2016 IL App (1st) 151687-U

FIFTH DIVISION
September 16, 2016

No. 1-15-1687

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PAMELA WARD,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 13 L 1211
	)	
NICOLAE TOMA, ELENA TOMA and	)	
4851 DAMEN APARTMENTS,	)	Honorable
	)	William Gomolinski,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

O R D E R

¶ 1 *Held:* Grant of summary judgment in favor of defendants is affirmed where plaintiff failed to identify the cause of her slip and fall.

¶ 2 Plaintiff, Pamela Ward, appeals *pro se* from an order of the circuit court granting summary judgment to defendants, Nicolae Toma, Elena Toma and 4851 N. Damen Apartments, LLC., in a negligence action arising from her slip and fall on a staircase inside a building owned by defendants. On appeal, she contends that the court erred in granting summary judgment

because a genuine issue of material fact exists as to whether defendants completely removed a hazardous liquid substance from the stairs prior to her slip and fall. We affirm.

¶ 3 According to plaintiff's complaint and deposition testimony, on February 2, 2011, she was a tenant at 4851 North Damen Avenue, a building owned by defendants. On that date, she entered the building and, as she walked down a staircase leading from the front door of the building to the lobby, she slipped and fell.

¶ 4 Plaintiff's two-count complaint alleged common law negligence and violation of the Premises Liability Act (740 ILCS 130/1 *et seq*. (West 2010)). She alleged that, prior to her fall, defendants had been informed about the unsafe condition of the stairs and unnatural accumulation of water and ice on the stairs. She also alleged that defendants knew or should have known that the stairs in question were unsafe and poorly maintained. She further alleged that defendants were negligent for failing to: maintain gutters so that there would be no unnatural accumulation of water and ice; properly remove water and ice from the stairs; construct the stairs of non-slippery material and with proper handrails; warn persons of slippery stairs; and adequately maintain stairs as to prevent injury to her. Defendants filed an answer to plaintiff's complaint admitting that they owned the building in question and denying her other allegations. Defendants also raised numerous affirmative defenses.

¶ 5 During discovery, plaintiff filed an answer to defendants' interrogatories. She stated that she suffered injuries when she fell in the entranceway of the building from the "second stair from top of four steps with clear liquid on steps." Also during discovery, defendants deposed plaintiff.

¶ 6 In her deposition testimony, plaintiff stated that the staircase in question was located "right after entering the building," as "you proceed down three to four steps to get to the" lobby or corridor of the building. Plaintiff used this staircase every time she exited and entered the building. Prior to her fall, she did not notice any problems with the staircase, which had handrails on each side. Plaintiff stated that there was a hole on one of the handrails, but "it wasn't loose or anything" and it did not "create any problems." She acknowledged that the lobby area, including the staircase, was in good condition and well maintained. She also acknowledged that, prior to her fall, she did not make any complaints about the staircase to defendants and that she was not aware of others making any complaints about the staircase to defendants. Plaintiff was also not aware of any prior accidents involving the staircase.

¶ 7 On the date of her fall, plaintiff left the building about 10 a.m. and used the staircase. As she left the building, she did not notice any debris or issues with the stairs. It was snowing outside and there was snow on the ground. Two men were shoveling the snow in front of the building. When plaintiff returned to the building about 30 minutes later, she was impressed with the snow cleaning because she was able to access the building. Plaintiff acknowledged that, prior to entering the building, there was no issue with snow being in front of the building and that she was not claiming that she fell on snow or ice.

¶ 8 As plaintiff entered the building, she noticed a puddle of clear liquid in the vestibule near the base of the right handrail of the staircase. She stated that she stopped and looked at the puddle for about 10 to 15 seconds. She also looked down the stairs and saw "light footprints of some clear liquid." Plaintiff then moved to the left, examining the stairs so she would not walk

in the water or any clear liquid. She then proceeded down the stairs without using the handrails. As she stepped down, she slipped and lost her balance. As she tried to recover her balance, she fell forward to the floor of the lobby of the building. Plaintiff stated that she was not distracted when she proceeded down the stairs and that nothing blocked her view of the stairs. She acknowledged that she saw the water to the right of the staircase in the vestibule area and that she was able to walk around it. She also acknowledged that, prior to walking down the stairs, she did not notice any debris or water on the stairs and that there was no defect with the stairs. Plaintiff testified that she did not know what caused her fall and that her "feet came out from under [her]." She was not aware if anyone saw her fall.

¶ 9 Defendants filed a motion for summary judgment, attaching plaintiff's deposition testimony. Defendants argued that summary judgment was appropriate because she failed to demonstrate that her slip and fall was caused by a condition on the stairs.

¶ 10 Plaintiff filed a response to the motion for summary judgment, attaching her own affidavit and the deposition testimony of Juan Davlos, a custodian who worked at the building. In her affidavit, plaintiff averred that, after she fell, she looked back to find out what caused her to fall and saw a clear liquid substance where she stepped. She also averred that, during her deposition, she responded 'no' to the question if there was water on the steps because the question was asked in "yes or no form and seemed to be leading [her] to a specific answer." In her motion, plaintiff argued that there were genuine issues of material fact as to whether defendants voluntarily undertook the responsibility of keeping the staircase dry and negligently performed that undertaking because Davlos caused the water accumulation in the vestibule area. Plaintiff

also argued that the stairs were made of a natural stone material that was particularly slippery when wet and in violation of section 13-160-330 of the Municipal Code of Chicago (Chicago Municipal Code § 13-160-330 (updated July 12, 1990).

¶ 11 Prior to the hearing on defendants' motion for summary judgment, plaintiff's counsel moved to withdraw. The court granted counsel's motion and continued the matter on several occasions to allow plaintiff to hire new counsel. Plaintiff did not hire a new attorney.

¶ 12 At the hearing on the motion for summary judgment, defendants argued that they were entitled to summary judgment as a matter of law because plaintiff was unable to identify the cause of her fall and therefore did not present a genuine issue of material fact. Plaintiff argued *pro se* that, although she did not step in the clear liquid, she was "thrown off the stairs" when the back of her boot connected with the "undercarriage" or run of one of the stairs, which "held [her] momentarily and then released [her] and projected [her] off the stairs." The court granted summary judgment for defendants, finding that plaintiff failed to establish the cause of her fall where she did not identify any defect or material hazard with the stairs. Plaintiff appeals.

¶ 13 Defendants initially argue that plaintiff's brief does not comply with Illinois Supreme Court Rule 341 (eff. January 1, 2016) and her arguments, raised for the first time on appeal are waived. Among other deficiencies, plaintiff's brief does not present us with a cohesive legal argument to consider. See *Twardowski v. Holiday Hospitatlity Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001) (this court is entitled to have briefs submitted that present an organized and cohesive legal argument in accordance with Supreme Court Rules). The brief includes numerous factual allegations without citation to the record and does not include a statement of the issue

presented for review, the applicable standard of review or a statement of jurisdiction as required by Rule 341. Ill. S. Ct. R. 341(e), (h)(3), (4), (7) (eff. July 1, 2008). Rule 341 is not a guideline (*Kerger v. Board of Trustees of Community College District No. 502*, 295 Ill. App. 3d 272, 275 (1997), and *pro se* litigants are required to follow and comply with the rules governing appellate briefs (*Twardowski*, 321 Ill. App. 3d at 511).

¶ 14 Nevertheless, this court has held that "our jurisdiction to entertain the appeal of a *pro se* plaintiff is unaffected by the insufficiency of [her] brief, so long as we understand the issue plaintiff intends to raise and especially where the court has the benefit of a cogent brief of the other party." (Internal quotation marks omitted.) *Id.* Here, the record is short, the issue is straightforward, and we have the benefit of defendants' cogent brief. *Id.* As such, the deficiencies in plaintiff's brief do not preclude our effective review and we will consider the merits of her appeal.

¶ 15 To the extent that we can discern, plaintiff argues that the court erred in granting summary judgment to defendants because a genuine issue of material fact exists as to whether defendants completely removed a hazardous liquid substance from the stairs prior to her slip and fall. Plaintiff bases her argument under the Premises Liability Act and common law negligence. For the reasons that follow, we find that summary judgment was properly granted.

¶ 16 Summary judgment is appropriate when the pleadings, depositions, and admissions, together with any affidavits, show that there is no genuine issue of material fact such that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (West 2014). A reviewing court will construe the record strictly against the movant and liberally in favor of the

nonmoving party. *Forsythe v. Clark USA Inc.*, 224 Ill. 2d 274, 280 (2007). Summary judgment should not be granted unless the moving party's right to judgment is clear and free from doubt. *Id.* Summary judgment should be denied if there is a dispute as to a material fact or if the undisputed material facts could lead reasonable observers to divergent inferences. *Id.* Although defendants urge us to review the court's grant of summary judgment for an abuse of discretion (see *e.g., Solomon v. American National Bank and Trust Co.*, 243 Ill. App. 3d 132, 134 (1993)), we continue to follow our supreme court and apply a *de novo* standard of review (*Forsythe*, 224 Ill. 2d at 280).

¶ 17 We first consider plaintiff's common law negligence claim. The elements of a cause of action based on common law negligence are 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 is an essential element of a negligence claim that, if not proved, will prevent the plaintiff from establishing a *prima facie* case. *Bermudez v. Martinez Trucking*, 343 Ill. App. 3d 25, 30 (2003). Proximate cause need not be proved with direct evidence. *Canzoneri v. Village of Franklin Park*, 161 Ill. App. 3d 33, 41 (1987). Rather, causation may be established by facts and circumstances that, in light of ordinary experience, reasonably suggest that the defendant's negligence caused the plaintiff's injury. *Id.* However, proximate cause may not be predicated on surmise or conjecture and, thus, causation will lie only when there exists a reasonable certainty that the defendant's acts caused the injury. *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 795 (1999). If the plaintiff cannot identify the cause of her injury or can only guess as to the cause, a court cannot find the

defendant liable for negligence. *Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813, 817 (1981).

¶ 18 Here, because the record shows that plaintiff cannot identify the cause of her injury, summary judgment for defendants was properly granted. In her complaint, plaintiff alleged she slipped and fell in the building, but did not identify the cause of her fall. Rather, she stated that defendants had previously been informed about the unsafe condition of the stairs and unnatural accumulation of water and ice on the stairs. She also alleged that defendants knew or should have known that the stairs in question were unsafe and poorly maintained. In her answers to defendants' interrogatories, plaintiff stated that she fell because of a clear liquid on the stairs. However, at her deposition plaintiff acknowledged that, prior to walking down the stairs, she did not notice any debris or water on the stairs and that there was no defect with the stairs. She testified that she saw the water to the right of the staircase in the vestibule area and that she was able to walk around it. She also testified that she saw "light footprints of some clear liquid," but that she moved away from that area of the stairs so she would "not *** follow in their steps." Plaintiff stated that she did not know what caused her to fall and that her "feet came out from under [her]." A short time later in the deposition, the following colloquy occurred:

"Q. Okay. And after you fell, you were concerned about what had happened; correct?

A. Yes.

Q. And you took it upon yourself to examine the stairs that you fell upon; correct?

A. Correct.

Q. And at that time after your fall, the area in which you had walked, you did not observe any debris or any liquid or any water on the section of stairs that you descended; is that correct?

A. Correct.

Q. And you would agree that the area of the stairs in which you attempted to walk down were clean, dry and free of debris and in good repair; correct?

A. Correct.

At the hearing on defendants' motion for summary judgment, plaintiff argued that:

"There was water. There was a slip and I maintained my balance after that slip and I stopped and I looked around and I did not see any debris and I did not see any clear liquid. And that is when I proceeded down the stairs and that is when my right foot was caught under the stair where there is a defect. And as I was maneuvering around the water trying to not to step in the water, I believe it caused a – for the accident, and I ask that you do not grant the defendant a summary judgment[.]"

¶ 19 Because liability cannot be predicated on surmise or conjecture as to the cause of plaintiff's injury, she has failed to sustain her burden of making a *prima facie* negligence case and summary judgment for defendants was proper. *Kimbrough*, 92 Ill. App. 3d at 817 (affirming grant of summary judgment to defendant, because the plaintiff could not identify the cause of her slip and fall. The plaintiff stated repeatedly in her deposition that she did not know why she fell, admitted that, while she saw something that looked like grease, she did not know whether she

stepped on it, and could not identify any defect with, or object on, the ramp she slipped on); see also *Barker v. Eagle Food Centers, Inc.*, 261 Ill. App. 3d 1068, 1072 (1994) (the plaintiff's circumstantial evidence that the floor she slipped on was wet was insufficient to raise a genuine issue of material fact to defeat defendant's motion for summary judgment).

¶ 20 Contrary to plaintiff's argument, her affidavit, filed in response to defendants' motion for summary judgment, does not create a question of fact where her deposition testimony was unequivocal such that it amounted to a judicial admission and therefore could not be contradicted by her affidavit. *Caponi v. Larry's 66*, 236 Ill. App. 3d 660, 671 (1992); see also *Tom Olesker's Exciting World of Fashion, Inc. v. Dunn & Bradstreet, Inc.*, 71 Ill. App. 3d 562, 568-69 (1979) (a party's own counter-affidavit does not place at issue material facts which had previously been removed from contention by the party's own deliberate and unequivocal admissions under oath); *Hansen v. Ruby Construction Company*, 155 Ill. App. 3d 475, 480 (1987) (a party cannot create a factual dispute by contradicting a previously made judicial admission).

¶ 21 Plaintiff's failure to identify the cause of her injury also defeats her claim under the Premises Liability Act because the act merely abolishes the common law distinction between invitees and licensees as to the duty owed by an owner of a premises, and does not affect causation. See 740 ILCS 130/2 (West 2010); see also *Wadycki v. Vanee Foods Company*, 208 Ill. App. 3d 492, 498 (1990).

¶ 22 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 23 Affirmed.