2011 IL App (3d) 100685-U

Order filed October 3, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

GLORIA LOPEZ, Plaintiff-Appellant, v. BECK OIL COMPANY OF ILLINOIS, an ILLINOIS CORPORATION, Defendant-Appellee.	) Appeal from the Circuit Court) of the 13th Judicial Circuit,) La Salle County, Illinois,)) Appeal No. 3-10-0685) Circuit No. 09-L-74)) Honorable) Eugene P. Daugherity,) Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Schmidt concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held*: Plaintiff failed to present evidentiary facts that support her claim that defendant proximately caused her injury. Therefore, summary judgment in favor of defendant was appropriate.

¶ 2 Plaintiff, Gloria Lopez, filed suit against defendant, Beck Oil Company of Illinois, alleging that defendant negligently maintained its premises by allowing a slippery, wet condition to accrue on the floor, which caused plaintiff to slip and fall. Defendant filed a motion for summary judgment, which the trial court granted. Plaintiff appeals, alleging that summary

judgment was improper. We affirm.

¶ 3 On December 3, 2008, plaintiff fell shortly after entering defendant's store. The fall occurred at approximately 3 a.m. Snow had been accumulating outside of the store prior to plaintiff's entry and, according to plaintiff, there were approximately five inches of snow on the ground. Plaintiff filed a complaint in negligence seeking damages for her injuries.

¶ 4 Plaintiff specifically alleged that defendant directly or by agents and/or employees failed to: (1) warn or otherwise provide knowledge to plaintiff of the dangerous slippery, wet condition; (2) inspect, maintain and provide a plan to alleviate the dangerous condition; and (3) prevent the dangerous condition. Pursuant to her claimed damages, plaintiff requested a judgment against defendant in excess of $50,000.

¶ 5 Depositions were taken from plaintiff and defendant's employee. In plaintiff's deposition, she stated that when she first walked in defendant's store she noticed a little residual snow on the floor which made it wet. She was not sure where the water came from, but it looked like it was from snow that had come in and melted. Plaintiff further testified that her shoes were wet when she came into the store and that she slipped and fell about two feet into the store.

¶ 6 Kevin Johnson was also deposed. He testified that he was a cashier at defendant's store and that he was working during the early morning hours of December 3, 2008. He stated that his duties included sweeping and mopping the floors and that he had been trained on the proper way to sweep and mop. Johnson testified that he had mopped the floors at around 2 a.m. on December 3. According to Johnson, when he mopped he would put up caution signs at the front and back of the section that he was mopping. He would then wait for that section to dry and move on to another section.

¶ 7 Johnson testified that plaintiff was a regular at the store and that on the morning in question she came into the store a little after 3 a.m. He stated that plaintiff walked around the store before he lost sight of her behind a stack of boxes. He then heard plaintiff screaming, so he walked to where she fell and asked if she was okay. Johnson said that he found plaintiff lying on the floor behind the boxes. He further testified that a wet floor sign was located right by the boxes but that the floor was dry around the area where plaintiff fell.

¶ 8 On March 8, 2010, defendant filed a motion for summary judgment, arguing that plaintiff did not present facts to support her theory that the water upon which she fell was an unnatural accumulation. Defendant further contended that the record clearly indicated that plaintiff slipped and fell because of a natural accumulation of snow and ice. Plaintiff responded, arguing that there was evidence that defendant's employee mopped the floor within one hour of her slip and fall, and, therefore, there was a genuine issue of material fact regarding where the water came from.

¶ 9 Following a review of the record and briefs, the trial court granted defendant's motion for summary judgment. Plaintiff appeals.

¶ 10 Plaintiff argues that the trial court's grant of summary judgment for defendant was not appropriate. In cases involving summary judgment, we conduct a *de novo* review of the evidence in the record. *Espinoza v. Elgin, Joliet and Eastern Ry. Co.*, 165 Ill. 2d 107 (1995). Summary judgment is proper where the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the nonmovant, reveal that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Abrams v. City of Chicago*, 211 Ill. 2d 251 (2004). Although plaintiff is not required to prove

her case at the summary judgment stage, she must present evidentiary facts to support the elements of her cause of action. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881 (2009).

¶ 11 To prevail in a negligence action, the plaintiff must set forth facts establishing the existence of: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) an injury proximately caused by that breach. *Ford v. Round Barn True Value, Inc.*, 377 Ill. App. 3d 1109 (2007). If the plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper. *Espinoza*, 165 Ill. 2d 107.

¶ 12 The issue of proximate cause is a factual matter for the trier of fact to decide, provided there is a genuine issue of material fact regarding the issue. *Espinoza*, 165 Ill. 2d 107. When attempting to prove causation, a plaintiff must show circumstances that justify an inference of probability, as opposed to mere possibility. *Richardson*, 387 Ill. App. 3d 881. In a case such as this, plaintiff must allege sufficient facts so that the trier of fact could find that defendant was responsible for an unnatural accumulation of water, ice, or snow which caused plaintiff's injuries. *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325 (1992). It is well settled that business operators are not liable for injuries resulting from natural accumulations of water, ice, or snow that are tracked inside the premises from the outside. *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39 (2009).

¶ 13 In *Richardson*, 387 Ill. App. 3d 881, the plaintiff brought a negligence action for injuries sustained in a slip and fall in a drugstore. On the day of the fall, a light snow had fallen on the ground. The plaintiff did not know why he had fallen or what had caused him to fall, but assumed that the floor was wet. The court held that plaintiff had not shown that defendant had

proximately caused his injury because plaintiff had produced facts that suggested only a mere possibility, not an inference of probability. Due to the snowfall and the inability of plaintiff to show that the floor inside the store was wet before his fall, the court affirmed the trial court's grant of summary judgment for the defendant. The court stated that the existence of one fact cannot be inferred when a contrary fact can be inferred with equal certainty from the same set of facts. *Id*.

¶ 14 Here, plaintiff has failed to present evidentiary facts that support her claim that defendant proximately caused her injury. The only evidence that plaintiff has produced to establish an unnatural accumulation of water is that defendant's employee had mopped the floor approximately one hour before plaintiff slipped and fell. Other evidence established that it was snowing and that there were up to five inches of snow on the ground outside. Evidence also suggested that at the time of plaintiff's fall, the floor around plaintiff was dry. Plaintiff herself claimed that she saw water on the floor but that it looked like it was the result of melting snow. Further, plaintiff admitted that her shoes were wet prior to entering the store.

¶ 15 The evidence plaintiff produced is merely speculative and only establishes a possibility that water from the mopping caused the fall, not a probability. Absent any evidence that the liquid that caused plaintiff's fall was a result of defendant's employee mopping the floor, summary judgment in favor of defendant was appropriate, because there was no genuine issue of material fact.

¶ 16 For the foregoing reasons, the judgment of the La Salle County circuit court is affirmed.

¶ 17 Affirmed.

¶ 18 JUSTICE HOLDRIDGE, dissenting:

¶ 19 I respectfully dissent. The central inquiry is whether the plaintiff presented sufficient evidentiary facts to create a genuine issue of material fact as to an element of the cause of action, thus surviving a motion for summary judgment. *Richardson v. Bond Drug Co. of Illinois,* 387 Ill. App. 3d 881 (2009). Here, there are facts in evidence which create a genuine issue of material fact as to the cause of the plaintiff's fall. Johnson's deposition testimony supports the contention that the plaintiff fell in the back of the store near a product display and not in the front of the store near the door where snow might have accumulated. Photographic evidence would seem to support the factual contention that the fall occurred at the rear, rather than the front, of the store. Moreover, Johnson testified that he had mopped the area where the plaintiff fell approximately an hour before the fall. Given this factual dispute as to the location of the plaintiff's fall and the fact that the floor had been mopped within an hour of the fall, the contention that the plaintiff's fall was the result of a natural accumulation of melted snow and ice near the front door can only be accepted if Johnson's testimony is shown to be mistaken. The fact that the plaintiff's testimony as to the location of the fall is also unclear and only further establishes that the location and cause of the fall is a matter of factual dispute that must be left to the trier of fact.

¶ 20 I believe that the majority reads the holding in *Richardson* too broadly. In *Richardson*, the plaintiff did not know why he had fallen or what had caused him to fall. He merely assumed that the floor was wet. Other than the plaintiff's mere assumption, there was no evidence to establish the presence of a liquid on the floor prior to the defendant's fall. *Richardson*, 387 Ill. App. 3d at 886. Likewise, the defendant in *Richardson* merely "assumed, on the other hand, that

plaintiff's shoes were wet when he fell because it was snowing." *Id.* Given the conflicting assumptions, the court found that there was nothing more than the "mere possibility" that the plaintiff's fall was caused by the defendant's negligence. *Richardson*, 387 Ill. App. 3d at 886.

¶ 21 Here, unlike *Richardson*, the plaintiff has presented more than just an assumption that she must have fallen due to a wet floor. She has presented some evidence, in the form of Johnson's deposition testimony concerning the location of the fall and the fact that he had mopped the floor within the hour preceding the fall, which, if given credence by a trier of fact, would justify an inference of probability necessary to survive a motion for summary judgment. Because the record contains some evidence supporting more than a mere possibility of causation, I would reverse the trial court's order granting summary judgment to the defendant and would remand the matter for further proceedings.

¶ 22 For the foregoing reasons, I would reverse the judgment of the trial court.