2015 IL App (3d) 130966-U

Order filed January 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

CRYSTAL LANG,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellant,	)	Will County, Illinois,
	)	
v.	)	Appeal No. 3-13-0966
	)	Circuit No. 11-L-832
THE SKILLET, LLC., an Illinois	)	
Limited Liability Company, d/b/a	)	The Honorable
THE HOT SKILLET,	)	John Anderson,
	)	Judge, Presiding.
Defendant-Appellee.	)	
	)	

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: Summary judgment in favor of defendant was appropriate where plaintiff could not identify the cause of her fall.

¶ 2 This case arises from a slip and fall accident. On February 27, 2010, plaintiff, Crystal Lang, parked her vehicle at The Hot Skillet (the restaurant). The restaurant was operated by defendant, The Skillet, L.L.C. Plaintiff slipped and fell in the restaurant's parking lot. She

brought suit against defendant, alleging negligence. The circuit court granted summary judgment for defendant. We affirm.

¶ 3 FACTS

¶ 4 Plaintiff's complaint *inter alia* alleges defendant was negligent through one or more of the following acts and/or omissions:

> "a. Improperly operated, managed, maintained and controlled the aforesaid premises so that as a direct and proximate result thereof, the Plaintiff was injured;
>
> b. Improperly and incompletely removed ice from the parking lot, creating a slippery, slick patch which was not easily visible to persons walking on the parking lot, and created a danger to those persons walking on the parking lot;
>
> ***
>
> e. Failed to make a reasonable inspection of the aforesaid premises and said parking lot, when Defendant knew, or should have known, that the inspection was necessary to prevent injury to the Plaintiff;
>
> ***
>
> g. Failed to warn Plaintiff of the dangerous condition of said parking lot, when Defendant knew, or in the exercise of ordinary care should have known, that said warning was necessary to prevent injury to the Plaintiff."

¶ 5 During discovery, the following evidence was adduced. Dimitris Grimanis stated he is a partial owner of the restaurant. He stated that defendant's business practice was for defendant to shovel and salt the sidewalk around the restaurant, but defendant had a contract with an independent company to have the parking lot of the restaurant plowed and salted. When asked if there was any snow on the date of the incident Grimanis stated: "Not when I got there in the morning." Defendant acknowledged that any water accumulation drains away from the doors of the restaurant and towards the restaurant's parking lot.

¶ 6 Plaintiff stated she was "not sure" if it was snowing on the night of the incident. She was also "not sure" what time she arrived at the restaurant, but noted that it "had to have been after midnight." Plaintiff parked approximately "two-car lengths" from the restaurant's front entrance. Upon getting out of her vehicle, plaintiff stated: "I didn't even make it to the sidewalk and that's where I slipped and fell." The following colloquy then took place regarding the cause of plaintiff's fall.

> "Q. Okay. And what was it that caused you to fall?
>
> A. Ice.
>
> Q. Did you see the ice before you slipped?
>
> A. No, I did not.
>
> Q. Did you see the ice after you slipped?
>
> A. I don't remember.
>
> Q. So how do you know it was ice that made you fall?
>
> A. I mean, I don't know. I mean, I could have -- No, I'm not -- probably could have -- I don't remember. I mean, it's been two years.

* * *

Q. At any point did you notice that, like, your pants were wet or anything along those lines?

A. I don't remember.

Q. Do you have any idea what would have caused ice to form in that spot?

A. No.

Q. Do you have any idea how long the ice would have been there?

A. No.

Q. And any point did you notice any rock salt or gravel or anything like that that had been applied to the ice?

A. I saw salt on the sidewalk but none on the parking lot.

Q. Okay. Was there any snow in the parking lot?

A. I don't remember.

Q. If you know, did it look like snowplows had been there recently?

A. I -- honestly, I don't remember.

Q. Could you describe the ice in any way?

A. No.

Q. Other than it was slippery, right?

A. Yeah."

¶ 7 ANALYSIS

¶ 8 On appeal, plaintiff argues that the circuit court erred in granting summary judgment to defendant where a material issue of fact existed as to whether she slipped on an unnatural accumulation of ice. Because plaintiff failed to produce any evidence as to the cause of her fall, we affirm.

¶ 9 Summary judgment is appropriate 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. 735 ILCS 5/2-1005(c) (West 2012). We review the trial court's entry of summary judgment *de novo*. *General Casualty Insurance Co. v. Lacey*, 199 Ill. 2d 281, 284 (2002).

¶ 10 In order to recover in a slip and fall case, a plaintiff must show that (1) he fell due to an unnatural accumulation of ice, snow, or water and (2) the property owner had actual or constructive knowledge of the condition. *Gilberg v. Toys R Us, Inc.*, 126 Ill. App. 3d 554, 557-58 (1984). Summary judgment is proper in a slip and fall case when the plaintiff fails to present any evidence regarding the cause of her fall. *Strutz v. Vicere*, 389 Ill. App. 3d 676, 679 (2009); *Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813, 817 (1981).

¶ 11 In *Strutz*, the plaintiff's decedent alleged a staircase was unreasonably dangerous after the decedent fell down the stairway and died from his injuries. The court affirmed summary judgment on the grounds that plaintiff failed to produce any evidence as to the cause of the decedent's fall. *Strutz*, 389 Ill. App. 3d at 681.

¶ 12 The plaintiff in *Kimbrough* brought a negligence action after she slipped and fell on a ramp after leaving the defendant's store. The plaintiff stated that she did not know why she fell, although she saw something that looked like grease in the area. The court affirmed summary

judgment finding that even if there was some defect or some object lying on the ramp, the plaintiff could not produce any evidence that the defect or the object was the proximate cause of her fall. *Kimbrough*, 92 Ill. App. 3d at 817.

¶ 13 Here, summary judgment was appropriate for the same reason found in *Strutz* and *Kimbrough*. Plaintiff failed to produce any evidence as to the cause of her fall. She acknowledged that she did not see any ice before or after she fell. She was not sure if it was snowing at the time of the incident. She did not know if there was any snow in the parking lot. Most importantly, however, she specifically acknowledged that she was not sure whether it was even ice that she slipped on.

¶ 14 Plaintiff calls our attention to the fact that the circuit court rejected her argument that the salted sidewalk and the non-salted parking lot caused water from the sidewalk to run off into the parking lot and then freeze. Plaintiff believes this constitutes an improper factual finding. We believe this argument is irrelevant. Such a belief presumes that ice was present in the parking lot. No facts have been alleged, however, to support such a presumption.[1] Since plaintiff admitted that she does not know what caused the fall, it is clear that plaintiff cannot even overcome her first evidentiary hurdle (establishing what she slipped on). Only after establishing what she had slipped upon would we be able to determine whether the cause was an unnatural accumulation.

¶ 15 Accordingly, we affirm the circuit court's judgment.

¶ 16 Affirmed.

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[1] Any inference must be based upon established facts. *In re Keith C.*, 387 Ill. App. 3d 252, 260 (2007).