plaintiff had failed to produce any evidence of proximate cause. In its motion, BT also argued that it did not own the property on which plaintiff fell, attaching the affidavit of an attorney, who averred that BT did not own the property. In its motion, the City additionally argued that the pothole was an open and obvious condition, against which the City had no duty to warn. PM's motion included an affidavit from its president, averring that PM had no contractual duty regarding potholes. Comcast subsequently filed a motion for summary judgment, adopting the motions of BT, the City, and PM.

¶ 11 Plaintiff responded, arguing that proximate cause and the property ownership were questions

of fact and that the deliberate encounter exception applied to negate the defense of an open and obvious condition. Plaintiff also challenged the attorney's affidavit and attached the transcript of deposition testimony in which the attorney admitted that he had no experience as a land surveyor.

¶ 12 BT, the City, and PM each filed a reply in support of its motion for summary judgment. The City attached the deposition transcript of Christopher Rohde, a paramedic who responded to the scene. Rohde testified that he found plaintiff next to the curb by her overturned wheelchair. Rohde believed that plaintiff had fallen where he found her. Rohde testified that plaintiff told him that she fell out of her wheelchair after hitting the curb. Rohde identified a photograph of the scene showing plaintiff's blood on the curb at the street. Rohde agreed that his report indicated that plaintiff said she was taking seizure medications, but he testified that he found no clinical indication that plaintiff suffered a seizure immediately before her fall.

¶ 13 The City also attached to its reply the deposition transcript of Officer Robert Roske of the McHenry police department. Roske testified that he found plaintiff partially in the roadway and partially in the driveway, approximately six to eight feet from the sidewalk. Plaintiff's wheelchair was tipped over in the driveway near the curb. Roske had to block a lane of traffic on McCullom Lake Road. Several persons at the scene told Roske that they had stopped to help plaintiff when they saw her lying in the street. Roske testified that plaintiff told him that she "made a bad turn" going down the driveway and tipped over. Plaintiff did not mention either the sidewalk or a pothole; if she had, Roske would have included it in his report.

¶ 14 On the day of the hearing on the summary judgment motions, Advanced, which had just recently been served with the fifth amended complaint, orally moved to join the other defendants' motions for summary judgment. The trial court granted Advanced's oral motion and allowed it seven

days to filed its appearance. After hearing argument on the summary judgment motions, the trial court granted summary judgment in defendants' favor. Relying on *Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813 (1981), the court concluded that there was a "complete absence of *** factual testimony from [plaintiff] linking the fall to the defect she has filed suit about." Plaintiff timely appeals.[1]

¶ 15 ANALYSIS

¶ 16 Plaintiff argues that the trial court erred in granting defendants' motions for summary judgment. Summary judgment is appropriate when the pleadings, depositions, and admissions on file, together with any affidavits, construed strictly against the movant and liberally in favor of the nonmovant, 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 2010); *Mills v. McDuffa*, 393 Ill. App. 3d 940, 948 (2009). "Although summary judgment can aid in the expeditious disposition of a lawsuit, it remains a drastic means of disposing of litigation and, therefore, should be allowed only where the right of the moving party is clear and free from doubt." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A defendant moving for summary judgment may either affirmatively

[1]Advanced subsequently filed its appearance pursuant to the trial court's order. Although at one point in the proceedings, plaintiff's counsel stated that "304 language" would be needed and plaintiff's notice of appeal indicates that the court's order was made final pursuant to an Illinois Supreme Court Rule 304(a) finding (Ill. S. Ct. R. 304 (a) (eff. Feb. 26, 2010)), the record contains no Rule 304(a) finding. It is clear from the record, however, that the court and the parties intended that the summary judgment would apply to Advanced upon the timely filing of its appearance. Accordingly, plaintiff appeals from a final, appealable order.

disprove the plaintiff's case by introducing evidence, which, if uncontroverted, would entitle the defendant to judgment as a matter of law, or may establish that the plaintiff lacks sufficient evidence on an element of the cause of action. *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A plaintiff need not prove her case at the summary judgment stage, but she must present evidentiary facts in support of each element of her cause of action. *Strutz v. Vicere*, 389 Ill. App. 3d 676, 678 (2009). We review the trial court's judgment *de novo*. *Williams*, 228 Ill. 2d at 417.

¶ 17 To maintain an action in negligence, a plaintiff must set out sufficient facts to establish that the defendant owed a duty of reasonable care to the plaintiff, the defendant breached that duty, and the breach proximately caused the plaintiff's injuries. *Majetich v. P.T. Ferro Construction Co.*, 389 Ill. App. 3d 220, 224 (2009). To establish proximate cause, a plaintiff must affirmatively and positively show that the defendant's negligence caused the plaintiff's injuries. *Keating v. 68th & Paxton, LLC*, 401 Ill. App. 3d 456, 473 (2010). Proximate cause may be established with circumstantial evidence. *Keating*, 401 Ill. App. 3d at 473. "Circumstantial evidence is the proof of facts and circumstances from which a jury may infer other connected facts that usually and reasonably follow, according to the common experience of mankind." *Barker v. Eagle Food Centers, Inc.*, 261 Ill. App. 3d 1068, 1072 (1994). While circumstantial evidence supporting more than one conclusion may be sufficient, "a fact cannot be established through circumstantial evidence unless the circumstances are so related to each other that it is the only probable, and not merely possible, conclusion that may be drawn." *Keating*, 401 Ill. App. 3d at 473 (citing *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 796 (1999)). "The existence of proximate cause cannot be established by speculation, surmise, or conjecture." *Majetich*, 389 Ill. App. 3d at 224. Although proximate cause is usually a question of fact, it may determined as a matter of law on a

motion for summary judgment if the facts as alleged show that the plaintiff would never be entitled to recover. *Keating*, 401 Ill. App. 3d at 472.

¶ 18 In the present case, the trial court found that there was no evidence linking plaintiff's fall to the pothole. We agree. In her deposition, plaintiff never testified that her wheelchair came into contact with the pothole. She stated that she "gather[ed]" the wheelchair hit the pothole, it "must have" hit the pothole, and she was "pretty sure" it did. When asked if she remembered telling her family that the pothole caused the accident, plaintiff replied, "I feel it did." Plaintiff did not remember a bump. She did not see her wheelchair hit the pothole, did not feel it hit, and could not even say how far away she was from the pothole when she turned her wheelchair to avoid it. Plaintiff's testimony amounted to speculation that could not affirmatively and positively show that defendants' alleged negligence in creating or allowing the pothole caused her to fall from her wheelchair. See *Majetich*, 389 Ill. App. 3d at 227 (affirming summary judgment in the defendants' favor where the plaintiff's decedent, an elderly woman with health issues, fell while negotiating a high step by reaching for a pole, because, although the woman told a witness that the step was too high, there was no evidence of why she lost her balance); *Snell v. Village of University Park*, 185 Ill. App. 3d 973, 977 (1989) (reversing judgment for the plaintiff on the jury's verdict where the plaintiff's decedent fell off of her bicycle near a defective curb, because absent evidence that she struck the curb, the court "cannot assume from the close proximity of the injured person to the defect that the defect was the cause of the fall").

¶ 19 While it is possible that plaintiff's wheelchair hit the pothole and caused her to fall, plaintiff produced no evidence that the pothole was the probable cause of her fall. Indeed, the record contains evidence of other possible causes. Rohde testified that plaintiff told him that she fell after her

wheelchair hit the curb. Roske testified that plaintiff told him that she made "a bad turn." Moreover, the evidence established that plaintiff and her wheelchair landed at the curb near or in the street (as reflected in Rohde's, Roske's, and plaintiff's testimonies), six to eight feet from the pothole (as estimated by Roske in his testimony). This fact does not support the probable inference that plaintiff's wheelchair hit the pothole, thereby causing her fall. Instead, if anything, the fact that plaintiff landed in or near the street would seem to contradict the inference she attempts to draw. On this record, it is no more probable that plaintiff's wheelchair hit the pothole than that it hit the curb or that plaintiff made "a bad turn." Because it is just as likely that plaintiff's wheelchair did not hit the pothole as that it did hit the pothole, the issue could not properly have gone to a jury. See *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 886 (2009) ("The existence of one fact cannot be inferred when a contrary fact can be inferred with equal certainty from the same set of facts."); *Wiegman*, 308 Ill. App. 3d at 795-96 ("[W]here from the proven facts the nonexistence of the fact to be inferred appears to be just as probable as its existence, then the conclusion that it exists is a matter of speculation, surmise, and conjecture, and the trier of fact cannot be allowed to draw it.").

¶ 20 Plaintiff takes issue with the trial court's reliance on *Kimbrough*. In *Kimbrough*, the plaintiff slipped and fell on a ramp as she exited the defendant's store. During her deposition, the plaintiff repeatedly stated that she did not know why she fell. *Kimbrough*, 92 Ill. App. 3d at 814. Although the plaintiff testified that she later noticed what appeared to be grease spots on the ramp, she did not know if her foot actually touched the grease and never checked the bottom of her shoe. *Kimbrough*, 92 Ill. App. 3d at 816. The appellate court affirmed the trial court's entry of summary judgment in the defendant's favor, noting that the plaintiff had stated repeatedly in her deposition that she did not

know why she fell, and did not know whether the spots were actually grease or whether they were slippery, and "most importantly, whether she had stepped on it." *Kimbrough*, 92 Ill. App. 3d at 817.

¶ 21 We agree with plaintiff that, in *Kimbrough*, the plaintiff could not positively identify any dangerous condition, whereas here, plaintiff presented undisputed evidence of the existence of the pothole. However, the court in *Kimbrough* stated that the plaintiff "could produce no evidence *** to show that even if there was some defect in the ramp, this object or this defect caused her fall." *Kimbrough*, 92 Ill. App. 3d at 817. Significant to the court was the lack of a causal connection between the alleged defect and the plaintiff. See *Kimbrough*, 92 Ill. App. 3d at 817 (noting "most importantly" that the plaintiff could not say if she had stepped on the grease). Thus, fatal to the plaintiff both here and in *Kimbrough* was the lack of evidence of physical contact with a defective condition.

¶ 22 Nonetheless, plaintiff maintains that *Kimbrough* is inapposite because the court there had no need to assess circumstantial evidence. She argues in her opening brief that she presented circumstantial evidence from which a jury could reasonably conclude that the pothole was a proximate cause of her fall. The purported circumstantial evidence on which plaintiff relies is her unequivocal testimony that she was attempting to maneuver around the pothole immediately before her fall, along with "the common knowledge that uneven pavement and potholes could make her wheel chair to become unbalanced."

¶ 23 Plaintiff's testimony that she fell while trying to avoid the pothole does not provide a factual basis necessary to support the probable inference that the pothole caused her to fall. Plaintiff's testimony that she was "pretty sure" that she hit the pothole because she was "near nothing else and there [we]re no other things in the vicinity that would have caused it" was conclusional. See *Barker*,

261 Ill. App. 3d at 1071 (affirming summary judgment for the defendant, and rejecting the plaintiff's "conclusional assertion" that the defendant's floor on which she fell must have been wet because " '[o]therwise, [she] wouldn't have slipped' "). Plaintiff's purported circumstantial evidence would require the fact finder to draw two inferences. First, from plaintiff's testimony that she fell while maneuvering around the pothole, the fact finder would need to infer that plaintiff's wheelchair actually hit the pothole, which, as discussed above, is entirely speculative. And, second, from that speculative inference, the fact finder would further need to infer that striking the pothole caused plaintiff's fall. Courts have consistently rejected this type of speculation and inference stacking. See *Barker*, 261 Ill. App. 3d at 1072 ("Even if plaintiff had proved that a spraying system was used by defendant [in its produce department] and sometimes caused wetness on the floor, we are not persuaded that a jury could reasonably infer that the floor was wet at the time and place of plaintiff's fall or that the fall in fact resulted from plaintiff's contact with that wetness."); *Leavitt v. Farwell Tower Limited Partnership*, 252 Ill. App. 3d 260, 268 (1993) (while there is no rule against basing inferences upon each other, "at some point, the probative value of such inferences becomes so weak that they should not be permitted"). Thus, absent evidence that plaintiff's wheelchair actually hit the pothole, "the common knowledge" that the pothole could unbalance her wheelchair was of no use.

¶ 24 The cases on which plaintiff relies for examples of sufficient circumstantial evidence of proximate cause are distinguishable. See *Wiegman*, 308 Ill. App. 3d 789 (the plaintiff testified that she did not know what caused her to fall on the bottom of the stairs but said that she did not trip on anything, witnesses testified that there was water on the floor where the plaintiff fell, and the plaintiff testified that she noticed later that the back of her dress was wet); *Grewe v. West Washington County Unit District No. 10*, 303 Ill. App. 3d 299 (1999) (there was testimony that someone fell in the same

spot prior to the plaintiff, the plaintiff's husband tripped over the plaintiff where she fell and noticed a spot on his pant leg, and a custodian testified that he used the same dry mop on the floor where the plaintiff fell that he used in another area, occasionally with an "Endust" type of product); *Ordman v. Dacon Management Corp.*, 261 Ill. App. 3d 275 (1994) (one witness heard the plaintiff's decedent fall and found him on an icy patch, and another witness and paramedics fell on the same ice trying to assist the decedent); *Housh v. Swanson*, 203 Ill. App. 3d 377 (1990) (the plaintiff fell from a second story balcony and was found with the allegedly defective condition, an antenna wire, wrapped around her legs); *Lapidus v. Union Oil Co. of California*, 181 Ill. App. 3d 116 (1989) (sufficient direct evidence of proximate cause where the plaintiff specifically testified that the "unevenness" between the defendant's driveway and the sidewalk, caused her to fall[2]); *Wright v. Stech*, 7 Ill. App. 3d 1068 (1972) (sufficient circumstantial evidence linking the defendant's unlit and littered stairway to the decedent's fall where a witness testified as to events immediately before and after the fall—that she heard the decedent on the stairs and then a loud thump, she found the decedent on the landing, and the decedent told the witness that she had fallen down the stairs).

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[2]In her opening brief, plaintiff includes a block quote (omitting the quotation marks) of the plaintiff's deposition testimony in *Lapidus* (181 Ill. App. 3d at 118-19) but omits several relevant statements that the court found dispositive. See, *e.g.*, *Lapidus*, 181 Ill. App. 3d at 121 (" 'I fell on the sidewalk near the driveway where it was uneven.' "). We do not condone the presentation of this incomplete quotation, especially without indicating the omissions. Counsel not only omitted two sentences of the plaintiff's answer to a question quoted by counsel, but also omitted the ensuing four questions and answers, and the subsequent exchange of two questions and answers quoted by the appellate court. We caution plaintiff's counsel to take care to avoid such conduct in the future.

¶ 25 Notwithstanding plaintiff's assertions to the contrary, plaintiff and defendants did not present conflicting evidence that created a disputed fact as to proximate cause, which would have required resolution by a jury. Rather, the issue before us is whether plaintiff presented a *prima facie* case of negligence. Because plaintiff's evidence allowed only a speculative inference on the element of proximate cause, she failed to establish a a *prima facie* case. See *Keating*, 401 Ill. App. 3d at 474 (holding that the plaintiff's speculative inference could not serve as the predicate for liability); *Jewish Hospital of St. Louis, Missouri v. Boatmen's National Bank of Belleville,* 261 Ill. App. 3d 750, 755 (1994) ("[O]n a motion for summary judgment, a fact will not be considered in dispute if raised by circumstantial evidence alone unless the circumstances or events are so closely related to each other that the conclusions therefrom are probable, not merely possible.").

¶ 26 In her reply brief, plaintiff shifted her argument to encompass the theory that proximate cause could be established from the direct evidence of the undisputed presence of the pothole and her undisputed testimony that she fell while she was attempting to avoid the pothole by maneuvering around it. Although plaintiff argued this "maneuvering" theory of proximate cause in the trial court, she then abandoned it in her opening brief. At oral argument, plaintiff revived the "maneuvering" theory. Despite pleading that contact with the pothole caused her fall,[3] she argued at oral argument that the proximate cause of her fall was her attempt to maneuver around the pothole, not physical contact between the wheelchair and the pothole. We conclude that plaintiff forfeited the "maneuvering" theory because she failed to raise it, develop it, and support it with authority in her opening brief. See *Forest Preserve District Of Du Page County v. First National Bank of Franklin*

[3]In her complaint, plaintiff alleged that the wheelchair "became entangled in a pothole" and that the wheelchair "caught in a pothole."

Park, 401 Ill. App. 3d 966, 976 (2010) (an argument raised for the first time in a reply brief is forfeited), *aff'd*, 2011 IL 110759; *Sakellariadis v. Campbell,* 391 Ill. App. 3d 795, 804 (2009) (the failure to assert a well-reasoned argument supported by legal authority is a violation of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008), resulting in forfeiture).

¶ 27 In any event, even absent forfeiture, under her "maneuvering" theory, plaintiff still cannot say what actually caused her fall. Plaintiff asserts in her reply brief that her "inability to testify with absolutely [*sic*] certainty as to the mechanism which caused her wheelchair to become unstable and tip over goes to the weight and credibility of her testimony" to be resolved by the trier of fact. Plaintiff's argument misses the mark. It is not her inability to testify with absolute certainty; rather, it is her inability to provide any cause whatsoever. That plaintiff fell *while* maneuvering around the pothole does not say *why* she fell. Given plaintiff's testimony that she successfully maneuvered around the pothole at least five times before her fall (on the way to Sears on the day of the accident, and on two previous round trips to Sears earlier that summer), plaintiff has demonstrated that there was nothing inherently dangerous about having to maneuver around the pothole. The only evidence in the record as to the actual cause of the fall was the deposition testimony of Rohde (plaintiff told him she hit the curb) and of Roske (plaintiff told him she made a bad turn). Accordingly, plaintiff's "maneuvering" theory fails for the same reason that her circumstantial-evidence theory failed—plaintiff presented no evidence of what actually caused her to fall. See *Strutz v. Vicere*, 389 Ill. App. 3d 676, 678 (2009) ("The occurrence of an accident does not support an inference of negligence, and, absent positive and affirmative proof of causation, plaintiff cannot sustain the burden of establishing the existence of a genuine issue of material fact." (Internal quotation marks omitted.)).

¶ 28 Viewing all of the evidence in the light most favorable to plaintiff, she failed to present any

evidence on the issue of proximate cause. See *Keating*, 401 Ill. App. 3d at 474 (holding that, where the plaintiff's suggested inference was speculative, there was no evidence of proximate cause). Accordingly, defendants were entitled to judgment as a matter of law. See *Strutz*, 389 Ill. App. 3d at 681 (affirming summary judgment in the defendants' favor despite an expert's affidavit opining that the stairway on which the plaintiff's decedent fell was unreasonably dangerous and violated city building codes, because no evidence addressed the actual cause of the fall). Given our holding, we need not address plaintiff's arguments regarding the ownership of the property or the deliberate encounter exception to the open-and-obvious-condition doctrine. See *Williams,* 228 Ill. 2d at 417 ("If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper.").

¶ 29 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 30 Affirmed.