

FOURTH DIVISION  
MARCH 21, 2013

No. 1-12-0528

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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WHITE ABURIME,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	09 L 5505
NORTHSHORE UNIVERSITY HEALTH	)	
SYSTEM, INC.,	)	The Honorable
	)	Drella C. Savage,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

*HELD:* Circuit court order granting defendant's motion for summary judgment affirmed where plaintiff failed to present an adequate factual basis to support his negligence claim.

¶ 1 Plaintiff White Aburime appeals an order of the circuit court granting defendant

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Northshore University Health System, Inc.'s (Northshore) motion for summary judgment. On appeal, Aburime argues that the court erred in granting Northshore's motion because he presented evidence from which a rational trier of fact could conclude that one of defendant's employees negligently injured him. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 2

## I. BACKGROUND

¶ 3 On May 10, 2007, plaintiff was employed by Aramark as a patient transporter. Aramark had a contract with Evanston Northwestern Hospital (Hospital) to provide personnel and various services, including patient transport services at the Hospital. As an employee of Aramark, Aburime had been providing patient transport services at the Hospital for eight years. At approximately noon that day, Aburime suffered a knee injury when his left knee came into contact with a rolling bed that he was using to transport a patient. A nurse and a patient care technician (PCT)<sup>1</sup> were both present at the time of the accident.

¶ 4 Aburime subsequently filed a negligence action against Northshore, the corporation that owned and operated the Hospital. In his complaint, Aburime alleged that on May 10, 2007, he "along with one of [Northshore's] agents, servants, and/or employees acting within the scope of said agency, service, and/or employment, was transporting a patient using a rolling bed." Aburime further alleged that Northshore and its employees owed him a "duty to use reasonable care in the transportation of patients so as not to negligently injure other individuals assisting in the transport." Finally, he alleged that Northshore breached its duty of care when one of its

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<sup>1</sup> In the record, PCTs are also referred to as CNAs (certified nursing assistants).

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employees operating within the scope of her employment with the Hospital, breached the duty of care by "commit[ting] one or more of the following acts and/or omissions:

a. Carelessly and negligently pushed the rolling patient bed with more force than was necessary under the circumstances, given Plaintiff's position relative to the rolling bed;

b. Carelessly and negligently pushed the rolling patient bed in a direction that was dangerous under the circumstances, given Plaintiff's position relative to the rolling bed;

c. Carelessly and negligently failed to stop the rolling bed from colliding with Plaintiff;

d. Carelessly and negligently failed to warn Plaintiff of the movement of the rolling bed when Defendant's agent should have known that Plaintiff was in danger of being struck by the rolling bed;

e. Otherwise carelessly and negligently transported the patient using a rolling bed."

¶ 5 Aburime asserted that his knee injury was a direct and proximate result of this breach of the duty of care.

¶ 6 Northshore filed an answer, denying the material claims of negligence advanced in Aburime's complaint. After the relevant pleadings had been filed, the parties commenced discovery.

¶ 7 In his deposition, Aburime explained that as a patient transporter he was responsible for transporting patients from their rooms to testing centers. Additionally, when patients were discharged, he was also responsible for transporting the patients from their rooms to the hospital's main entrance. Generally, only one patient escort was required for each patient; however, he explained that more than one person might be needed when a patient was larger in

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size or was hooked up to a lot of equipment.

¶ 8 Aburime testified that he received safety training from Aramark. During training sessions, he was taught how to transport patients and how to interpret hospital signs. He was also instructed to immediately inform his supervisor if he sustained any injuries while transporting patients. Prior to the injury to his left knee on May 10, 2007, Aburime testified that he had previously sustained other injuries at work including injuries to his shoulder and thumb. He never filed a worker's compensation claim for either injury, but received prompt treatment for his injuries in the Hospital's emergency room.

¶ 9 In February 2006, a tech in the emergency room hit Aburime's left knee with a hospital cart. Aburime reported the injury to his boss, Lillie Herron, received treatment from Doctor Clancy, his primary care physician, and completed physical therapy. Aburime did not have any difficulties walking or any other issues following the February 2006 incident that prevented him from working. Although Doctor Clancy wanted to perform an MRI on Aburime's knee in January 2007, Aburime did not undergo the test.

¶ 10 On May 10, 2007, while working the morning shift, Aburime suffered another injury to his left knee. At around 12 p.m., that afternoon, he received a radio dispatch to pick up a patient from one of the Hospital's testing centers and transport him to his hospital room located on the fourth floor. A nurse and a Patient Care Technician (PCT) were in the room when he arrived with the patient. Aburime maneuvered the bed into the room and was kneeling down to plug the bed into the wall when he "had the bump on [his] knee." Aburime explained that he was "kind of" facing the wall when the bed made contact with the front of his left knee. He testified the

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nurse was by the hospital room's door before the bed struck his knee and believed that "maybe [the nurse] was just trying to walk past and pushed the bed." Immediately afterwards, he could "barely walk" and reported the incident to his boss. He received treatment in the emergency room. Following the incident, Aburime was forced to take a number of sick days because he was unable to work due to the pain. He ultimately underwent two different surgeries to repair his knee. Although he has returned to work, he has been placed on "restricted duty" because he continues to experience pain in his knee.

¶ 11 Aburime did not recall the name of the nurse who pushed the bed into his knee or the name of the PCT. He described the nurse as being "white" and "tall" with "long hair." She was "not skinny." White knew that the woman was a nurse because "she was wearing the nurse uniform." However, he could not recall "what uniforms [nurses] were wearing at that time, 2007." Aburime explained that uniforms change "sometimes \*\*\* twice a year." Although he returned to work at the Hospital, White has not seen the nurse who caused his injury or the PCT that was present in the room at the time that the injury occurred.

¶ 12 Lillie Herron, an assistant manager of Aramark, has worked with Aburime for eight years and considered him a "good employee." She explained Aramark's affiliation with the Hospital and indicated that Aramark uses a computerized system to dispatch patient transporters throughout the Hospital. Although Aramark employs patient transporters, it does not employ any nursing staff. Based on her knowledge, the nurses who work at the Hospital are employed by Northshore.

¶ 13 Herron confirmed that she completed an incident report following Aburime's accident.

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She recalled that he came to her office at approximately 12:30 p.m. on May 10, 2007, to report his injury. At the time, White was "limping a little bit" and informed her that the PCT pushed a bed into his knee when he was attempting to plug the bed into the wall. White did not provide any names of the people in the hospital room at the time he was injured, and Herron did not try to find out their names. Herron did not recall White approaching her in February 2006 and telling her about a prior injury to his knee. Herron testified that it is not very common for a patient transporter to sustain repeated injuries on the job and that an employee would receive additional training if he kept getting injured at work.

¶ 14 Mary Dillon Grant, a clinical nurse manager at the Hospital, testified that she supervised the fourth floor of the hospital on May 10, 2007. Specifically, she oversaw the nurses and PCT's assigned to that floor. Grant confirmed that nurses and PCTs were employees of Northshore. At the Hospital, nurses are responsible for performing physical assessments of patients, dispensing medication and implementing physician orders. In addition, nurses and PCTs could be involved in moving patients from one room to another.

¶ 15 Grant never received any documentation regarding Aburime's injury and no members of her staff reported that they had "made a mistake" [*sic*] that day. Grant reviewed Aburime's description of the events surrounding his injury and opined that even if everything he said was true, none of the persons involved in the movement of the patient were negligent because "it d[id not] seem to be on purpose." In addition, although Grant agreed that the standard of care dictates that a bed should not be pushed into another individual during patient transport, she explained that she did not believe that bumping someone with a bed rose to the level of negligent conduct.

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¶ 16 Upon completion of the aforementioned discovery, Northshore filed a motion for summary judgment. Northshore argued that it was entitled to summary judgment because Aburime failed to present any facts that an agent of the Hospital was negligent. Specifically, Northshore argued: "Fact discovery was closed months ago, and plaintiff has not presented any facts that would identify the alleged tortfeasor, the exact location of the alleged incident or anything that would identify a witness to the incident. Pushing a hospital bed is not a negligent action in and of itself. Plaintiff has not and cannot offer any evidence or assert any facts that would tend to show that this unidentified nurse acted unreasonably or that the alleged tortfeasor was an employee of this defendant."

¶ 17 In support of its motion for summary judgment, Northshore affixed an affidavit completed by Mary Dillon Grant, the clinical nurse manager for the fourth floor of the Hospital on May 10, 2007. In her affidavit, Grant averred that it was the "established protocol" at the Hospital that all personnel report any alleged incident involving a nurse or PCT to appropriate Hospital employees, but that there was no record or documentation created or maintained by the Hospital regarding Aburime's injury. Grant further averred that "nothing in [Aramark]'s incident report or [Aburime's] current version of events in any way suggests that the unnamed nurse or unnamed PCT violated the applicable standard of care or acted in any way unreasonable."

¶ 18 Aburime filed a response contesting Northshore's motion for summary judgment. Initially, he urged the court to strike Grant's affidavit because it merely stated a conclusion rather than facts admissible as evidence in violation of Illinois Supreme Court Rule 191(a). In addition, he argued that summary judgment not proper because a genuine issue of material fact existed as

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to whether one of Northshore's employee's conduct was negligent when she pushed a bed into his knee.

¶ 19 In a written order, the trial court granted Northshore's motion for summary judgment. Initially, the court agreed with Aburime that Grant's affidavit was legally insufficient because it "simply state[d] that the unnamed nurse complied with the reasonable standard of care without citing to any specific facts in support thereof." Notwithstanding the deficiencies in the affidavit, the court nonetheless found that Northshore was entitled to summary judgment. In its written disposition, the court observed:

"[T]he record is devoid of any factual information that links Plaintiff's injuries to the unidentified individual who Plaintiff claims was one of [Northshore's] employees.

\*\*\* [T]here is not enough factual evidence to establish that this unknown individual was in fact an employee of Defendant hospital or holding herself out as one of Defendant's agents. This unknown individual could have been a nurse, PCT, [or an] independent contractor \*\*\*.

Furthermore, the parties have completed written and oral discovery in this case. Therefore, in considering all of the evidence in this matter, this Court finds no genuine issue of material fact exists that connects any employee of Defendant who committed a negligent act [in] this case. \*\*\* Liability cannot be predicated upon surmise or conjecture as to the cause of the injury; proximate cause can only be established when there is a reasonable certainty that defendant's acts caused the injury. [Citation].

Based on the overwhelming lack of factual evidence in this case, Plaintiff cannot

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state a *prima facie* case of negligence."

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, Aburime contends that the circuit court erred in granting Northshore's motion for summary judgment, because he "has provided evidence from which a trier of fact could conclude that one of [Northshore's] employees injured him." He acknowledges he was unable to name the woman who injured him, but maintains that he provided a physical description of the woman as well as a description of the uniform that she was wearing, which established her employment status with Northshore. In addition, Aburime argues that he presented evidence that the nurse breached her duty of care when she pushed a rolling bed into his knee, which ultimately caused his injuries. Accordingly, because he presented a *prima facie* case of negligence, Aburime argues that the circuit court's order must be reversed.

¶ 23 Northshore responds that the circuit court properly granted its motion for summary judgment because there are "glaring factual voids in this case." Northshore observes that Aburime failed to come forward with any facts to establish the identity of the person who caused his injury. In addition, because Aburime was facing the wall at the time when he injured his knee, he has no firsthand knowledge to support his theory that someone, namely an agent of Northshore, pushed or caused the bed to come into contact with his knee. Because Aburime's entire theory is "premised on surmise and conjecture," Northshore argues that the circuit court's order must be affirmed.

¶ 24 Summary judgment is appropriate when "the pleadings, depositions, and admissions on

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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 judgment as a matter of law.” 735 ILCS 5/2-1005(c)(West 2006). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A genuine issue of fact exists where the material relevant facts in the case are disputed, or where reasonable persons could draw different inferences and conclusions from undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). To survive a motion for summary judgment, the nonmoving party need not prove his case at this preliminary stage of litigation; however, the plaintiff must present some evidentiary facts to support each element of his cause of action, which would arguably entitle him to judgment. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 885 (2009); *Garcia v. Nelson*, 326 Ill. 2d 33, 38 (2001). Although summary judgment has been deemed a “drastic means of disposing of litigation” (*Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)), it is nonetheless an appropriate mechanism to employ to expeditiously dispose of a lawsuit when the moving party’s right to a judgment in its favor is clear and free from doubt (*Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001)). A trial court’s ruling on a motion for summary judgment is subject to *de novo* review. *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009).

¶ 25 To prevail on a negligence claim, a plaintiff must establish that the defendant owed the plaintiff a duty of care, that the defendant breached that duty, and that the breach of that duty proximately caused plaintiff’s injury. *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 42

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(2009); *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001). A defendant's negligence may be shown through both direct and circumstantial evidence. *Barker v. Eagle Food Centers, Inc.*, 261 Ill. App. 3d 1068, 1072 (1994). Ultimately, if a plaintiff cannot establish an element to support his cause of action, summary judgment in favor of the defendant is proper. *Pavlik*, 323 Ill. App. 3d at 1063.

¶ 26 Here, although not expressly stated, Aburime seeks to hold Northshore liable under a *respondeat superior* theory. The general rule of law is that an injured party must seek relief from the person who caused his injury. *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 163 (2007). The doctrine of *respondeat superior*, however, is an exception to this general rule, and permits a plaintiff to hold a principal liable for the negligent conduct of its agent. *Bagent*, 224 Ill. 2d at 163; *Moy v. County of Cook*, 159 Ill. 2d 519 (1994); *Daniels v. Corrigan*, 382 Ill. App. 3d 66, 75 (2008). A presumption of agency arises from an employer-employee relationship (*Pyskaty v. Oyama*, 266 Ill. App. 3d 801 (1994)), and under the doctrine of *respondeat superior* an employer can be held liable for an employee's tort committed within the scope of the employee's employment (*Bagent*, 224 Ill. 2d at 163-64).

¶ 27 In this case, there is no dispute that Aburime has never identified the woman who allegedly caused his injury. Aburime, however, contends that this omission is not fatal to his claim because he nonetheless established that the woman was a nurse and was thus, an employee of Northshore.<sup>2</sup> While the testimony of Mary Dillon Grant established that nurses are employees,

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<sup>2</sup> We note that Aburime initially reported to his boss, Lille Herron, that it was a PCT, not a nurse, who purportedly caused his injury.

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rather than independent contractors of Northshore, the record does not contain any facts to support Aburime's contention that the woman who reportedly caused his injury was, in fact, a nurse. During his discovery deposition, Aburime testified that although he was only able to provide a general description of the woman as "white," "tall" "not skinny" with "long hair," he was able to identify the woman as a nurse based on the "nurse uniform" that she was wearing. However, he was unable to provide any description whatsoever of the uniform itself because uniforms are changed frequently, "sometimes \*\*\* twice a year." Absent an identification of the woman, or at the very least, the uniform she was wearing, Aburime's contention that the woman was a nurse employed by Northshore, who owed him a duty of care, is merely speculative and insufficient to withstand Northshore's motion for summary judgment. See, e.g., *Benson v. Stafford*, 407 Ill. App. 3d 902, 912 (2010), quoting *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999) ("Mere speculation, conjecture or guess is insufficient to withstand summary judgment").

¶ 28 Even if Aburime could establish the woman's employment status with Northshore, we nonetheless find that the circuit court's order granting Northshore's motion for summary judgment was proper because Aburime cannot satisfy the element of proximate cause necessary to succeed on his negligence claim.

¶ 29 In Illinois, there is no presumption of negligence based on the mere occurrence of an accident. *Rotche v. Buick Motor Co.*, 358 Ill. App. 3d 507, 516 (1934); *Strutz v. Vicere*, 389 Ill. App. 3d 676, 678 (2009); *Dinkins v. Ebbersten*, 234 Ill. App. 3d 978, 992 (1992). Rather, to prevail on a negligence claim, the plaintiff must establish the element of proximate cause and

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" 'affirmatively and positively show' " that the defendant's negligence caused the injury for which he seeks to recover. *Keating v. 68th & Paxon, LLC*, 401 Ill. App. 3d 456, 473 (2010), quoting *Bermudez v. Martinez Trucking*, 343 Ill. App. 3d 24, 29 (2003). Although proximate cause can be established through circumstantial evidence (*Keating*, 401 Ill. App. 3d at 473) "a plaintiff must show circumstances which justify an inference of probability, as opposed to mere possibility" (*Richardson*, 387 Ill. App. 3d at 886).

¶ 30 Here, Aburime cannot affirmatively and positively show that an employee of Northshore caused the bed to move and strike his knee. In his complaint, Aburime alleged that the accident occurred while a Northshore employee was helping him transport a patient in the Hospital. At his discovery deposition, however, Aburime testified that he was behind the patient's movable bed and was bending down to plug the bed into the wall when "it hit [him] on the knee."

Although he acknowledged that he was "kind of" facing the wall when the bed made contact with his left knee and indicated that the woman he believed to be a nurse was initially by the doorway of the hospital room before the bed struck his knee, Aburime explained that "*maybe* [the nurse] was just trying to walk past and pushed the bed." It is apparent from Aburime's testimony that the explanation he provided as to how his injury occurred is not based on facts or logical inferences, rather it is based on speculation and conjecture, and is insufficient to establish causation. See, e.g., *McCormick v. Maplehurst Winter Sports, Ltd.*, 166 Ill. App. 3d 93, 100 (1998) (summary judgment in favor of the defendant affirmed where the plaintiff only offered "speculation and conjecture as to how [his] accident occurred"); *Leavitt v. Farwell Tower Ltd.*, 252 Ill. App. 3d 260, 268 (1993) (affirming the circuit court's order awarding summary judgment

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in favor of the defendant where the plaintiff could only offer a "probable scenario" as to how the accident occurred).

¶ 31 We acknowledge that a plaintiff need not prove his case at the summary judgment stage. *Garcia*, 326 Ill. 2d at 38; *Richardson*, 387 Ill. App. 3d at 885. However, he must nonetheless present some evidentiary facts to support his cause of action. *Id.* Here, based on Aburime's failure to present an adequate factual basis to support his negligence claim, we conclude that the circuit court properly granted Northshore's motion for summary judgment.

¶ 32

### III. CONCLUSION

¶ 33 Accordingly, the judgment of the circuit court is affirmed.

¶ 34 Affirmed.