

No. 1-11-0102

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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LORRAINE LINDSEY,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09 L 4146
	)	
NANCY HAMILTON,	)	
	)	Honorable Jeffrey Lawrence,
Defendant-Appellee.	)	Judge Presiding.

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Justice Murphy delivered the judgment of the court.  
Presiding Justice Steele and Justice Salone, concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Plaintiff's deposition testimony that two screws were missing from the metal nosing on the top stair of a common stairway of her apartment building and the nosing caught her sandal and caused her to fall down the flight of stairs, presented a factual question sufficient to survive summary judgment and trial court's grant of summary judgment was improper.

¶ 2 Following an August 24, 2008, fall down the interior stairway of her apartment building, plaintiff, Lorraine Lindsey, filed a complaint on April 27, 2009, against defendant, Nancy Hamilton, her landlord and owner of the building. Plaintiff alleged defendant negligently failed

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to maintain the aluminum nosing of the stair, failed to inspect the stairway, and failed to warn of its defective condition leading to her fall and causing great pain and anguish. On October 14, 2010, after discovery had closed, defendant moved for summary judgment arguing that there was no evidence of a defect of which she had any actual or constructive notice of the alleged unreasonably dangerous condition.

¶ 3 The trial court granted summary judgment and this appeal followed. Plaintiff argues on appeal that the trial court erred in granting summary judgment in such a heavily contested factual case. She also asserts that sufficient question of material fact also exists as to whether defendant had notice of the defect and a duty to fix the defect or warn of the danger. For the following reasons, we reverse the judgment of the trial court and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff testified that on August 24, 2008, at around 8:00 p.m. she went from her apartment on the first floor at 821 South LaGrange Road, LaGrange, Illinois, to visit friends Curtis Marshall and John "Bobby" Absher in their second floor apartment in the same building. She took the interior stairwell up to the second floor, carrying two beers. When she arrived, plaintiff put the beers in the freezer and watched television with Marshall and Absher. Plaintiff did not recall herself, or the two men, drinking anything at the time. At around 10:00 p.m., plaintiff ran out of cigarettes and left to retrieve more cigarettes from her apartment.

¶ 6 Plaintiff testified that when she began to descend the stairs, which were linoleum covered with a metal nosing screwed on each stair, she believed that she caught her flip flop sandal on her right foot in the metal nosing of the first stair. She believes that this is how she lost her balance. Plaintiff stated that there were two screws missing from the metal nosing in this area.

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Plaintiff proceeded to fall down the flight of stairs, ending up lying on her stomach at the base of the stairs.

¶ 7 Plaintiff stated that there was no issue with the lighting in the stairwell. Plaintiff did not recall that the stairs were slippery, greasy, or obstructed by anything. Plaintiff stated that she did not notice missing screws when she went to visit Marshall earlier that evening and did not look down and see any missing screws right before she fell. Plaintiff stated that she must have looked at the nosing some time between her fall on that Monday and the following Friday when she inspected the stairs with her friend and saw that two screws that had been missing were replaced with two older-looking screws. Plaintiff could not recall specific details about her contacting defendant, but she stated that she called defendant approximately one month after the accident. Plaintiff told defendant that screws were missing when she fell, but were replaced shortly thereafter and defendant was "very noncommittal" in response.

¶ 8 Plaintiff testified that after she fell down the stairs, she heard heavy footsteps come down the stairs and saw her neighbor Greg Ota approach and ask if she was alright. After giving plaintiff a minute to gather herself, Ota helped pick her up. Marshall appeared during this time, but did not assist Ota. Ota helped plaintiff back to her apartment. He told plaintiff that he wanted to call defendant, but plaintiff told him there was no need. Ota gave her a cup of black coffee and left and plaintiff went to bed after drinking the coffee. Plaintiff testified that her whole right side hurt her immediately after the fall. Despite her pain, she felt that there was no need to call an ambulance. She said that she ended up with bruising on her right shoulder, thigh, arm and breast and she suffered a cut elbow.

¶ 9 Marshall testified that plaintiff frequently visited him at his apartment. The night of the

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fall, plaintiff was visiting him, drinking vodka and smoking cigarettes on his couch. Marshall testified that at some point plaintiff got up to go back to her apartment and "she was feeling good" and "a little tipsy" and she fell over him into the wall. He stated that plaintiff put her half-full glass on Marshall's table and prepared to leave. He told plaintiff to be careful and advised her to take the front stairwell because the steps were carpeted and easier to use than the back stairs.

¶ 10 Marshall testified that he heard a "boom, boom, boom" noise and he went out into the hallway. He testified that he saw Ota, but said that he was too old and plaintiff was too much for him to help pick her up. Marshall watched Ota help plaintiff up, give her some coffee and take her to her apartment. Marshall testified that he used the stairwell when doing laundry and never noticed a problem with the stairs or railing. However, plaintiff told Marshall that there were screws loose when he talked to her a couple days later about the fall.

¶ 11 Absher also testified that plaintiff hung out with him and Marshall on the night of her fall and watched a preseason football game with the men. Absher stated that plaintiff arrived with an approximately 12-ounce glass filled with straight vodka. Before she left, plaintiff finished her entire glass of vodka and stumbled over Marshall when she got up to leave. Absher did not know that plaintiff fell down the stairs until Marshall and Ota told him the next day that she fell down the stairs. The men told Absher that plaintiff fell because she was intoxicated.

¶ 12 Absher stated that plaintiff did not explain to him why or how she fell down the stairs. Plaintiff also did not indicate that there was anything wrong with the stairs. Absher stated that he never saw any issue with the stairs himself, but Ota told him that plaintiff said she fell because the stair "moved." Ota told Absher that plaintiff was drunk and he got her coffee to help

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sober her up.

¶ 13 Finally, Ota also provided deposition testimony. Ota stated that he found plaintiff laying at the bottom of the steps when he was leaving his apartment to get food. She appeared hurt and he asked if she wanted him to call an ambulance, but she declined. Ota said that plaintiff appeared disoriented and told him that she was intoxicated. She told him that she tripped down the stairs, but did not provide more details. Ota retrieved her flip flop from one of the top stairs, gave her some coffee and helped her to apartment. He did not see a glass, broken glass or any moisture or other obstacles on the stairs. He did not see anything wrong with the metal nosing on the stairs.

¶ 14 At the close of discovery, defendant filed a motion for summary judgment arguing that there was no evidence of an unreasonably dangerous condition on the stairs or that defendant could have known of the alleged condition. Following a hearing, the trial court granted defendant's motion without opinion. There is no transcript of the hearing on defendant's motion or bystander's report of the proceedings before the trial court. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Summary judgment may be granted when the pleadings, depositions, admissions and affidavits on file demonstrate no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008). The purpose of summary judgment is not to try a question of fact, but simply to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). Summary judgment is a drastic means of disposing of litigation and is appropriate only when, after construing the evidence on file strictly against the movant, that there is no dispute of facts and

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the right of the movant is clear and free from doubt. *Id.* We review a trial court's order granting summary judgment *de novo*. *Chicago Hospital Risk Pooling Program v. Illinois State Medical Inter-Insurance Exchange*, 397 Ill. App. 3d 512, 523 (2010). While our review is under a light most favorable to the nonmovant, we cannot ignore evidence unfavorable to the nonmovant and may sustain the trial court on any basis called for in the record. *Ruane v. Amore*, 287 Ill. App. 3d 465, 474 (1997).

¶ 17 To withstand summary judgment in a negligence action, a plaintiff must set out sufficient facts to establish the existence of a duty owed by the defendant to the plaintiff, a breach of that duty and an injury proximately resulting from that breach. *Sanchez v. Wilmette Real Estate and Management, Company*, 404 Ill. App. 3d 54, 59 (2010). The determination of whether a duty exists is a question of law that includes consideration of factors such as the foreseeability of injury as a result of action or inaction, the magnitude of the burden of guarding against the injury and currently prevailing public policies and social attitudes. *Hartung v. Maple Investment and Development Corp.*, 243 Ill. App. 3d 811, 813-14 (1993). The occurrence of injury must have been reasonably foreseeable. *Id.*

¶ 18 Plaintiff argues that decades of Illinois law in stairway cases must be ignored for this court to uphold the trial court's order granting summary judgment. She notes that to prevail on her negligence claim, she had to show that the stairs were unreasonably dangerous and that condition caused her injury and that defendant did not fix or warn licensees of the condition and risk involved. *Latimer v. Latimer*, 66 Ill. App. 3d 685, 689 (1978), citing Restatement (Second) of Torts § 342 (1965). Plaintiff relies principally on *Garshon v. Aaron*, 330 Ill. App. 3d 540 (1947), noting that it cites decades of case law involving stairway falls and has been cited itself

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favorably for several decades. Under *Garshon*, a defect is not latent where it can be discovered by the exercise of reasonable care or a reasonable inspection and these questions are questions of fact for the jury. *Id.* at 544-45.

¶ 19 Plaintiff asserts that, viewing the evidence in a light most favorable to her, there was a defect in the stairs that caused her to fall. She argues that her testimony that "she saw two missing screws and the nosing bent upward" supports a finding that, upon reasonable inspection, defendant would have seen the same problem and had a duty to fix the problem. She cites to the discussion in *Latimer* that notes that stairs are not inherently unreasonably dangerous, but where a defect, such as worn marble steps that form an uneven surface can form the basis for liability. *Latimer*, 66 Ill. App. 3d at 689. Therefore, she concludes that her testimony established that the missing screws on the stair nosing that led to her fall created an unreasonably dangerous condition and a sufficient defect to establish liability.

¶ 20 Plaintiff's argument with respect to duty mirrors her argument on the unreasonably dangerous condition. Under *Garshon*, she asserts that her testimony was sufficient to establish a duty. She maintains that if defendant had taken such an action in a proper and timely manner, her fall and injuries would have been avoided. Accordingly, she concludes that she provided sufficient factual support on the question of duty to create a question of material fact to withstand summary judgment under *Garshon*.

¶ 21 Defendant argues that summary judgment was proper because there was no evidence to support plaintiff's claim that there were missing screws. Defendant points to plaintiff's own testimony that she did not see any missing screws before she fell and claims that "there is simply no evidence that Defendant allowed a dangerous condition to exist on the stairway." Defendant

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adds that no other testimony or evidence was presented that there were any screws missing, or any problem at all with the stairs. She adds that *Garshon* and *Latimer* are distinguishable because *Garshon* involved an issue with a rotting wooden railing and *Latimer* involved the defendant's creation of a risk by placing remnant carpet in an area that created a hazard.

Accordingly, unlike those cases, there was no longstanding defect that was easily discoverable and defendant did not create any hazard, therefore, even accepting plaintiff's testimony, there was at best a latent defect that was not actionable. *Hartung v. Maple Investment and Development Corp.*, 243 Ill. App. 3d 811, 814 (1993).

¶ 22 Further, defendant argues that the evidence clearly demonstrates that plaintiff was intoxicated to the point that her motor skills were impaired and this was the likely cause of her fall. Defendant asserts that the trial court properly determined that there was no material issue of fact and plaintiff failed to establish that defendant owed her a duty. Therefore, she concludes that summary judgment was proper.

¶ 23 First, plaintiff's claim that she testified the nosing was "bent up" was made without any citation to the record and this court is unable to find support for that contention. While this is true, defendant also misinterprets the record in her arguments. Defendant incorrectly argues that no evidence was presented to support plaintiff's claim that a dangerous condition existed, concentrating on only part of plaintiff's testimony.

¶ 24 Defendant cites to plaintiff's testimony that she did not look down at the time she fell and did not see missing screws at that time. However, plaintiff also testified that screws were missing and she fell because her sandal got caught by the nosing at that spot. While all of the other witnesses deposed testified that they did not see any missing screws or other issues,

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viewing plaintiff's deposition testimony in the light most favorable to her, an issue of material fact exists.

¶ 25 Likewise, taking the evidence in a light most favorable to plaintiff, her testimony supports a finding that an unreasonably dangerous defect was present in a common area to establish a duty on behalf of defendant. The extent of that defect and whether it was sufficient to put defendant on notice are questions of material fact. Again, contrary to defendant's arguments, there was evidence presented of this defect and the drastic means of disposing of the litigation by summary judgment was in error. Accordingly, the trial court's judgment is reversed and this matter is remanded for further proceedings.

¶ 26

### III. CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the trial court is reversed and remanded for further proceedings.

¶ 28 Reversed and remanded.