2014 IL App (2d) 140243-U
No. 2-14-0243
Order filed October 1, 2014

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CONSTANCE KREBS,	)	Appeal from the Circuit Court
	)	of Kendall County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11-L-104
	)	
VALLEY BAPTIST CHURCH, INC.,	)	Honorable
	)	Robert P. Pilmer,
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendant summary judgment: on plaintiff's premises-liability claim, there was no evidence that defendant had actual or constructive notice of the alleged dangerous condition; on plaintiff's general negligence claim, there was no evidence that defendant created the condition.

¶ 2 Plaintiff, Constance Krebs, sued defendant, Valley Baptist Church, Inc., for damages sustained when she slipped and fell on a wet floor located on defendant's premises, the Valley Baptist Church. The trial court granted defendant summary judgment, finding that there was no evidence that defendant had actual or constructive notice of the liquid on the floor or caused the liquid to be on the floor. Plaintiff timely appealed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff testified at her deposition that, on January 29, 2010, she went to the Valley Baptist Church in Oswego for a women's fellowship meeting, along with her aunt, Janice Parkhurst. They arrived at approximately 6:45 p.m. for the 7 p.m. meeting and parked in the parking lot. It was cold, and there was snow on the ground. Plaintiff was wearing "non slip nurse's type shoes" and a "[m]id calf or below" length skirt. They entered the building and walked on a carpeted floor toward Pastor David Hemphill's office. It took about one minute to reach the entrance to the office. The flooring in front of Hemphill's office door was vinyl. There was a secretarial area with a desk located adjacent to the entrance to Hemphill's office. When plaintiff arrived at the area directly outside of the office, she stopped at the secretary's desk. She asked Hemphill if he had a minute to talk, and he waved her into his office. Plaintiff started talking to Hemphill, and, as she did so, she stepped onto the vinyl floor, first with her left foot then her right. Plaintiff did not look at the vinyl floor before she stepped onto it; she was looking at Hemphill, who was sitting at his desk about three feet away and looking at her. As she stepped onto the floor, she felt her right foot slip out from under her, and she fell. After falling, plaintiff lay on her back for about three or four minutes, with the lower half of her body in Hemphill's office. Plaintiff got herself up and told everyone that she needed to go to the hospital. Hemphill got a wheelchair for plaintiff and brought plaintiff to her car. Parkhurst drove plaintiff to the hospital.

¶ 5 Plaintiff further testified that she did not look at the floor after she had fallen, but that her skirt felt wet. The wetness on her skirt was located "[f]rom about an inch above [plaintiff's] knee down to the bottom of [her] skirt and around the back." She also had liquid on her hand from pushing herself up. The liquid did not have a color. She did not smell the liquid or

otherwise determine what it was, but she believed that it was water. According to plaintiff, the liquid on the floor caused her to fall. She did not know how long the liquid had been on the floor before she fell or how wide an area the liquid covered. She agreed with her counsel on cross-examination when he estimated that the area of wetness on her skirt was at least three square feet and inferred that that was the size of the area of liquid on the floor. She also agreed that Hemphill could see her and the floor when he waved her into his office.

¶ 6 Plaintiff further testified that other people were present when she fell, specifically Jackie Berenyi and Lynn Wise. There were also "a handful of others that were chitchatting in little groups," but she could not recall their names. She did not see anyone walk on the vinyl floor before she fell, and there was no one sitting at the desk outside Hemphill's office or standing in the secretarial area.

¶ 7 Plaintiff was aware of general complaints having been made to Hemphill "[t]hat there were too many kids running in and out of the office, bringing water or soda in and out of the office and spilling it" on the vinyl floor. According to plaintiff, Hemphill "has a bathroom off of his office, and his children would often go in there with their friends to either use the bathroom or get a drink." Hemphill had six children; four lived with him on defendant's premises. On the night that she fell, there were kids "all over" but she did not see any of them spill anything. She was not aware of anyone spilling anything on the night that she fell.

¶ 8 Hemphill testified that in January 2010 he worked for defendant as a pastor. He lived on defendant's premises with his wife and four of his six children. (His two oldest children were away at college.) Defendant had two other employees: Scott Salisbury, a custodian, who worked about 12 hours per week; and Sandra Awalt, a secretary, who worked from 9 to 3 p.m. On a typical Friday, which was the day of the accident, Hemphill would be in his office all day,

usually leaving only for lunch. He and Awalt would be "constantly moving back and forth between a copy room and [his] office," putting together the church bulletin. His children would regularly come to his office to visit.

¶ 9 Hemphill testified that the flooring located outside of his office door was laminate. When he sat at his desk, he did not have a direct line of vision out of his office door; he could see people coming in only at an angle. There was a bathroom in his office that only his wife and children had access to. Hemphill testified that, on the day of the accident, he had last walked across the laminate floor to return his office about 10 minutes before plaintiff fell. He was not drinking or eating anything at that time. He did not see anything on the laminate floor. During that 10-minute period before plaintiff arrived, no one else had entered his office. Hemphill could not specifically recall whether his children were present on the day of the accident. He recalled that no children of church members were present for the ladies' fellowship meeting that evening.

¶ 10 Hemphill testified that, when plaintiff arrived, he was sitting at his desk and his office door was open. Plaintiff stopped outside of his office by the secretarial desk to speak with him. She wanted to speak privately, so she went around the desk to enter his office. As she did so, he heard a commotion and "saw her slide into [his] office." When asked whether any other people were in the area surrounding the secretarial desk, Hemphill stated: "I don't recall anyone being in the area, but I can't say either way if there was somebody that was out of my view. I could not see anybody in my view." After plaintiff fell, Parkhurst and Berenyi came to help; "there was a flood of people after that." Plaintiff said that she was hurt and remained on the floor to "gain her composure" for about 10 minutes. Hemphill retrieved a wheelchair from a storage room and eventually wheeled her to her car. Hemphill recalled seeing a "very minimal" amount of snow on the edge of plaintiff's shoe.

¶ 11 Berenyi testified that she was standing by the secretary's desk when she saw plaintiff fall. She could not remember if she could see the laminate floor. Berenyi could see Hemphill sitting at his desk, and Hemphill could see out of his office door. Plaintiff hit the doorway to Hemphill's office when she fell, ultimately landing on her back. Plaintiff's entire body was in Hemphill's office. Berenyi walked around the secretary's desk to help plaintiff. She never looked at the floor to determine what caused plaintiff to fall. She walked on the laminate floor to help plaintiff after plaintiff had fallen. She never saw anyone spill anything on the floor. She did not know if Hemphill would have been able to see liquid on the floor while seated at his desk.

¶ 12 Berenyi testified that she could not recall whether Parkhurst was present when plaintiff fell. There were other women standing around the area, but Berenyi could not remember if they left before or after plaintiff fell. Berenyi could not recall if any of Hemphill's six children were present on the day plaintiff fell. The two youngest boys often "run[] around the church and the parking lot" with other children. She did not know if anyone had ever made any complaints to Hemphill about his children. She knew that there were complaints about the children running in the parking lot, because people were concerned for their safety. She was not aware of any complaints about liquid on the laminate floor.

¶ 13 Parkhurst testified that she arrived at the church with plaintiff and that they walked in together. When plaintiff walked across the laminate floor, she slipped and fell. Parkhurst saw plaintiff as she was falling. Parkhurst was not talking to plaintiff when she fell; Parkhurst was talking to some other people. Parkhurst testified that she did not observe the floor before plaintiff fell. Parkhurst observed a wet spot about 1½ feet wide on plaintiff's skirt after she fell. When Parkhurst went to help plaintiff, she noticed that the floor was "very slippery." She

believed that water caused the floor to be slippery. The slippery area of the floor was about four feet wide. Parkhurst testified that Hemphill's two youngest children were present at the church on the day plaintiff fell. She did not see them carrying any cups or bottles. She had never seen them enter Hemphill's office to get water.

¶ 14 Salisbury testified that he normally worked until 11 a.m. on Fridays. He did not recall the day of the accident. He had never seen Hemphill's children go into Hemphill's office to get water. There were no paper cups for people to get water; there was only a water fountain downstairs.

¶ 15 Awalt testified that she worked from 9 a.m. until 3 p.m. at the secretary's desk outside of Hemphill's office. She did not recall ever seeing Hemphill's children walking around with anything to drink. No one ever complained to her about Hemphill's children.

¶ 16 Defendant moved for summary judgment, arguing that there was no evidence that defendant had actual or constructive notice of any liquid on the floor or that defendant caused the liquid to be on the floor. In response, plaintiff maintained that there were genuine issues of fact as to whether defendant caused the liquid to be on the floor and as to whether defendant should have been aware of the liquid on the floor. Following a hearing, the trial court entered summary judgment for defendant. Plaintiff timely appealed.

¶ 17 II. ANALYSIS

¶ 18 Summary judgment is appropriate where "the pleadings, depositions, and admissions on 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 a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2010).

> " 'A defendant moving for summary judgment bears the initial burden of coming forward with competent evidentiary material, which if uncontradicted, entitles him to judgment as a matter of law.' [Citation.] A defendant does not need to prove its case or disprove its opponent's case in order to prevail on its motion. A plaintiff, however, 'must come forth with some evidence that arguably would entitle him to recover at trial' in order to survive such a motion. [Citation.]" *Caburnay v. Norwegian American Hospital*, 2011 IL App (1st) 101740, ¶ 30.

A reviewing court's function is to determine whether a genuine issue of fact was raised and, if none was raised, whether judgment as a matter of law was proper. *American Family Mutual Insurance Co. v. Page*, 366 Ill. App. 3d 1112, 1115 (2006). The entry of summary judgment is subject to *de novo* review. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 19 To maintain a premises-liability claim, a plaintiff must establish that the defendant knew about a condition on its premises causing an unreasonable risk of harm to its invitees or would have discovered the condition by the exercise of reasonable care. See *Genaust v. Illinois Power Co.*, 62 Ill. 2d 456, 468 (1976); Restatement (Second) of Torts § 343 (1965). Notice, either actual or constructive, is an essential element of a premises-liability claim.

¶ 20 Plaintiff argues that there are genuine issues of fact as to whether defendant had constructive notice of the dangerous condition that caused plaintiff's fall. (Plaintiff does not contend that defendant had actual notice of the condition.) According to plaintiff, the evidence established that Hemphill should have seen the liquid on the floor either (1) when he walked across the floor while returning to his desk just 10 minutes before plaintiff fell or (2) while he was sitting at his desk during the 10-minute period prior to plaintiff's fall. We disagree.

¶ 21 "Generally, if a plaintiff is relying on proof of constructive notice, she must establish that the dangerous condition existed for a sufficient time or was so conspicuous that the defendant should have discovered the condition through the exercise of reasonable care." *Smolek v. K.W. Landscaping*, 266 Ill. App. 3d 226, 228-29 (1994). Here, there is absolutely no evidence establishing how long the liquid was on the floor prior to the fall. The only person who testified as to the condition of the floor prior to plaintiff's arrival was Hemphill, and he testified that he did not see anything on the floor. There is simply no evidence that suggests that the spill was present when Hemphill walked across the floor. We disagree with plaintiff's contention that the only people who could have caused the spill were Salisbury, Awalt, Hemphill, and Hemphill's children, as it ignores plaintiff's own testimony (in addition to testimony from Berenyi and Parkhurst) that other people were present when plaintiff fell. Further, even if Hemphill had an unobstructed view of the laminate floor while sitting at his desk, absent evidence showing how long the liquid was on the floor, it would be unreasonable to conclude that Hemphill should have discovered it. See *Ishoo v. General Growth Properties, Inc.*, 2012 IL App (1st) 110919, ¶ 28.

¶ 22 Plaintiff argues that this case is like *Wiegman v. Hitch-Inn Post of Libertyville, Inc*., 308 Ill. App. 3d 789 (1999), asserting that here, as in *Wiegman,* there are sufficient facts regarding constructive notice to require a jury to decide the issue. We fail to see the similarities. In *Wiegman*, there was testimony that the water that caused the plaintiff's fall had been present for hours before she fell. *Id*. at 802. As noted, here, there is no testimony from anyone who saw the water prior to plaintiff's fall.

¶ 23 Plaintiff also argues that she raised a genuine issue of material fact as to constructive notice by establishing that defendant negligently allowed a "pattern of conduct that created

dangerous conditions." Specifically, plaintiff contends that "[f]or months leading up to the fall, Plaintiff observed [Hemphill's] children running in and out of [his] bathroom to get water from the sink and then spill it on the same laminate wood flooring where she fell." In support of her pattern-of-conduct theory, she relies on *Grewe v. West Washington County Unit District No. 10*, 303 Ill. App. 3d 299, 304 (1999), and *Culli v. Marathon Petroleum Co.*, 862 F. 2d 119, 126 (7th Cir. 1988). Neither case aids plaintiff.

¶ 24 In *Grewe*, the plaintiff slipped and fell in the lobby of the defendant's school. *Grewe*, 303 Ill. App. 3d at 301. The plaintiff presented evidence that two other people had slipped prior to and within hours of her fall. *Id*. at 304. The evidence also established that the superintendent had been told prior to the plaintiff's fall that someone had slipped. *Id*. In reversing a directed verdict for the defendant, the court noted that "[i]t is well settled that evidence of prior accidents, occurring at the same place or with the same instrumentality, is admissible as tending to show that the common cause of such accidents was a dangerous and unsafe condition, and the frequency of such accidents also tends to raise the presumption of knowledge on the part of the offending parties." *Id*.

¶ 25 In *Culli*, the plaintiff stepped on an unidentified slippery substance and fell when she stepped off of a gas-pump island while walking through the defendants' gas-station lot. *Culli*, 862 F.2d at 122. There was substantial evidence that there were spills of all types on a daily basis in the pump area and that the volume of sales on the day of the incident made it unreasonable for the defendants to sweep the lot only at night. *Id*. at 126-27. The court found "that the defendants were on constructive notice of a dangerous condition since such condition was a recurring situation on their property and their maintenance of the property was unreasonable and proximately caused [the plaintiff's] injury." *Id*. at 128.

¶ 26 Both *Grewe* and *Culli* are distinguishable. In the present case, unlike in *Grewe*, there was no evidence of prior accidents involving spilled liquids in the area of plaintiff's fall (or in any other area of defendant's property). Further, although there was evidence that Hemphill's children had, on past occasions, spilled water on the laminate floor, the evidence does not rise to the level of the evidence presented in *Culli*, which showed that spills happened on a daily basis. Moreover, in *Culli*, unlike here, there was evidence that the defendant inspected the gas station only during the night shift even though it was open 24 hours a day and had notice of spills occurring at other times during the day. Plaintiff did not present any evidence here that defendant's maintenance of its property was unreasonable.

¶ 27 Accordingly, we agree with the trial court that there is no genuine issue of fact as to whether defendant had constructive notice of the liquid on the floor.

¶ 28 In the alternative, plaintiff argues that the evidence established that defendant's negligence created the dangerous condition. See *Reed v. Wal-Mart Stores, Inc.*, 298 Ill. App. 3d 712, 715 (1998) ("[A] plaintiff does not need to prove actual or constructive notice when she can show the substance was placed on the premises through the defendant's negligence."). To maintain a negligence claim, a plaintiff must establish the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately caused by that breach. *Ward v. K mart Corp.*, 136 Ill. 2d 132, 140 (1990). Proximate cause cannot be predicated on surmise or conjecture, and, therefore, causation will lie only when there exists a reasonable certainty that the defendant's acts caused the injury. *Wiegman*, 308 Ill. App. 3d at 795.

¶ 29 According to plaintiff, "[a]ll the evidence in the record points to the fact that the Pastor's negligent supervision of his children is the only logical cause of the large water spill that caused Plaintiff's fall." However, plaintiff's argument that the liquid on the floor was water spilled by

Hemphill's children is nothing more than speculation. The fact that Hemphill's children in the past had spilled water in the area of plaintiff's fall does not establish that they did so on the day in question. There is no testimony from anyone that Hemphill's children were seen in the area with water that day.

¶ 30 We find instructive *Olinger v. Great Atlantic & Pacific Tea Co.*, 21 Ill. 2d 469 (1961), which plaintiff cites. In *Olinger*, the plaintiff slipped and fell after stepping on an unidentified substance in the defendant's store. *Id.* at 472. The plaintiff described the substance as a "thin oil, pinkish or light red in color, covering a spot of 6 or 7 inches." *Id*. He tasted it and described it as "sweetish" and "a little bit sticky." *Id*. On the day that the plaintiff fell, bottles of Coldene, a red liquid cough medicine, were on display nearby. *Id*. There was also testimony from a witness who stated that, after the plaintiff had fallen, the witness went to the defendant's store to purchase Coldene and, while there, saw a bottle of Coldene with a sticky liquid on the outside of the bottle. *Id*. at 472-73. The plaintiff argued on appeal that the circumstantial evidence was sufficient to sustain a reasonable inference that the substance was on the floor as a result of the defendant's negligence. *Id*. at 474-75. The court disagreed. The court found that "[o]nly by the wildest speculation" could one conclude that the substance the plaintiff slipped on was Coldene. *Id*. at 476. Thus, absent evidence that the substance was related to the defendant's operations, no inference could be drawn that the substance was more likely to have been dropped by defendant's servants than by third persons. *Id*.

¶ 31 As in *Olinger*, plaintiff has failed to put forth any evidence of how the liquid came to be on the floor. Although there was a sink in Hemphill's bathroom, plaintiff offers nothing but speculation that the liquid on the floor was water from the sink. And as in *Olinger*, we simply cannot infer that it is more likely than not that the liquid was dropped by defendant's servants (or

their children) rather than by third persons. As noted above, plaintiff's argument that the only people who could have caused the spill were Salisbury, Awalt, Hemphill, and Hemphill's children disregards evidence that other people were present when plaintiff fell. Plaintiff's argument also disregards evidence that there was snow on the ground outside and a small amount of snow on plaintiff's shoe.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm summary judgment for defendant.

¶ 34 Affirmed.