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2018 IL App (3d) 180017-U

Order filed December 21, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

HELEN REYES,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Plaintiff-Appellant,)	Peoria County, Illinois.
)	
v.)	Appeal No. 3-18-0017
)	Circuit No. 16-L-249
PEORIA FORREST HILL DEVELOPMENT)	
COMPANY, d/b/a LANDMARK CINEMAS,)	The Honorable
)	Jodi Melinda Hoos,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice McDade dissented.

ORDER

- ¶ 1 *Held:* Trial court properly granted summary judgment to movie theater owner in negligence suit brought by patron who sued after falling on a step while attempting to leave theater when movie credits were rolling.
- ¶ 2 Plaintiff Helen Reyes filed a negligence complaint against defendant Peoria Forrest Hill Development Co., d/b/a Landmark Cinemas after falling in a movie theater owned by defendant. Plaintiff alleged that she fell as she attempted to leave the theater while the credits were rolling because defendant failed to turn up the house lights. Defendant filed a motion for summary

judgment. The trial court granted the motion, holding that defendant did not owe a duty to plaintiff to raise the house lights while the credits were rolling. We affirm.

¶ 3

FACTS

¶ 4

Plaintiff filed a complaint against defendant, alleging that she was injured at Landmark Cinemas on December 6, 2014. Plaintiff alleged that she was injured when she fell on a step in front of her seat when she attempted to leave the theater when the movie credits were rolling. Specifically, plaintiff alleged: “[D]ue to the negligence of the Defendant the Plaintiff fell on stairs located in the cinema when the Defendant failed to turn overhead lights on after the movie ended.” She alleged that her injuries were caused by “dangerously unlit conditions” in the theater caused when defendant “[f]ailed to turn the lights on in the theatre room when the movie was over” and/or “[f]ailed to maintain the lights in the theatre in proper working condition.”

¶ 5

Defendant filed a motion for summary judgment. In its motion, defendant asserted: (1) “it had no duty to turn up the house lights while the credits were rolling,” (2) plaintiff could not establish that inadequate lighting was the proximate cause of her injury, and (3) “the step was an open and obvious condition.” Attached to the motion were excerpts from plaintiff’s discovery deposition, as well as an affidavit from one of defendant’s employees.

¶ 6

In her deposition, plaintiff testified that she and a friend went to Landmark Cinemas to see a movie in Theater 10 on December 6, 2014. Plaintiff testified that she had been to Landmark Cinema approximately 15 to 20 times before and thought she had “possibly” been in Theater 10 before. Plaintiff testified that she sat in the first row in the middle of the theater so she wouldn’t have to climb multiple steps to reach a seat. There was one step up to the seats in the row where plaintiff sat.

¶ 7 After the movie ended and the credits were rolling, plaintiff stepped forward and fell. Plaintiff testified that she fell because she “didn’t see the step.” According to plaintiff, everyone else had left the theater when she attempted to leave, and an employee had come in with a flashlight to sweep the theater. She left the theater when she did because she believed that the lights would not be turned up.

¶ 8 When plaintiff fell, the theater was at the same level of darkness as when the movie was playing. There were track lights on the floor running along the aisle and along the perimeter of the theatre. Plaintiff stated that the track lights were lit at the time of her fall, when she entered the theater and at all times while the movie was playing. Plaintiff did not remember seeing any lights on the floor in front of her where she fell, but she saw lights “in the center down going towards the screen.” Plaintiff testified that she did not “consciously remember” stepping up one step to get to her seat, but she “most certainly would have.”

¶ 9 Zach Washburn, defendant’s employee and the manager of Landmark Cinemas since 2005, provided an affidavit, which stated in relevant part:

“Based upon my experience, working for and managing movie theaters, it is common to leave the house lights down during the movie and while the credits are rolling. To raise the house lights would interfere with the satisfactory projection of the picture on the screen. While the house lights are down, there is lighting in the theater. All of that lighting was working at the time Ms. Reyes claims to have fallen.”

¶ 10 The trial court entered an order granting defendant’s motion for summary judgment. One week later, plaintiff filed a motion for clarification, asking the court to specify the grounds on which it granted defendant’s motion. The trial court entered an order finding that defendant owed

no duty to raise the house lights in the theater until after the credits were over. The court rejected defendant's argument that the step on which plaintiff fell was an open and obvious condition and that plaintiff could not prove proximate causation.

¶ 11 ANALYSIS

¶ 12 The purpose of a summary judgment motion is to determine whether a genuine issue of material fact exists. *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986). Summary judgment is proper 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 2016). A grant of summary judgment is reviewed *de novo*. *Perri v. Furama Restaurant, Inc.*, 335 Ill. App. 3d 825, 829 (2002).

¶ 13 A plaintiff asserting a cause of action for negligence must establish the existence of duty, a breach of that duty, and an injury proximately resulting from a breach of that duty. *Neimiec v. Roels*, 244 Ill. App. 3d 275, 277 (1993). It is proper to raise the issue of duty in a motion for summary judgment. *Id.*

¶ 14 The existence of a duty is a question of law that turns on foreseeability, the likelihood of injury and the cost of prevention. *Poelker v. Macon Community Unit School District No. 5*, 212 Ill. App. 3d 312, 315 (1990). The existence of a duty is a matter of law to be decided by the court. *Id.* If no duty exists, there can be no recovery and summary judgment should be granted to the defendant. *Id.*

¶ 15 A landowner has the duty to exercise reasonable care for the safety of an invitee. *Sumner v. Hebenstreit*, 167 Ill. App. 3d 881, 885 (1988). “[P]roprietors of theaters are not insurers of the safety of their patrons, but are required to use only ordinary care to make the premises as

reasonably safe as may be consistent with the practical operation of the business.” *Dire v. Balaban and Katz, Inc.*, 241 Ill. App. 199, 203-04 (1926). A theater owner has a duty to its patrons to sufficiently light the aisle and stairway during the showing of a movie. *Gibbons v. Balaban & Katz Corp.*, 242 Ill. App. 524, 529 (1926). A theater owner also has “a duty to turn on the house lights for the convenience of its patrons within a reasonable time after the show [is] over.” *Rosston v. Sullivan*, 179 N.E. 173, 175 (Mass. 1932).

¶ 16 “Moving picture theatres are necessarily dark while the pictures are being shown, and the lighting of the aisles and walks must be subdued.” *Mayberry v. Cage*, 322 Ill. App. 655, 660 (1944). The defendant violates no duty to its patrons “if the condition of light was that ordinarily used in exhibiting moving pictures to enable the audience to get a reasonably clear view of the image thrown on the screen.” *Rosston*, 179 N.E. at 175.

¶ 17 While the lack of bright illumination in a theater does not constitute negligence, a movie patron may recover damages if the evidence shows that lighting in the theater was completely absent. See *Davis v. Theatre Amusement Co.*, 351 Ill. App. 517, 520-21 (1953); *Gibbons*, 242 Ill. App. at 530. A theater in total darkness creates an “inherently dangerous condition.” *Davis*, 351 Ill. App. at 521. However, when a theater has a lighting system and there is no testimony that the system was not functioning properly at the time of the plaintiff’s fall, judgment for the defendant is proper. See *Mayberry*, 322 Ill. App. at 660.

¶ 18 Here, plaintiff does not allege that the theater was completely dark when she fell. She admits that she saw lighting on the floor along the aisles and the perimeter of the theater. Additionally, the theater manager stated that the lights were working when plaintiff fell. Thus, defendant did not violate its duty to light the aisles and stairways during the movie.

¶ 19 Plaintiff, however, contends that defendant was negligent for failing to turn up the house lights when she fell while the credits to the movie were still rolling. While a theater has a duty to turn up house lights within a reasonable time after a movie has ended (*Rosston*, 179 N.E. at 175), there is no duty to do so while a movie is still playing and the credits are rolling. Thus, we affirm the trial court’s grant of summary judgment to defendant.

¶ 20 CONCLUSION

¶ 21 The judgment of the circuit court of Peoria County is affirmed.

¶ 22 Affirmed.

¶ 23 JUSTICE McDADE, dissenting:

¶ 24 The majority has found that defendant did not owe plaintiff a duty to light the stairway during the movie because the theater was not completely dark when she fell. One of plaintiff’s main contentions was that the step in front of her seat was inadequately lit as she attempted to leave the theater. In plaintiff’s complaint, she argued that defendant was negligent because, *inter alia*, it failed to warn her of a dangerously unlit condition in the theater and failed to provide adequate lighting for patrons exiting the theater. At the hearing on the motion for summary judgment, the parties presented contradictory evidence as to whether the step was lit. In plaintiff’s deposition, she testified that, as the credits were rolling, she waited for the lights to be raised in the theater because “it was very dark.” When a theater employee came into the theater with a flashlight and started sweeping, plaintiff assumed that the lights were not going to brighten. She then stood up, stepped forward, and fell. She stated that she fell because she “didn’t see the step.” Although she observed that there were track lights on the floor of the theater, *there were no track lights on the step she fell over*. Moreover, while plaintiff stated that

there was light emanating from the movie screen as the credits were rolling, the record is devoid as to whether that light actually illuminated the step.

¶ 25 Defendant submitted an affidavit from Zach Washburn, the manager of Landmark Cinemas, to counter plaintiff's allegations. Washburn testified that there was lighting in the theater while the house lights were down and that it was in effect at the time plaintiff fell. In defendant's motion for summary judgment, it claimed that the illumination in the theater came from track lights along the floor and light generated on the movie screen during the running of the credits. Because a theater owner has a duty to sufficiently light the stairway while the movie is playing (*Gibbons*, 242 Ill. App. at 529), I would find that there is a disputed issue of material fact--whether the step, the alleged dangerous condition, was in fact adequately illuminated—precluding summary judgment.

¶ 26 In discussing a theater owner's duty of care to its patrons, the majority cites multiple cases that were decided between the late 1920s and early 1950s. These cases obviously do not address changes in the habits and patterns of moviegoers in the last 65-85 years. To this point, during oral argument, defendant stated that most patrons now leave the theater before or during the running of the credits. I would suggest that the duty of reasonable care for contemporary theatergoers requires owners like defendant to raise the house lights at the end of the movie's storyline when people are actually using the stairs to leave the theater and not at the end of the credits. For these reasons, I would reverse the trial court's grant of summary judgment and remand the matter for further proceedings.