FOURTH DIVISION
May 21, 2015

1-14-2489

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEVI WILLIAMS, a Minor, by his Mother and Next Friend, VIETTA WILLIAMS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 13 L 761
THE CHICAGO PARK DISTRICT,	)	Honorable James N. O'Hara,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court of Cook County's judgment granting summary judgment in favor of defendant is affirmed because the pleadings, evidence, and depositions on file do not raise a genuine issue of material fact as to whether defendant is guilty of willful and wanton conduct with regard to the existence of a condition on park property which allegedly caused plaintiff's injury.

¶ 2 Plaintiff, Levi Williams, a minor born December 7, 2004, by his mother and next friend, Vietta Williams, filed a complaint against defendant, the Chicago Park District, to recover for damages plaintiff suffered after he fell on defendant's property and cut his leg. Defendant filed a motion for summary judgment. The circuit court of Cook County granted defendant's motion for summary judgment.

¶ 3 For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 On May 10, 2013, plaintiff filed his first amended complaint (complaint). The complaint contained one count alleging willful and wanton conduct by defendant (count II). The complaint alleged that on July 5, 2012, plaintiff "slipped and fell striking the sharp metal edge of the threshold in the doorway to the locker room of the Fieldhouse" at Washington Park. The complaint alleged that plaintiff "slipped and fell near the missing tiles and threshold of said locker room door, thereby causing [plaintiff] to then and there sustain severe and disabling injuries." Plaintiff's complaint alleged defendant had "willfully and recklessly" caused or permitted missing tiles in the tile floor at or near the threshold of the doorway to the fieldhouse[1] locker room at Washington Park leaving a sharp edge of the threshold exposed.

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[1] The evidence on file, including plaintiff's deposition testimony, reveals that this incident happened at a door between a men's locker room and the swimming pool at Washington Park. Several deponents testified the pool is actually a part of the Washington Park refectory and though physically near each other the fieldhouse and refectory are considered separate facilities in the park. Defendant has not raised an issue with regard to this wording in plaintiff's complaint, and we note it simply for clarity when referring to the deposition evidence on file.

¶ 6 Plaintiff alleged the missing tile created a dangerous condition on the property and that defendant willfully violated its duty in the premises in several ways, including by: (1) allowing the premises to remain in an unsafe condition, (2) failing or refusing to replace the missing tiles, (3) failing to warn persons lawfully on the premises of the unsafe and dangerous condition, and (4) failing to inspect the area around the threshold of the locker room doorway to ascertain if it was safe for use. The complaint alleged that defendant knew or should have known that the presence of the condition and its breach of its duties as alleged in the complaint could and would cause injury to persons in the area. Plaintiff also alleged that defendant failed to provide proper and adequate supervision over children using the locker room and fieldhouse.

¶ 7 Defendant filed a motion for summary judgment on plaintiff's complaint on the grounds plaintiff has no evidence that any of defendant's alleged acts or omissions constituted willful and wanton conduct or showed utter indifference or conscious disregard for plaintiff's safety as required by sections 3-106 and 3-108 of the Local Governmental and Governmental Employees Tort Immunity Act (Tort Immunity Act) (745 ILCS 10/3-106, 3-108 (West 2012)). Defendant's motion for summary judgment relied on deposition testimony by plaintiff; plaintiff's mother; and Clarissa Ford, the park supervisor at the Washington Park refectory.

¶ 8 Plaintiff testified that when he went out the door to go swimming he was not running. He testified someone was walking with him but he does not remember who, and that he was walking slowly. Plaintiff testified that he slipped because the floor was wet. He fell forward and tried to break his fall with his hands. His leg hit the ground first and, plaintiff testified, he cut his knee on "the metal piece." He later stated he was not sure if he cut himself on little

nails sticking up in the area where he fell. Plaintiff's mother testified that plaintiff told her that he was coming out of the locker room and he slipped and fell because the floor was wet. She also testified that her son told medical personnel that he was coming out of the locker room and he slipped and fell. Plaintiff did not say that he was running before he slipped and fell. Plaintiff did not indicate to his mother that he was running. Plaintiff's mother testified her son told her he slipped on wetness and hit his leg on the metal piece. She visited the location and took photographs but did not touch the metal piece. At her deposition she testified she saw little nails sticking up approximately a quarter to a half inch in the area where her son fell in a photograph she took after the alleged accident. Plaintiff did not tell his mother that the nails caused the injury to his leg or what specifically cut his leg. He only said that he slipped and hit his leg against the metal piece. Plaintiff did not identify to her where exactly on the piece of metal he cut himself.

¶ 9 Ford had been a park supervisor at the Washington Park refectory for just under two years when she was deposed. In July 2012 the park supervisor for Washington Park was Janie Collins. Collins was in charge of the fieldhouse. Ford testified that the refectory and the fieldhouse use the same system for inspecting the facilities. Inspections were done daily to look for anything that needs to be corrected. She performed daily inspections of the refectory including the locker room. Ford testified that plaintiff was injured in the refectory where the shower rooms are located. Desteni Bates completed an incident report after plaintiff was injured and Darren Shannon, the monthly natatorium supervisor, signed the incident report.

¶ 10 Ford was aware of the condition of the threshold because of her daily inspections but did not know how long the threshold had been in that condition prior to July 5, 2012. Ford

did know of the condition of the threshold on the day of the accident, however. She could not remember when she learned that information. Ford did not know if the condition existed for six months prior to the accident. Ford testified she had seen the condition of the threshold before plaintiff's alleged accident and there was nothing about the area that struck her as being hazardous. She did not consider it a dangerous condition because: "It's a cosmetic, it's no sharp objects. It's just cosmetic." Looking at a photograph of the threshold, Ford testified she did not see any edge that appeared to be sharp. Ford viewed plaintiff's injuries and testified there was nothing about the condition of the threshold that would give her an inkling that a young man could be cut in that manner.

¶ 11 No one had ever told Ford that the condition of the threshold was dangerous or that they had hurt themselves on the threshold. Thousands of kids would have gone through the locker room in 2012. She was not aware of any complaint about the condition before July 5, 2012, or of any accidents in the locker room involving the doorway. Ford did not know if there were previous reports of the missing tiles. Ford did not know that plaintiff said he fell on the tile and cut his leg on the threshold of the doorway to the pool until her deposition. After plaintiff was injured, Ford walked through the area to see if there was anything unsafe and to see "where he possibly could have hurt himself." But she testified that she did not learn he allegedly hurt himself on the doorway until her deposition. On the day of the accident her only understanding was that plaintiff "said he was running through the locker room and he fell."

¶ 12 In its motion for summary judgment, with regard to plaintiff's allegation defendant failed to provide proper and adequate supervision over children using the locker room,

defendant argued that plaintiff has no evidence that any employee of defendant proximately caused plaintiff's injury or acted willfully or wantonly. Next, plaintiff argued that the alleged property defect that caused plaintiff's injury was water on the locker room floor, not the allegedly sharp metal edge of the threshold in the doorway. Defendant argued the water on the floor was the cause-in-fact of the accident while the threshold represents only a "foreseeable injury" arising from the fall, "but this does not make it a proximate cause of the fall." Thus, plaintiff "confused the proximate cause of the accident with what she [*sic*] claims was the proximate cause of the injury." Defendant argued it was entitled to summary judgment because the issue of "foreseeable injury" only arises if plaintiff can establish defendant was willful and wanton in its maintenance of the floor; and plaintiff had no evidence on that question, or on whether defendant acted with utter disregard for plaintiff's safety in its maintenance of the floor.

¶ 13 Defendant's remaining arguments in its motion for summary judgment also focused on the water on the floor. Defendant argued plaintiff cannot show that the water on the floor constituted an impending danger to plaintiff. Defendant argued plaintiff "has submitted no evidence of [defendant's] actual knowledge showing that [defendant] should have known of danger because of past accidents or complaints involving slipping on water in the locker room." Defendant argued plaintiff has no evidence it had actual notice that any water was on the locker room floor prior to the time the water constituted an impending danger. Defendant also argued there is no evidence it had constructive notice of any impending danger from water on the locker room floor, or time to correct it, because there is no evidence indicating how long the water on which plaintiff slipped had been on the locker room floor.

¶ 14 Plaintiff filed a response to defendant's motion for summary judgment. Plaintiff relied on the deposition testimony of plaintiff; plaintiff's mother; and several of defendant's employees who were working at Washington Park on the day plaintiff was injured: Lake Smith, a recreation leader; Desteni Bates, a lifeguard; Brandy Johnson, a recreation leader; Jeton Elliott, who ran the summer camp plaintiff was participating in when he was injured; and Janie Collins, the park supervisor. Janie Collins is the park supervisor for the Washington Park fieldhouse. Collins supervised Jeton Elliott. Elliott was Lake Smith and Brandy Johnson's immediate supervisor. Elliott testified Smith told her Smith was in the locker room at the time plaintiff was injured. Desteni Bates, the lifeguard who began treatment of plaintiff's injury, testified Lake "Robinson" was supervising plaintiff's group at the time of the accident.

¶ 15 Brandy Johnson was in her fourth year as a recreation leader at Washington Park at the time of her deposition. Johnson was plaintiff's recreation leader on the day of the accident. She was on the deck by the pool with her female campers waiting for her male campers to come out of the locker room. She testified that normally a male recreation leader is sent into the locker room with the male campers and if no male recreation leader is available the person who lets them into the locker room continues to supervise the male campers until they go out of the locker room. Johnson does not remember if a male recreation leader was in the locker room with the male campers just before plaintiff's accident. She did not recall who let the male campers into the locker room on the day of the accident. She testified she thinks someone went into the locker room with the male campers but she could not remember who that person was. She stated that someone is always there with the

campers when they are showering. Johnson instructed her campers, including plaintiff, on not running in the locker room or on the pool deck before letting them enter the locker room.

¶ 16 Lake Smith testified that he is a recreation leader at Washington Park. He was working as a recreation leader on July 5, 2012. When the campers were going to participate in swimming, the procedure was to take them downstairs into the locker room in the fieldhouse, then walk to the refectory, walk through the refectory, and into the pool area. Smith testified he was not in charge of plaintiff's group at the time of the accident and does not know who was in charge of plaintiff's group. The regular protocol would be for all recreation leaders to give their groups instructions not to run in the locker room and pool area before the campers entered the area.

¶ 17 Plaintiff argued the evidence created a question of fact as to whether defendant was willful and wanton in its failure to supervise him. Plaintiff also disavowed any allegation defendant was willful and wanton in allowing wet floors in the locker room or that the wet floor presented an impending danger. Plaintiff argued that the threshold in the door was a proximate cause of his injury, noting that the laceration to his leg was not caused by slipping on the wet floor but by the sharp metal edge of the threshold, and argued the threshold was an impending danger to plaintiff. The question, plaintiff argued, is one of forseeability. Plaintiff conceded there was no evidence of prior injuries or complaints about the threshold, but argued defendant's conduct was nonetheless willful and wanton because (1) one of defendant's employees knew about the threshold yet did nothing to correct the condition, and (2) other employees failed to notice the condition of the threshold. Plaintiff argued

defendant's failure to correct or warn of the condition of the threshold shows utter indifference to or conscious disregard for the safety of others.

¶ 18 Defendant filed a reply arguing, in part, that no evidence shows that defendant acted willfully and wantonly in its supervision of plaintiff. Defendant also replied the evidence failed to show defendant was willful or wonton with regard to the threshold because no evidence showed the threshold was an imminent danger to plaintiff or constituted a dangerous condition of the property, or that defendant had knowledge of the condition, or that there were previous incidents or complaints. Defendant maintained that the threshold was not the proximate cause of plaintiff's accident.

¶ 19 On May 14, 2014, the circuit court of Cook County granted defendant's motion for summary judgment. The court found that the evidence establishes that plaintiff was injured while he was walking slowly towards the exit of the Washington Park fieldhouse and fell because the floor of the locker room was wet. The court rejected plaintiff's argument that, assuming he was running, defendant had no employee present to remind him not to run. The court rejected that argument based on plaintiff's deposition testimony that he was walking slowly prior to the fall, and, other than mere hypothetical ("assuming" plaintiff was running), plaintiff had failed to introduce any evidence of willful and wanton supervision by defendant. The court also found that the evidence establishes that there had been no complaints about the condition of the threshold, no accidents in the locker room involving the threshold, and no evidence of how long the condition of the threshold existed.

¶ 20 The trial court found that the evidence establishes that defendant performs daily inspections to ensure the safety of the premises. The court held that the regular inspection of

the premises "indicates a concern for possible injuries, rather than a course of conduct displaying an utter indifference or conscious disregard for the safety of Plaintiff." The court held the evidence shows, at most, that defendant failed to discover the condition "which caused Plaintiff's injury, either because it was created recently or due to the inadvertence of [defendant's] staff." The court ruled that because ordinary negligence is insufficient to establish willful and wanton conduct, there is no genuine issue of material fact as to whether defendant's actions were willful and wanton.

¶ 21 This appeal followed.

¶ 22 ANALYSIS

¶ 23 Plaintiff argues the trial court erred in granting defendant's motion for summary judgment because the pleadings and depositions on file raise a question of material fact as to whether defendant was willful and wonton in its failure to repair the door where plaintiff fell, to warn plaintiff of the condition of the floor, or to supervise plaintiff as he exited through the door.

¶ 24 Defendant argues (1) this court may affirm the trial court's judgment on the grounds the condition of the threshold was not a proximate cause of plaintiff's injury, but rather, the wet floor was the proximate cause of plaintiff's fall and the threshold was at best a cause of a foreseeable injury from plaintiff's fall; (2) plaintiff failed to produce evidence it had actual or constructive notice of the condition of the threshold, or knowledge that the condition of the threshold represented an imminent danger or posed a serious risk of injury; and (3) the evidence does not show it acted willfully or wantonly in its supervision of plaintiff.

¶ 25 1. Legal standards.

¶ 26 "Summary judgment is proper where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal 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. [Citation.] The standard of review for the entry of summary judgment is *de novo*. [Citation.]" (Internal quotation marks omitted.) *Illinois Founders Insurance Co. v. Williams*, 2015 IL App (1st) 122481, ¶ 30.

> "A defendant moving for summary judgment bears the initial burden of proof. [Citation.] The defendant may meet his burden of proof either by affirmatively showing that some element of the case must be resolved in his favor or by establishing that there is an absence of evidence to support the nonmoving party's case. [Citations.] In other words, there is no evidence to support the plaintiff's complaint." (Internal quotation marks omitted.) *Bowman v. Chicago Park District*, 2014 IL App (1st) 132122, ¶ 44.

¶ 27 On the other hand, to withstand a summary judgment motion, the nonmoving party need not prove his case, but he must present some factual basis that would support his claim. *Id.* ¶ 45. The purpose of summary judgment is not to try an issue of fact but to determine whether one exists. *Id.* "We may affirm on any basis appearing in the record, whether or not the trial court relied on that basis or its reasoning was correct." *Id.*

¶ 28 There is no dispute that the property where plaintiff injured himself is governed by the Tort Immunity Act. See *Corral v. Chicago Park District*, 277 Ill. App. 3d 357, 360 (1995). The Tort Immunity Act provides as follows:

> "Neither a local public entity nor a public employee is liable for an injury where the liability is based on the existence of a condition of any public property intended or permitted to be used for recreational purposes, including but not limited to parks, playgrounds, open areas, buildings or other enclosed recreational facilities, unless such local entity or public employee is guilty of willful and wanton conduct proximately causing such injury." 745 ILCS 10/3-106 (West 2012).

¶ 29 2. Whether the condition of the threshold was a proximate cause of plaintiff's injury.

¶ 30 Defendant argues the proximate cause of plaintiff's injury was the wet floor rather than the threshold in the door, and plaintiff has not offered any evidence of defendant's misconduct with regard to the wet floor. Defendant argues that because plaintiff testified he slipped on the wet floor, "[i]t does not matter what condition caused the cut or other injury." Defendant argues that the foreseeability of the injury from the threshold "arises only if the Plaintiff can establish that [defendant] breached a duty of care by acting willfully and wantonly in maintaining a wet locker room floor." Defendant's argument the condition of the threshold was not a proximate cause of plaintiff's injury focuses on plaintiff's fall rather than plaintiff's injury--the cut to his leg.

¶ 31 "The term 'proximate cause' contains two elements: cause in fact and legal cause. [Citation.] Cause in fact exists where there is a reasonable certainty that a defendant's acts caused the plaintiff's injury. [Citations.] The relevant question is whether the defendant's conduct is a material element and a substantial factor in bringing about the injury. Conduct is a material element and a substantial factor if, absent the conduct, the injury would not have occurred. [Citations.]" *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 225-26 (2010).

¶ 32 "Proximate cause means any cause which, in natural or probable sequence, produced the injury complained of. It need not be the sole cause or the last or nearest cause." *Capiccioni v. Brennan Naperville, Inc.*, 339 Ill. App. 3d 927, 937 (2003). We may find proximate cause where the alleged cause "occurs with some other cause acting at the same time, which in combination with it, causes injury. [Citation.]" *Garest v. Booth*, 2014 IL App (1st) 121845, ¶ 41. "Although proximate cause is generally a question of fact ([citation]), the lack of proximate cause may be determined by the court as a matter of law where the facts alleged do not sufficiently demonstrate both cause in fact and legal cause ([citation])." *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 395-96 (2004).

¶ 33 We find that the complaint alleges that the condition of defendant's property--specifically the threshold of the door--was a material element and a substantial factor in bringing about plaintiff's injury. While slipping on the wet floor--which plaintiff has not alleged resulted from defendant's negligence--may have acted in concert with the condition of

defendant's property to result in plaintiff's injury, the allegations in the complaint allege that it was the combination of the slip on the floor and the sharp metal edge of the threshold that caused the injury. Because plaintiff alleges the condition of the threshold was a material element and substantial factor, because without it he would not have cut his leg, we reject defendant's argument this court may affirm the trial court's judgment because plaintiff has not pled or proved any facts that defendant acted willfully or wantonly with regard to the wet floor. See *Drell v. American National Bank & Trust Co.*, 57 Ill. App. 2d 129, 139 (1965) ("There was no need for [the defendant] to foresee the exact method in which the injury took place, but only that a particular result would occur."); *Junge v. South Halsted Street Iron Works*, 188 Ill. App. 603, 606 (1914) (in an action by an employee for personal injuries alleged to have resulted from condition of iron, an instruction given for plaintiff which, in effect, told the jury that although some other agency was a contributing cause of the injuries, yet if they believed that the condition of the iron was also a proximate cause, plaintiff's recovery could not be defeated because of the other concurring or contributing cause, held proper).

¶ 34 3. Whether the evidence raises a question of fact as to whether defendant's conduct was willful and wanton with regard to the condition of the threshold.

¶ 35 Defendant argues there is no evidence either (1) the condition of the threshold was dangerous or (2) defendant had actual or constructive knowledge the condition of the threshold represented an imminent danger to plaintiff. In support of its argument, defendant asserts the evidence establishes that the missing tiles at the threshold of the door to the locker room did not expose or create any sharp objects and did not change the shape or condition of the threshold adjacent to them. Thus, defendant argues, plaintiff has no evidence to show the

missing tiles posed a serious risk of injury at any time. Defendant also argues that evidence of its daily inspections negates plaintiff's claim of willful and wanton conduct.

¶ 36 Plaintiff responds there is evidence that the threshold was sharp enough to cause a gash in plaintiff's leg. Plaintiff relies on his own testimony and that of his mother. In support of its claim there is no evidence the condition of the threshold was not reasonably safe, defendant relies on the deposition testimony of Clarissa Ford.

¶ 37

> "[A] local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition." 745 ILCS 10/3-102A (West 2012).

¶ 38 "Willful and wanton conduct" is defined as "a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." 745 ILCS 10/1-210 (West 2012). "Willful and wanton conduct is established where the public entity has been informed of a dangerous condition, knows that others have been injured because of that condition, or intentionally removes a safety feature or device from its recreational property. [Citation.]

Although generally a question of fact, a court may 'hold as a matter of law that a public employee's actions did not amount to willful and wanton conduct when no other contrary conclusion can be drawn.' [Citation.]" *Thurman v. Champaign Park District*, 2011 IL App (4th) 101024, ¶ 10.

¶ 39 Plaintiff has not adduced any evidence anyone intended to harm him. There is no evidence defendant had actual or constructive knowledge of a dangerous sharp edge or otherwise dangerous condition at the doorway. Plaintiff has failed to adduce evidence that defendant was informed of a hazardous condition at the threshold to the swimming pool by anyone. There is no circumstantial evidence defendant knew of a dangerous condition at the doorway. There is no evidence of prior accidents or injuries either in the locker room or caused by the condition of the threshold. Other than Ford, no other employees were even aware of the missing tiles. We cannot say those other employees were indifferent to or consciously disregarded that which they did not perceive. The evidence on file does not show a course of conduct demonstrating an utter indifference to or conscious disregard for the safety of others as a matter of law. *A.D. ex rel. J.D. v. Forest Preserve District of Kane County*, 313 Ill. App. 3d 919, 923-24 (2000) (holding defendant's conduct did not rise to the level of willful and wanton conduct as a matter of law where the defendant had no knowledge of a prior injury or complaint about a tree and there was no evidence that the defendant knew that the tree at issue was unreasonably dangerous).

¶ 40 The pleadings and depositions on file do not demonstrate a course of conduct showing utter indifference to or conscious disregard for the safety of others by Ford. When the legislature amended section 1-210 of the Tort Immunity Act it "indicated that it requires the

use of the statutory definition of willful and wanton to evaluate the conduct of public entities in Tort Immunity Act cases to the exclusion of common law definitions." *Tagliere v. Western Springs Park District*, 408 Ill. App. 3d 235, 243 (2011). Applying that statutory definition, this court held that a failure to discover a defect after repeated inspections did not constitute an actual or deliberate intention to cause harm in that case, nor did it show an utter indifference to or conscious disregard for the safety of others. *Id.* at 244.

¶ 41 Ford testified the missing tiles created a merely "cosmetic" problem and did not appear to be sharp. She inspected the area of plaintiff's injury and still could not perceive a dangerous condition in the locker room--she did not learn the threshold was the alleged cause of the injury until her deposition. We cannot say that Ford's inspections and repeated perception that the missing tiles were not dangerous was a course of action which shows "an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others or their property." Under the facts of this case, the failure to discover the alleged dangerous condition after repeated inspections of the area of the alleged defect may arguably have been negligent but is not willful and wanton as defined by section 1-210 of the Tort Immunity Act. *Id.* See also *Thurman*, 2011 IL App (4th) 101024, ¶ 26 (distinguishing *Oelze v. Score Sports Venture, LLC*, 401 Ill. App. 3d 110, 123 (2010), on the grounds "[t]his case does not involve the same 'consciousness of danger' by defendant.").

¶ 42 We hold that the evidence does not raise a question of fact that defendant was guilty of willful and wanton conduct proximately causing plaintiff's injury. 745 ILCS 10/3-106 (West

2012). Accordingly, the trial court's judgment granting summary judgment in favor of defendant on plaintiff's premises liability claims is affirmed.

¶ 43 4. Whether the evidence raised a genuine issue of fact that defendant willfully and wantonly failed to supervise plaintiff.

¶ 44 Finally, we turn to defendant's argument that plaintiff has identified no evidence that shows any willful and wanton act in the supervision of plaintiff which proximately caused his injury. Specifically, defendant argues that there is no evidence a supervisor saw plaintiff doing something dangerous and failed to intervene.

¶ 45 Ford testified that she did not know if anyone was in the locker room with plaintiff in a supervisory capacity at the time of his alleged accident. It was the policy of the day camp and defendant to have someone in the locker room with the camp participants while they were showering. That person likely would have been a male recreational leader. Standard practice is to line up the camp participants before allowing them into the locker room and to provide them with the rules which include no running in the locker room. That procedure is repeated every time a different group goes into the locker room. Plaintiff testified no one came to help him when he first got hurt; he went to Mr. Lake. Plaintiff testified none of the counselors ever said he should not run in the locker room.

¶ 46 "Neither a local public entity nor a public employee is liable for an injury caused by a failure to supervise an activity on or the use of any public property unless the employee or the local public entity has a duty to provide supervision imposed by common law, statute, ordinance, code or regulation and the local

> public entity or public employee is guilty of willful and wanton conduct in its failure to provide supervision proximately causing such injury." 745 ILCS 10/3-108(b) (West 2012).

¶ 47 After reviewing the evidence on file, we find that a question of fact exists as to whether plaintiff was supervised in the locker room. Johnson testified someone was with the male campers at the time plaintiff was injured. Bates's testimony suggests Smith was supervising plaintiff's group of campers, but Smith testified he was not in charge of plaintiff's group at the time of the accident and does not know who was in charge of plaintiff's group. Regardless, the point of dissidence between the parties on this issue is the effect of plaintiff's own testimony that he was walking slowly through the locker room when he slipped on the wet floor. Plaintiff would "agree with defendant if, as [plaintiff] testified at his deposition, he was walking toward the [threshold] when he slipped." But, plaintiff argues, the finder of fact could find that plaintiff was running. Plaintiff argues that defendant's alleged failure to supervise could then be found to be a proximate cause of his injury because "if a supervisor had been on hand, he or she could have cautioned against running."

¶ 48 Plaintiff's complaint does not allege a specific willful or wanton act or omission to demonstrate how defendant allegedly failed to provide proper and adequate supervision. The only act or omission urged on appeal is the failure to prevent plaintiff from running in the locker room by which his fall may have been averted. Plaintiff has pointed to no admissible

evidence that he was running in the locker room when he fell.[2] Any evidence that would not be admissible at trial cannot be considered in a summary judgment proceeding. *People ex rel. Vuagniaux v. City of Edwardsville*, 284 Ill. App. 3d 407, 412 (1996). Plaintiff only suggests a trier of fact could surmise he was running because he was young and rambunctious. "[M]ere speculation, conjecture, or guess is insufficient to withstand summary judgment." *Bowman*, 2014 IL App (1st) 132122, ¶ 44.

¶ 49 We agree that the alleged failure to supervise could not have been a proximate cause of plaintiff's injuries if plaintiff's injuries resulted from plaintiff slowly walking across a wet floor. There are no allegations defendant was negligent in any way with regard to the wet floor. Accordingly, we hold the trial court properly granted summary judgment in favor of defendant on plaintiff's claim defendant failed to provide adequate supervision of plaintiff and that such failure was a proximate cause of his injuries.

¶ 50 CONCLUSION

¶ 51 For the foregoing reasons, the trial court's judgment is affirmed.

¶ 52 Affirmed.

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[2] Several deponents testified that plaintiff stated he was running in the locker room and then fell. There is evidence in the record that plaintiff made these statements directly to one of defendant's employees and that plaintiff made these statements to other campers who then relayed plaintiff's statements to defendant's employees. None of the other campers could be identified. Although plaintiff's counsel would be permitted to impeach plaintiff's testimony he was walking slowly when he slipped on the wet tile, should counsel make the tactical decision to do so, the impeachment would not be substantive evidence plaintiff was running in the locker room. *Edward Don Co. v. Industrial Comm'n*, 344 Ill. App. 3d 643, 652 (2003) ("While evidence of a witness' prior inconsistent statement may be used to impeach the witness' credibility, the statement is not admissible as substantive evidence.").