2012 IL App (3d) 110786-U

Order filed August 21, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

MAUREEN REID, as Special Administrator of the Estate of Charles L. Reid, Deceased,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellant,	)	
v.	)	Appeal No. 3-11-0786 Circuit No. 08-L-100
AMERICAN HOIST & MAN LIFT, INC., and HUMPHREY MANLIFT COMPANY, INC.	)	Honorable Michael J. Powers,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting summary judgment in favor of a manlift inspection company and the manlift manufacturer where no one witnessed plaintiff attempt to board the manlift or fall two floors to the base of the manlift. Circumstantial evidence of proximate cause was based on mere speculation, surmise and conjecture.

¶ 2 Plaintiff, Maureen Reid, as special administrator of the Estate of Charles L. Reid,

brought a negligence suit against defendants, American Hoist & Man Lift, Inc. (American Hoist) and Humphrey Manlift Company (Humphrey), alleging that defendants were negligent in maintaining and repairing the nonskid treads on the steps of the belt manlift installed by Reid's employer. Plaintiff alleged that as a result of defendant's negligence, Reid fell to the first floor of the manlift and sustained fatal injuries. Following discovery, both defendants moved for summary judgment, claiming that plaintiff failed to establish proximate cause. The trial court entered judgment in favor of defendants. We affirm.

¶ 3 Reid was employed by Midwest Generation (Midwest) and had worked at the company's Joliet plant for two-and-a-half years. On March 31, 2006, he was working as an electrician, troubleshooting control circuits and lighting. At the end of his shift, he clocked out on the third level and followed his coworker, James Rhodes, to a manlift the workers used to travel between floors.

¶ 4 The manlift, manufactured by Humphrey, had an upper and lower belt. The lower belt ran between the first and fifth floors, and the upper belt carried workers from the fifth floor to the tenth. Both belts ran continuously, traveling approximately 75 feet per minute. At each floor there were two semi-circle openings, measuring 25-26 inches in diameter. One opening was for going up, and the other opening was for riders going down. At eight foot intervals, steps and handholds were attached to the manlift belt. Each step had a dimension of 16 inches by 14 inches and was covered with a rough tread that had been glued in place. The steps and handles were both painted blue.

¶ 5 To board the manlift, workers grabbed onto a handle located 55.5 inches above each step, and stepped onto the protruding step. When the lift arrived at the desired floor, workers

stepped off the lift as it continued to move. The lift contained no enclosure or safety belt to prevent a rider from falling off the manlift or through the floor openings.

¶ 6 A large cage-like enclosure housed the base of the manlift on the first floor. The workers had to open a door to enter or exit the area. Within the cage, the manufacturer had a sign attached to the lift that read:

"Manlift Instructions (1) Face the Belt (2) Use the Handhold (3) To Stop Pull Rope in Direction of Travel (4) New Employees Keep Off Until Instructed (5) Report Any Malfunctions (6) No Double Riding (7) No Tools, Materials or Equipment to be Carried on Manlift."

¶ 7 Midwest hired an independent firm, American Hoist, to perform monthly and annual routine maintenance of the company's manlifts beginning in 2003. American Hoist was responsible for checking all the parts of the manlift during the inspection and completed a detailed report listing the condition of various items as "good/fair" or "in need of repair." If American Hoist discovered that the manlift was not in compliance with industry standards, the inspector would alert Midwest that the manlift needed to be repaired or needed maintenance. While inspecting the lift, American Hoist employees often made minor repairs, or more significant ones if they had the necessary parts. If the parts were not available, American Hoist put together a quote and Midwest then approved the purchase order.

¶ 8 One of the items American Hoist checked was the treads on the steps. The treads wore out over time and frequently needed to be replaced or glued back down. American Hoist inspectors replaced the treads by scraping off the old material and spraying adhesive down for the new material. If only a few trends needed to be replaced during an inspection,

American Hoist could replace them without Midwest's approval.

¶ 9 In addition to American Hoist's monthly inspection, Midwest's electrical maintenance employees would perform weekly inspections of the manlift. They would check the lighting at each landing, and they would check the override bars to make sure the manlift would stop. They did not check the treads on the steps as part of their inspection.

¶ 10 On the day of Reid's accident, Rhodes traveled down the manlift first, ahead of Reid. He did not see Reid step onto the lift. He exited the manlift enclosure and began to walk to the showers. When he was several feet away, he heard a loud noise and turned to find Reid lying at the bottom of the lift in a fetal position. He rushed over to Reid and called to him, but Reid was unresponsive. Reid sustained massive head injures and was pronounced dead at the scene. No one witnessed Reid's fall.

¶ 11 Reid's wife, Maureen, filed suit against American Hoist and Humphrey as the special administrator of his estate. The complaint alleged that American Hoist improperly maintained and repaired the manlift system, failed to warn Midwest of the need to routinely repair nonskid safety treads, failed to identify the need to replace the nonskid safety treads, and failed to properly and timely replace the nonskid safety treads. The complaint further alleged that Humphrey failed to provide adequate instructions for the use and maintenance of the manlift and failed to place adequate warnings of the need to routinely replace the nonskid safety treads on the manlift.

¶ 12 During discovery, both parties deposed several witnesses, employees and experts. James Rhodes stated that he and Reid worked together on the day of the accident. Their shift started at 7 a.m. During their lunch break, Reid fell asleep in the lunch room. Rhodes woke

him up when it was time to return to work. After completing their work day, he and Reid went to their shift supervisor's office on the third floor to sign out. They took the manlift up to the office. Rhodes testified that both he and Reid planned to go back down to the first floor to the shop and shower after signing out. They signed out, and Rhodes walked toward the manlift. Reid was walking behind him. It is approximately 300 feet from the office to the manlift. In that distance, Reid and Rhodes were never walking together. Rhodes took the manlift down to the first floor. As he was walking toward the shop, he heard a crash behind him. He was 10 to 25 or 35 feet away. He turned around and saw Reid lying at the bottom of the lift face down.

¶ 13 Another worker, Tim Edwards, testified that Reid had no anxiety job performance issues. On the day of Reid's fall, Edwards was alerted there had been an accident and rushed to the manlift. He testified that Reid's body was at the bottom of the lift inside the cage. Reid had on a short sleeved T-shirt, and his hard hat was lying outside the cage.

¶ 14 Tim Sheppard, Reid's supervisor, also came to the scene. He testified that Reid's body was at the bottom of the cage slumped over the bottom platform. Sheppard testified that Reid's long-sleeved work shirt was lying within the caged enclosure, inches away from Reid.

¶ 15 Midwest conducted an incident investigation five days after the accident. The Midwest investigation report indicated that Reid weighed 357 pounds but was in good health. He did not suffer from a pulmonary attack or a heart condition prior to his death. His yearly company health scan did not show any problems. None of Reid's coworkers noticed any unusual behavior on the day of the accident.

¶ 16 The report noted that Reid's hard hat had been crushed on the left side and was found on the ground outside the cage. It concluded that Reid's fall was an accident of unknown cause. It noted that some contributing factors could have been that he was carrying his long sleeved shirt and that he was wearing bifocal safety eye wear, both of which may have impeded his ability to ride the lift safely.

¶ 17 The report also included an inspection of the manlift. The investigation team reviewed the manlift standards, which stated that the surfaces of the manlift steps should be covered completely by a non-slip tread securely fastened to it. The team concluded that the lift was in proper working order and that the steps and nonskid safety treads were in good condition.

¶ 18 The monthly inspection by American Hoist weeks before the incident revealed similar results. The inspection on March 17, 2006, indicated that the steps and treads were in good condition. No repairs were required. The manlift was temporarily removed from service following the accident and was used again on April 4. The April 18, 2006, inspection indicated that the nonskid treads on the steps needed to be replaced or repaired because they were lifting up around the edges and tearing.

¶ 19 David Anderson, an inspector for American Hoist, testified that he performed the inspections on the upper and lower manlifts at Midwest. During one inspection in February of 2004, he noted that the treads were worn and needed to be replaced. Based on his observations, Jim Anderson, from American Hoist, sent a letter to Midwest dated February 9, 2004, stating the treads "could become a safety issue in the near future" but "are not things that require immediate attention." The inspection in April of 2004 showed that the treads

were only in fair condition. Subsequent inspections indicated that the treads were in good condition and did not need to be replaced. Anderson acknowledged that the April 2006 inspection noted that some of the treads were lifting up, but he stated that the material itself was still in good shape.

¶ 20 Jerry Brown, a Midwest employee, testified that he discussed replacing the treads with Anderson in February of 2006. Anderson told him that Midwest should consider replacing all the treads at some point in time. Brown asked Anderson to give him a quote for replacing all the treads at once. Brown testified that he did not receive a quote from Anderson.

¶ 21 Both defendants moved for summary judgment, arguing that (1) they did not have a duty to Reid, (2) if they had a duty, they did not breach it, and (3) any alleged negligence on their parts was not the proximate cause of Reid's death.

¶ 22 Plaintiff filed three affidavits in response to defendants' motions. In the first affidavit, plaintiff's expert, Dr. Earnest P. Chiodo, stated that, in his opinion, the direct and proximate cause of Reid's fatal fall was the lack of instruction concerning the use of the manlift and the defects of the worn and unsafe treads, including poor color contrasting. He stated that although the type of glasses worn by Reid and the possibility of his shirt being caught on a portion of the manlift could have been factors, those causes were limited to the initiation of improper hand or foot placement.

¶ 23 Another expert for plaintiff, Dr. Shaku Teas, a forensic pathologist, opined that there was no medical evidence or forensic pathologic evidence of any kind to support a medical cause of Reid's death. She concluded that Reid was on the manlift and pivoted from 90

degrees to horizontal, striking the left side of his head on the top of the containment cage. The blow to the left side of Reid's head caused severe, potentially fatal injuries to his cervical spine. The final right-sided fall could have produced fatal injuries as well.

¶ 24 Plaintiff's third expert, safety consultant Gene Litwin, reviewed the investigation report, coroner's report, numerous photographs of the lift and employee depositions. He concluded that Humphrey failed to include appropriate instruction for riding the manlift. He also concluded that American Hoist had a responsibility to alert Midwest that the manlift violated American Society of Mechanical Engineers (ASME) standards by not having contrasting colors on the handholds and step treads. He stated that the dangerous condition of the safety treads and the handholds was the most probable cause of Reid's loss of footing and contact points on the lift.

¶ 25 Defendants' motions, as well as subsequent arguments by both parties, focused primarily on the issue of proximate cause. At the conclusion of the hearing, the trial court granted judgment in favor of defendants.

¶ 26 I

¶ 27 Plaintiff claims that the circumstantial evidence and expert affidavits give rise to the inference that Reid was on the manlift and fell due to the defects of the steps. She maintains that a question of fact remains for the jury to determine whether those defects were the proximate cause of Reid's death.

¶ 28 Summary judgment should be granted when the pleadings, depositions, and admission on file, together with any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS

5/2-1005(c) (West 2010). To withstand a motion for summary judgment, the nonmoving party must come forward with evidentiary material that establishes a genuine issue of fact. *Salinas v. Chicago Park District*, 189 Ill. App. 3d 55 (1989). Where the evidence before the court shows that a trial verdict would have to be directed, summary judgment is proper. *Bickerman v. Wosik*, 245 Ill. App. 3d 436 (1993).

¶ 29 Summary judgment in favor of defendant is appropriate where the plaintiff has failed to establish an essential element of the cause of action. *Rogers v. Matanda, Inc.*, 393 Ill. App. 3d 521 (2009). In a negligence action, the plaintiff must prove that (1) the defendant owed a duty of reasonable care to the plaintiff, (2) the defendant breached that duty of care, and (3) the breach was the proximate cause of the plaintiff's injury. *Majetich v. P.T. Ferro Construction Co.*, 389 Ill. App. 3d 220 (2009). Proximate cause must be demonstrated by establishing with reasonable certainty that the defendant's acts or omissions caused the injury. *Kellman v. Twin Orchard Country Club*, 202 Ill. App. 3d 968 (1990). While proximate cause is generally a question of fact, it becomes a question of law when the facts alleged indicate that a party would never be entitled to recover. *Bermudez v. Martinez Trucking*, 343 Ill. App. 3d 25 (2003).

¶ 30 As plaintiff in this case notes, proximate cause in a negligence action may be established through circumstantial, rather than direct, evidence that supports more than one logical conclusion. See *McCullough v. Gallaher & Speck*, 254 Ill. App. 3d 941 (1993) (sufficient circumstantial evidence defined as proof of certain facts and circumstances from which the jury may infer other connected facts). However, liability based on negligence cannot be predicated on mere surmise, guess or conjecture as to the cause of the injury.

Schultz v. Hennessy Industries, Inc., 222 Ill. App. 3d 532 (1991). Thus, the conclusion or inference that arises from circumstantial evidence must be one that can reasonably be drawn. *Bermudez*, 343 Ill. App. 3d at 30; see also *Kimbrough v. Jewel Cos.*, 92 Ill. App. 3d 813, 817 (1981) ("proximate cause can only be established when there is a reasonable certainty that the defendant's acts caused the injury").

¶ 31 Courts have held that to establish proximate cause to defeat a motion for summary judgment, circumstantial evidence must be of such a nature and so related as to make the conclusion more probable as opposed to merely possible. See *Bermudez*, 343 Ill. App. 3d at 30*; Bakkan v. Vondran*, 202 Ill. App. 3d 125, 131 (1990)*; Kellman*, 202 Ill. App. 3d at 975. In *Bermudez*, there was no evidence in the record indicating why or how the plaintiff lost control of his truck and collided with a barrier wall. The plaintiff testified that he only remembered driving the truck and waking up in the hospital, and the only other eyewitness, the passenger, testified that he was asleep when the plaintiff lost control. The expert who testified was also unable to provide testimony as to the cause of the accident. He opined that the defendant passenger was negligent in going to sleep, but he could not determine that defendant's negligence was the cause of the accident. The appellate court affirmed the trial court's grant of summary judgment, noting that any inference that the plaintiff lost control because the passenger was asleep and not sitting beside him was pure speculation and conjecture. *Bermudez*, 343 Ill. App. 3d at 31.

¶ 32 In *Bakkan*, the decedent was found dead near a ladder and scaffold, which were both tipped over. No one witnessed the decedent's fall. The plaintiff alleged that the scaffold created an unsafe condition in the workplace and that the condition was a proximate cause

of the decedent's death. The appellate court held that summary judgment in favor of the defendant was proper where the evidence merely showed that a ladder was positioned on top of the scaffold and that both pieces of equipment were tipped and leaning against a wall. The court noted that "[w]hile it is possible that decedent fell as a result of unsafe equipment, it is equally as possible, based on these facts, that he fell as a result of some other cause, wholly unrelated to the scaffold and ladder." *Bakkan*, 202 Ill. App. 3d at 131.

¶ 33 In *Kellman*, the plaintiff filed suit against the defendant country club for the death of her husband who was found on the floor of a shower stall. The plaintiff alleged that the country club was negligent in the design and maintenance of the stall. The evidence provided that while in another shower stall, decedent's friend heard two thuds but did not witness the accident. The plaintiff submitted affidavits of medical experts to establish that the plaintiff died as a result of falling on the shower floor. Additionally, an engineer opined that the shower stall was unreasonably dangerous because it was slippery and the grips in the shower stalls were inadequate. Despite these affidavits, the trial court granted summary judgment in favor of the defendant. In affirming, the appellate court ruled that "[t]he possibility that the alleged unreasonably dangerous shower stall and basin had caused decedent to slip and fall is insufficient to establish a causal relationship between defendant's alleged negligence and decedent's injuries." *Kellman*, 202 Ill. App. 3d at 975.

¶ 34 Like *Bermudez*, *Bakkan*, and *Kellman*, there is nothing in the record in this case from which it can be inferred that American Hoist's failure to properly inspect or repair the nonskid treads was the proximate cause of Reid’s death. No one saw Reid step onto the manlift. No one saw Reid reach for a handle. No one saw Reid fall off the manlift. The only

evidence before the trial court established that Reid was a large man, that he was wearing bifocal safety glasses and carrying a shirt as he approached the lift, and that he hit his head on the cage of the lift as he fell to the first floor. Any number of scenarios could have caused Reid to fall through the manlift opening or off the manlift as it traveled down two floors. Speculation may lead to the conclusion that Reid fell off a step on the lift, but none of the workers testified that the steps were slippery that day or that the treads caused them to loose their footing, and the inspection 14 days earlier stated that the treads were in good condition. Proper inferences cannot be based on mere conjecture or speculation as to what possibly happened to cause Reid's injury. See *Majetich*, 389 Ill. App. 3d at 227. The mere possibility that the alleged dangerous condition of the steps and handles caused Reid to fall to the first floor of the manlift is insufficient to establish a causal connection between defendant's negligence and Reid's death. See *Bakkan*, 202 Ill. App. 3d at 131.

¶ 35 Plaintiff cites several cases where circumstantial evidence as to proximate cause was found to be sufficient and summary judgment was reversed. See, *e.g.*, *Foreman v. Gunite Corp.*, 2012 IL App (1st) 091644; *Block v. Lohan Associates, Inc.*, 269 Ill. App. 3d 745 (1993); *McKanna v. Duo Fast Corp.*, 161 Ill. App. 3d 518 (1987), *abrogated on other grounds*, *Johnson v. United Airlines*, 203 Ill. 2d 121 (2003). In those cases, however, witness testimony established that the accidents were probably, not possibly, caused by defendant's negligent conduct. *Foreman*, 2012 IL App (1st) 091644, ¶ 17 (plaintiff's truck leaned and overturned; another driver testified that on the same day, defendant loaded his truck in the same manner, causing it to lean due to a shifting load); *Block*, 269 Ill. App. 3d at 757 (witness saw plaintiff start up the ladder and heard him say "hold it" just before he saw

plaintiff lying on the ground); *McKanna*, 161 Ill. App. 3d at 527-28 (co-worker saw plaintiff on the roof, saw him place his left hand on the hatch, and saw him turn around to descend moments before plaintiff fell).

¶ 36 This is a difficult case. The manlift installed by Midwest is a dangerous piece of equipment that includes few safety features to prevent employee's from falling. American Hoist, as the company responsible for inspecting the manlift, had a duty to make reasonable inspections and repair the lift in a reasonably safe manner. Here, however, plaintiff can provide little, if any, evidence as to how the accident occurred or what dangerous conditions on the manlift may have proximately caused it. While it is possible that Reid fell as a result of an unsafe step, it is equally possible that he fell as a result of another cause, completely unrelated to the tread on the step. Accordingly, the trial court properly entered summary judgment in favor of American Hoist.

¶ 37 Plaintiff argues that American Hoist also had a duty to make reasonable inspections and repairs. However, we need not reach that issue since we have determined that plaintiff failed to prove proximate cause as a matter of law. See *Lewis v. Chica Trucking, Inc.*, 409 Ill. App. 3d 240 (2011).

¶ 38 II

¶ 39 Plaintiff also claims that Humphrey's failure to provide proper instructions on the manlift itself was a proximate cause of Reid's death.

¶ 40 To prevail on a claim of negligence, the plaintiff must offer evidence to show that the defendant's negligence was arguably the proximate cause of the plaintiff's injuries. *Wilson v. Bell Fuels, Inc.*, 214 Ill. App. 3d 868 (1991). The non-movant need not prove his case at

the summary judgment stage; but he must show a factual basis to support the elements of his claim. *Ralston v. Casanova*, 129 Ill. App. 3d 1050 (1984). Thus, facts, not conclusions, must be presented. *Kay v. Village of Mundelein*, 36 Ill. App. 3d 433 (1975).

¶ 41 An expert's opinion is only as valid as the basis and reasons for the opinion. *McCormick v. Maplehurst Winter Sports, Ltd.*, 166 Ill. App. 3d 93 (1988). Where there is no factual support for an expert's conclusions, his conclusions alone do not create a question of fact. *Wilson*, 214 Ill. App. 3d at 875-76.

¶ 42 Here, there are no facts showing that Reid failed to read the warnings on the manlift or the sign on the wall, nor is there any evidence suggesting that Reid did not understand the dangers of the manlift. The evidence shows that Reid had been using the manlift on a daily basis for three years without incident. Moreover, there are no facts clearly identifying exactly how plaintiff fell. Thus, any allegation that Humphrey's negligence in failing to warn Reid was a proximate cause of his death is speculation. In addition, plaintiff's experts' affidavits do not explain how warnings placed on the manlift, rather than near the manlift, would have prevented Reid from falling off the lift as it traveled to the first floor. While proximate cause generally is a question of fact, these facts fail to establish the essential elements of a negligence action and are insufficient to survive summary judgment.

¶ 43 CONCLUSION

¶ 44 The judgment of the circuit court of Will County is affirmed.

¶ 45 Affirmed.