2019 IL App (2d) 190072-U
No. 2-19-0072
Order filed October 1, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JONATHON REISNER,	)	Appeal from the Circuit Court
	)	of DeKalb County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-L-35
	)	
TARGET CORPORATION, a foreign	)	
corporation, d/b/a TARGET STORES,	)	Honorable
	)	William P. Brady
Defendant-Appellee.	)	Judge, Presiding

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting Target's motion for summary judgment on Count I of plaintiff's complaint because there was no genuine issue of material fact as to whether the liquid causing plaintiff's fall was a natural accumulation. Summary judgment granted to Target on Count II of the complaint was not in error as the ordinance plaintiff sought to use as *prima facie* evidence of Target's negligence specifically states that it is not intended to nullify state law. The trial court did not abuse its discretion in denying plaintiff's motion to reconsider its March 15, 2016, order granting summary judgment to Target on Count I of the complaint, nor did it abuse its discretion in denying his motion to compel production of documents related to an unpleaded theory of negligent design.

¶ 2 Plaintiff, Jonathan Reisner, appeals the trial court's order granting summary judgment to defendant, Target Corporation (Target), as to both counts of his complaint in negligence.

Plaintiff contends that the trial court erred in its determination that The City of DeKalb Property Maintenance Code imposes sanctions for its violation and precludes *prima facie* evidence of negligence as to count II of the complaint. Additionally, plaintiff contends that the trial court erred in granting summary judgment to defendant on Count I of the complaint pursuant to the natural accumulation rule without the testimony of plaintiff's expert design witness. We affirm the trial court's grant of summary judgment to defendant as to both counts of the complaint.

¶ 3 I. BACKGROUND

¶ 4 On January 27, 2013, plaintiff went with his grandson to the Target store in DeKalb. It was a cold and rainy day, and there was ice in the parking lot. After paying for his purchases, plaintiff returned his cart to the cart corral. Upon turning around to notify his grandson that it was time to leave, he slipped on an area of water near the exit doors and fell on his right elbow and shoulder. Plaintiff was helped up by a Target employee and filled out an incident report. He declined further medical assistance and proceeded with his grandson to his car in the parking lot. When he reached his car, plaintiff could not lift his arm to put the key in the ignition. He then returned to the store and requested an ambulance. Plaintiff was taken to Kishwaukee hospital for x-rays and given a recommendation for further evaluation at Midwest Orthopedic Institute. Midwest Orthopedic Institute diagnosed plaintiff with a torn right rotator cuff and recommended surgery. Surgery took place on April 18, 2013. Plaintiff underwent physical therapy after surgery and completed treatment for his injury in October 2013.

¶ 5 On April 29, 2014, plaintiff filed a two-count complaint against Target. Count I sounded in negligence alleging Target had a duty to maintain its entrances and exits in a reasonably safe condition, and that Target breached that duty by failing to provide a safe means of egress from the store. Plaintiff alleged that his fall was proximately caused by the dangerous means of egress

from Target, and that he sustained damages in excess of $50,000. Count II was titled as Negligence *Per Se* and alleged that Target was in violation of the City of DeKalb Property Maintenance Code, Chapter 13, § 101.2 *et cet* (DeKalb ordinance), which applied to all nonresidential structures and all existing premises within DeKalb. Plaintiff alleged that Target's violation of the DeKalb ordinance produced the kind of harm the ordinance was designed to prevent and that plaintiff was a member of the protected class. Target filed an answer on June 16, 2014, and generally denied plaintiff's allegations. Target filed several affirmative defenses including its statement that it owed no duty to plaintiff as it was his duty to exercise ordinary care for his own safety.

¶ 6 On January 21, 2015, plaintiff filed a motion to compel production of documents. Relevant here, the motion sought documents related to the design of the store, past renovations, and a list of contractors who worked on the store in order to potentially discover design defects. On April 1, 2015, the trial court denied plaintiff's requests for the documents without prejudice pending further discovery.

¶ 7 Between May 15 and July 13, 2015, deposition testimony was taken from plaintiff and several Target employees present on the day of the fall.[1] Plaintiff testified that he was visiting the Target store on January 27, 2013, with his grandson in order to procure some Hot Wheels toys. He was wearing rubber-soled work boots. He recalled that it was cold and very rainy that day. There was ice in the parking lot and it had snowed the prior day. When he arrived at the store, it was raining and the parking lot was wet and icy. He entered the store through its only

[1] Both parties' briefs refer to store surveillance footage from the day of plaintiff's fall. This surveillance footage was not provided to this court with the record on appeal. As such, our recitation of the facts from the day in question will be limited to the pleadings and deposition testimony.

entrance and took a cart to begin shopping. He did not notice any water or snow tracked into the store, nor did he notice any cones or warning signs on the floor. After completing their shopping, he and his grandson proceeded to the check-out register and paid for their items. Plaintiff then took his cart to the corral, which is located inside the store. He turned to tell his grandson it was time to leave and fell next to the cart corral after slipping on a puddle of water. He did not see a cone or warning sign when making his way toward the cart corral. He did not see the water before slipping.

¶ 8 Plaintiff admitted that the surveillance video clearly showed an approximately 2.5 foot high, yellow caution cone that denoted the floor was wet. There was nothing obstructing his view of the caution cone; he just did not see it. The puddle of water was approximately four feet by four feet in area. Upon falling, plaintiff landed on his right elbow and shoulder as he hit the ground. He was helped to his feet by a male Target employee. Plaintiff had no idea where the water came from, how long it had been there, what created it, or whether it was rainwater or water tracked in from outside. He admitted that he was acting more cautious than normal upon entering the store because of the slippery conditions outside, but testified that the inside of the store was not slippery aside from the puddle of water.

¶ 9 Plaintiff testified that he filled out an incident report with a Target employee. The incident report contained a question asking "[w]as the floor clean and dry?" Plaintiff answered "[n]o." The report then asked "[i]f no, please describe the condition." Plaintiff answered '[w]ater from snow." Plaintiff could not recall whether those answers were his opinion or those of the Target employee.

¶ 10 Plaintiff was offered and refused medical assistance from Target following his fall. He then left the store with his grandson and made his way to his vehicle in the parking lot. Plaintiff

testified that he was unable to lift his right arm in order to start the ignition of his car and had to return to the store to request an ambulance. An ambulance took him and his grandson to Kishwaukee hospital. After x-rays and observation, plaintiff was sent home with a recommendation to undergo further evaluation with Midwest Orthopedic Institute, which he did two days later. Midwest Orthopedic Institute diagnosed plaintiff with a torn right rotator cuff and recommended surgery. Plaintiff underwent surgery on April 18, 2013. He missed 46 days of work following surgery due to his doctor's recommendation. He needed help from his grandchildren to complete some household tasks. Plaintiff said that he still has some pain when he sleeps on his right shoulder.

¶ 11 Karol Ravillas, the Target store team leader on duty the day of plaintiff's fall, testified that the weather on the day in question was rainy and the conditions of the parking lot were slushy. She testified that the DeKalb Target has one entrance and one exit door. Patrons can only enter through the entrance door and exit through the exit door. Between the two doors is a half-garage opening, through which carts are pushed into the store from outside for shoppers to use. There is carpeting on the inside of the store on both the entrance and exit sides. The carpet extends out slightly further on the entrance side. Sometimes when carts are returned into the store, the carts may overhang onto the carpet or tile.

¶ 12 Ravillas testified that there was a yellow caution cone placed at the front of the store near where plaintiff fell due to the weather conditions that day. She said this was standard procedure on days in which the weather presents wet conditions. Cart attendants are in charge of making sure that the front end of the store is in good condition for shoppers. Their duties include vacuuming, picking up debris, and using towels to wipe down wet carts and floors. It is common

at the DeKalb Target store for carts to bring in liquid from outside when the conditions are rainy, snowy, or icy.

¶ 13 Following plaintiff's fall, Ravillas filled out the incident report. She recalled that the report included a recitation of what plaintiff had told her on that day. Plaintiff told Ravillas that he did not know what caused him to fall. She testified that following plaintiff's fall, he said he was okay and that the fall was not a big deal. She then procured an ambulance for plaintiff upon his return to the store.

¶ 14 Bianca Geraci was working as a cashier on January 27, 2013, at the store. She recalled having heard the squeaking of shoes behind her while conducting a transaction with another customer. She turned and saw plaintiff on the floor near the cart corral at the front of the store. She was approximately 10 to 15 feet from plaintiff when he fell. She helped to clean up the wet spot where plaintiff fell and testified that it was common in her seven-year experience as a Target employee for carts to make the tile floor wet on days where they were brought in from rain, snow, or ice.

¶ 15 Matthew O'Dell was on duty as the cart attendant on the day of plaintiff's fall. He testified that he did not witness plaintiff's fall but came out to mop up the area afterwards. His duties as cart attendant included bringing carts in from outside and maintaining the front end of the store, including the entrance and exit areas. He recalled having wiped up water on the tile prior to plaintiff's fall on the day in question. O'Dell believed that the source of the water on the tile was from melting snow off the carts. He testified that the carts near the exit door overhang onto the tile. He could not recall if the floor was wet after plaintiff's fall but he cleaned the floor nonetheless. In his experience, he said that it was common for water to fall off of the carts onto

the tile during inclement weather. On the day of the incident, O'Dell had toweled off many carts that were wet from the conditions outside.

¶ 16 Clint Schiola was working as the cashier supervisor on January 27, 2013. He testified that he was in charge of the front end of the store and inspected the entry and exit areas every 15 to 30 minutes on days when the weather was rainy or snowy. The day of plaintiff's fall was no different in that regard. He recalled telling Matthew O'Dell to put out the wet floor sign as a precaution for customers. He testified that sometimes water from the carts would leak on to the tile when brought in from the rain outside, but insisted that he and his team are aggressive in making sure to towel off the carts for both safety and customer convenience. He did not see plaintiff's fall but attended to him as he was getting up from the floor. He recalled that there appeared to be some wetness on plaintiff's boot heel but did not remember any water present on the ground. Schiola did acknowledge that the incident reports of Bianca Geraci and Karoll Ravillas reflect the presence of water on the floor but insisted that he could not remember it being wet. He further acknowledged the surveillance video depicting Bianca Geraci wiping the floor with towels in the area of plaintiff's fall.

¶ 17 On October 5, 2015, Target filed a motion for summary judgment. In its motion, Target claimed summary judgment was appropriate because plaintiff would be unable to prove that Target owed him any duty because the liquid allegedly causing his fall was a natural accumulation. In his response to Target's motion, plaintiff argued that summary judgment should be denied as "the hazard at issue was an artificial accumulation of moisture caused by a poor egress design that transformed a cart corral into a water spout pouring moisture and creating condensation upon the store's only prescribed egress route." Plaintiff further argued that "the hazard that injured plaintiff was clearly the proximate result of the defendant's negligent design

and layout of its cart corral which overhangs onto the tile egress route and was a direct window to the elements without any protection for exiting patrons in violation of the [DeKalb ordinance]."

¶ 18 On March 15, 2016, the trial court granted Target's motion for summary judgment as to Count I of plaintiff's complaint. Regarding plaintiff's argument concerning a negligent design of the store, the trial court said "the words of plaintiff's counsel doesn't make it true and I don't think that one can look at the picture or the video and come to the conclusion without some type of expertise to say that it was a negligent design." The trial court went on to say "[w]e can't just make it a negligent design because we say so, and there's no evidence that I found in any of the material presented to me that would support the argument that there's a factual dispute *** because there's no evidence that it was a negligent design ***." The trial court ultimately agreed with Target that whatever the liquid was that caused plaintiff to slip, it was the product of a natural accumulation.

¶ 19 The trial court did not agree with Target that, as a matter of law, there was no violation of the DeKalb ordinance. "[I]f there's a violation of an ordinance, that's prima facie evidence *** of negligence ***. [T]he ordinance creates a duty on the landowners [and] [v]iolating that ordinance breaches that duty and any injuries that flow from that breach are recoverable ***." Summary judgment as to Count II was denied.

¶ 20 On April 11, 2016, plaintiff filed a motion to reconsider the trial court's March 15, 2016, order. Plaintiff argued that new case law decided on December 21, 2015, supported his claim of negligent design. He cited *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2015 IL App (1st) 142804, for the proposition that expert testimony is not necessary to create a genuine issue of fact for a design flaw to create an unnatural accumulation of water. Additionally,

plaintiff argued that he should have been permitted more time to obtain expert testimony before the court ruled on Target's motion for summary judgment as eyewitness depositions had only recently concluded.

¶ 21 On May 31, 2016, the trial court denied plaintiff's motion to reconsider. The trial court reasoned that although the new case law cited by plaintiff was available at the time of the hearing on Target's summary judgment motion, it would not hold that against plaintiff. The court denied plaintiff's motion because it believed that the case cited did not apply to the facts here.

¶ 22 Following the trial court's order that plaintiff disclose Rule 213(f)(3) witnesses to Target, plaintiff disclosed two liability experts and their reports on September 27, 2016. The liability experts disclosed were Stephen Clark, a consulting meteorologist, and J. Terrence Grisim, a safety engineer.

¶ 23 Clark's report concluded that the water accumulation on the floor of the store was due to accumulated moisture from a shopping cart due to the precipitation. A review of the surveillance video led Clark to conclude that the cart attendant shaking his hands after wheeling the carts inside suggested his hands were wet. Clark opined that no effort was made by Target employees to dry off the cart or the tile floor where the cart was rolled until after plaintiff's fall.

¶ 24 Grisim's report concluded that Target's floor monitoring and clean up procedures fell below retail industry standards. He opined that Target did not train its employees on wet floor conditions and that there should have been more than one caution cone present. He concluded that Target's store procedures were insufficient to deal with inclement weather and that negligence caused plaintiff's injuries.

¶ 25 On May 19, 2017, Target filed a motion to bar plaintiff's liability experts, arguing that neither expert's deposition testimony (conducted on January 13, 2017, and February 8, 2017)

offered any opinions in support of the alleged violation of the DeKalb ordinance. Target argued that because violation of the DeKalb ordinance was the only surviving claim, plaintiff's liability experts should be barred from testifying at trial and plaintiff should be barred from introducing their written or oral opinions at trial for being in violation of Supreme Court Rule 213. On September 13, 2017, the trial court denied Target's motion.

¶ 26 On October 9, 2018, Target filed a motion for summary judgment as to Count II. Target argued that summary judgment was appropriate because the DeKalb ordinance does not confer a private right of action and cannot be used to circumvent the common-law of negligence. Plaintiff argued that he was not alleging a private right of action under the DeKalb ordinance. He maintained that the DeKalb ordinance established a duty owed by Target, notwithstanding the absence of such a duty at common-law.

¶ 27 On January 9, 2019, after a hearing, the trial court granted Target's motion for summary judgment on Count II of plaintiff's complaint. The trial court reasoned that because the DeKalb ordinance provides for sanctions and penalties for its violation, plaintiff could not use the DeKalb ordinance as a private cause of action. In issuing its decision, the court stated:

> "[T]he issue of whether or not the plaintiff in this case can use the ordinance as a private cause of action was allowed in *Bier* because of a violation of the Beach Act and I couldn't figure out why they allowed it if there were sanctions and penalties available. Well, as it turns out there were no penalties available and that to me tips *** the scales to defendant in this particular case, so that's the ruling of the Court."

Plaintiff timely appealed.

¶ 28 II. ANALYSIS

¶ 29 Plaintiff appeals the trial court's grant of summary judgment to Target on both Count I

and Count II of his complaint. Additionally, plaintiff contends that the trial court abused its discretion in 1) denying his motion to reconsider the March 15, 2016, order granting summary judgment as to Count I; and 2) denying his motion to compel documents related to a defective design of the DeKalb Target store. We will address each of plaintiff's contention in turn.

¶ 30 Summary judgment will be granted "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue [of] 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). The purpose of summary judgment is not to try a question of fact, but to determine if one exists. *Gilbert v. Sycamore Municipal Hospital,* 156 Ill. 2d 511, 517 (1993). We review *de novo* the trial court's summary judgment ruling. *Barba v. Village of Bensenville,* 2015 IL App 2d 140337, ¶ 31.

¶ 31 We begin our analysis with the grant of summary judgment on Count I. Plaintiff argues that this court's opinion in *McLean v. Rockford Country Club*, 352 Ill. App. 3d 229 (2004), stands for the proposition that the natural accumulation rule does not apply to Target as owners of the premises because their employees, while in a direct business relationship with plaintiff, placed the cart in a location where water would drip down to the tile floor. Alternatively, plaintiff argues that a genuine issue of material fact exists as to whether the puddle was an unnatural accumulation of water. Plaintiff believes that a reasonable person could find that Target created the puddle as a result of Target's business operations rather than being a natural accumulation.

¶ 32 In *McLean*, the plaintiffs, Charles and Linda McLean, sought to recover damages for injuries sustained when Charles was struck by a falling icicle near the entrance of defendant's premises. *McLean*, at 230. Plaintiffs alleged that Charles was defendant's business invitee and was walking under the edge of an overhanging roof near the front entrance of defendant's

premises when he was struck about the head, neck, and shoulder by an icicle that broke off of the overhang, causing him serious injuries. *Id*. The trial court granted defendant's motion to dismiss plaintiffs' complaint pursuant to section 2-615 of the Code of Civil Procedure (the Code) based on defendant's argument that it had no duty to remove snow or ice that accumulated naturally on its premises, and that plaintiffs failed to allege sufficient facts to establish that the icicles were an unnatural accumulation created as a result of a defective condition on the premises. *Id*. at 231-32.

¶ 33 On appeal, this court reversed the trial court's dismissal of plaintiffs' complaint under section 2-615 of the Code for failure to state a cause of action. We held that plaintiffs could properly allege that defendant breached both its duty to provide a reasonably safe means of ingress and egress from its premises, and facts stating a cause of action predicated upon the presence of defective conditions on defendant's building because a business' duty to provide to its invitees a reasonably safe means of ingress and egress was not abrogated by the natural accumulation of snow or ice. *Id*. at 237-38. Plaintiff in the present case seems to predicate his contention on our interpretation of *Bloom v. Bistro Restaurant, Ltd. Partnership*, 304 Ill. App. 3d 707 (1999), when we noted in *McLean* that a careful reading of that case reveals that the majority applied the natural accumulation doctrine only when considering the liability of a building owner/landlord and not the restaurant/tenant because the building owner/landlord had no direct business relationship to the injured plaintiff. *McLean*, at 236. Here, plaintiff seems to assert that because Target is both the building owner and business operator, it can be held liable for injuries resulting from natural accumulations of water. We disagree with plaintiff's interpretation of *McLean* as it is distinguishable from the procedural posture of the present appeal.

¶ 34 As noted, *McLean* was an appeal from a dismissal under section 2-615 of the Code. A complaint should be dismissed under section 2–615 for failure to state a cause of action only

when it clearly appears that no set of facts could be proved under the pleadings that would entitle the plaintiff to relief. *McLean*, at 232. In ruling on a motion to dismiss, the complaint's factual allegations are to be interpreted in the light most favorable to the plaintiff, but factual deficiencies may not be cured by liberal construction. *Id*. The present issue in this appeal comes to us from a grant of summary judgment to Target from plaintiff's common-law negligence claim. At the summary judgment stage, the mere allegations in the pleadings are not enough to create a material issue of fact. *Richter v. Burton Investment Properties, Inc.*, 240 Ill. App. 3d 998, 1002 (1993). A plaintiff must present evidence through depositions, affidavits and admissions to support the allegations. *Id*.

¶ 35 In plaintiff's complaint, his common-law negligence claim never mentions Target's building as defectively designed. It does allege that Target "had a duty to provide a reasonably safe means of ingress to, and egress from, their store, including, but not limited to, a duty to illuminate the egress way properly, and give warning of known dangerous conditions, or it must repair the condition." However, aside from the mere allegation of an unsafe means of ingress and egress, plaintiff never offered any evidence to suggest that Target breached this duty. All witnesses deposed described the weather conditions as cold, rainy, and icy in the parking lot. Plaintiff said that he did not notice the caution sign on the floor near where he slipped, but admitted it was there after reviewing of the surveillance video. He further admitted that nothing obstructed his view of the sign. The deposed Target employees testified similarly to the presence of the caution sign on the floor. Plaintiff said that he had no idea where the water came from. However, the incident report he filled out with Karol Ravillas said that plaintiff fell on the wet floor because of "water from snow." The Target employees testified that it was common from their experience for water to fall from carts onto the tile floor when the weather conditions were

rainy, snowy, or icy. Although there was some discrepancy between the employees' testimony as to whether they noticed the wetness of the floor, we do not believe that this creates a genuine issue of material fact so as to find error with the trial court's grant of summary judgment to Target on Count I of the complaint.

¶ 36 In *Lohan v. Walgreens Co.*, 140 Ill. App. 3d 171 (1986), plaintiff, a customer, brought a slip-and-fall action against the defendant store. She alleged in her complaint that she slipped and fell on the wet surface of a common entryway to the store. *Lohan*, at 172. She admitted in her deposition testimony that there was heavy rainfall on the day of her accident. *Id*. The mats laid out in the entryway were wet from customers tracking in rainwater, and after stepping from the mat to the floor inside, she slipped and fell. *Id*. at 172-73. She said that she did not know why her foot slipped as she did not observe any debris or puddles on the floor. *Id*. at 173. The trial court granted defendant's motion for summary judgment based on their argument that plaintiff could not establish the cause of her fall and that assuming the evidence could establish a fall caused by water tracked in from outside, defendant could not be liable for injuries resulting from a natural accumulation of water. *Id*.

¶ 37 In affirming the trial court's dismissal of plaintiff's complaint, the appellate court in *Lohan* held that "[i]t is undisputed that as a general rule, a landowner has no liability for injuries resulting from natural accumulations of substances such as ice, snow or water." *Id*. Landowners have no duty to continuously remove the tracks left by invitees or customers who have tracked in such natural accumulations. *Id*. at 173-74. "[T]hese principles also apply to snow or water that is tracked inside a building from natural accumulations outside." *Id*. at 174. The *Lohan* court noted that liability may be found for a landowner for injuries resulting from tracked-in water when the

plaintiff specifically alleges that the materials used in the subject floors are particularly slippery and dangerous when wet, but no such allegation was made by plaintiff in that case. *Id*. at 175.

¶ 38 The facts of the present case are very similar to those in *Lohan*. Here, plaintiff testified in his deposition that the inside of the Target store was not slippery aside from the puddle of water upon which he slipped. At the time of the trial court's grant of summary judgment on Count I, plaintiff failed to produce any evidence of a defective design. Further, he failed to produce any evidence pertaining to a breach of duty by Target in providing safe ingress to, and egress from the store. The evidence available shows that Target satisfied this duty in warning customers of potential dangers by putting out a 2.5 foot, yellow caution sign that plaintiff unfortunately overlooked. Therefore, this court's holding in *McLean* does not support plaintiff's position on his common-law negligence claim either as his mere allegations of an unsafe means of egress from the store is not supported by the evidence available at the time of summary judgment. See *Supra* ¶ 34. We can find no error in the trial court's grant of summary judgment to Target as to this Count. The evidence showed that the puddle of water was a natural accumulation and Target can have no liability for plaintiff's injuries through a common-law negligence complaint. See *Lohan*, at 173. Accordingly, without reiterating the evidence introduced at the time of the trial court's ruling on Target's first motion for summary judgment, plaintiff's alternative argument that a genuine issue of material fact exists as to whether the puddle was an unnatural accumulation of water also fails under this analysis.

¶ 39 We now move to plaintiff's contention that the trial court erred in denying his motion to reconsider the grant of summary judgment to Target on Count I. The purpose of a motion to reconsider is to bring to the trial court's attention: (1) newly-discovered evidence not available at the time of the hearing; (2) changes in the law; or (3) errors in the court's previous application of

existing law. *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248 (1991). The decision to grant or deny a motion to reconsider lies within the trial court's discretion, and we will not disturb the court's ruling absent an abuse of discretion. *Williams v. Dorsey*, 273 Ill. App. 3d 893, 903 (1995). An abuse of discretion occurs where no reasonable person would take the court's view. *Matthews v. Avalon Petroleum Co.*, 375 Ill. App. 3d 1, 9 (2007).

¶ 40 Plaintiff argues here that the trial court's grant of summary judgment to Target on Count I was due to his inability to present expert testimony on a negligence count for the design of the entryway in the Target store. Plaintiff maintains new case law and discovery issues mandated a reversal of the trial court's March 15, 2016, summary judgment order. We disagree.

¶ 41 As Target points out in their brief to this court, the case upon which plaintiff relies is *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2015 IL App (1st) 142804, an opinion published on December 21, 2015. The trial court held its hearing on Target's motion for summary judgment on March 15, 2016. If the purpose of a motion to reconsider is to bring to the trial court's attention newly-discovered evidence not available at the time of the hearing, changes in the law, or errors in the court's previous application of existing law, it is difficult for this court to entertain plaintiff's contention based on case law available at the time of the hearing on Target's first motion for summary judgment.

¶ 42 But even with the available case law, plaintiff's arguments here still fail. The crux of his contention on this issue is that the trial court did not provide ample opportunity to conduct expert discovery. Following the denial of plaintiff's motion to reconsider, the trial court set a deadline for expert discovery under Rule 213(f)(2) of August 10, 2016. Somehow plaintiff believes this constitutes the trial court "thwarting the discovery process and hindering the ascertainment of

truth by requiring expert testimony before an expert disclosure date." This argument is confounding to this court. Plaintiff filed his complaint on August 29, 2014. The trial court conducted the hearing on Target's first motion for summary judgment on March 15, 2016. We fail to see how plaintiff was prevented from obtaining an expert to support a negligent design theory, a theory that he never pled in his complaint, during this time period. Nothing in his motion to reconsider explains why he failed to provide any expert witness to support his unpleaded theory, nor does his motion meet the understood purpose of a motion to reconsider. The trial court did not abuse its discretion in denying that motion.

¶ 43 Plaintiff's contention that the trial court erred in denying his motion to compel documents related to a defective design of the DeKalb Target store fails for similar reasons. Trial courts are given great discretion during the discovery phase of litigation, and its exercise of discretion on appeal will not be disturbed absent an abuse of discretion. *In re Estate of O'Hare*, 2015 IL App (2d) 140073, ¶ 14. Again, plaintiff's complaint alleged that Target failed to provide a safe place to exit the store and provide a safe means of egress. No allegation of negligent design was contained in the complaint, and the complaint was never amended to add such an allegation. Plaintiff argues that his motion to compel documents, related to the design of the Target store, was reasonably calculated to lead to expert testimony and other admissible evidence of a design defect. This argument misconstrues the trial court's order denying his motion to compel these documents, and therefore was not in error.

¶ 44 At the April 1, 2015, hearing on plaintiff's motion to compel, the trial court told plaintiff that he would be allowed to rephrase his request for documents to include all incident reports of falls that occurred within the area depicted on the surveillance video in order to explore his theory of a defective design. The court then told plaintiff:

> "[L]et's see what this shows us. If it doesn't show anything significant to your case, then you're not going to go anywhere with it anyway. If it does, then you're going to say okay, now I have information to expand it to other areas. Let's see what this gets us. *** That's what I'm going to direct them to produce, is for the area shown in the video."

After clarifying to Target that it was to produce all relevant incident reports from 2009 to the date of plaintiff's fall in 2013, the trial court told the parties:

> "Once [plaintiff] gets that, he may have some other requests flowing from that but, you know, we're not going on a fishing expedition. On the other hand, each step we go, it may lead us to another step. And I think that based on what [plaintiff] see[s], you know, it is possible that they're going to make specific requests for how the decision was made to design it in that fashion, or whether or not there were any modifications made ***."

Finally, the trial court told the plaintiff:

> "[F]ind out *** whether there's enough information to bring in an expert to say that this, you know, isn't the way it's supposed to be [designed], because *** you're never going to be able to go to trial using any of this information or specific instances of other people, because notice is only part of the issue. You have to have somebody say [that] based on [their] experience [this] is one of the reasons why [an expert] think[s] this is a crummy way to design an exit. I'm not sure *** what it looks like or anything like that, but you're going to have to get somebody *** to support your position."

Following the trial court's order, plaintiff never amended his complaint to allege a design defect. He never retained an expert to attest to that theory. Our reading of the trial court's instructions to the parties lead us to conclude that plaintiff was given ample opportunity to explore his theory of a design defect with the potential to file additional motions to request or compel documents from

Target if his investigation supported such a theory. Nothing prevented him from doing so before the trial court ruled on Target's first motion for summary judgment on March 15, 2016. Plaintiff's argument that "by precluding plaintiff from obtaining the requested documents before the plaintiff produced a design expert, the trial court abused its discretion in denying the motion to compel" is wholly meritless. He was given wide latitude by the trial court to explore an otherwise unpleaded theory of negligent design. We will not disturb the trial court's denial of his motion to compel.

¶ 45 We now come to plaintiff's final contention. Plaintiff contends that the trial court erred in granting summary judgment to Target on Count II of his complaint. He argues that the trial court erroneously determined that a statute or ordinance imposing monetary sanctions cannot be *prima facie* evidence of negligence. We agree with plaintiff regarding the error of the trial court's reasoning, but as our review of the grant of summary judgment to Target is *de novo*, our analysis will not be limited to that proposition.

¶ 46 Before delving into our analysis on this issue, we must note that in his complaint, plaintiff titled Count II as "Negligence Per Se." Plaintiff argues that he is not implying a private cause of action under the DeKalb ordinance, but alleging that Target's violation of the ordinance represents *prima facie* evidence of negligence. Count II of plaintiff's complaint incorporates by reference all statements and allegations contained in his Count I claim for common-law negligence. Count II then goes on to allege that the DeKalb ordinance was in effect on the date of plaintiff's injury and that the ordinance "constitutes minimum requirements *** for premises, structures, equipment and facilities for protection from the elements, life safety, *** the responsibility of owners ***." Count II alleges that the purpose of the ordinance is to "ensure public health, safety and welfare in so far as they are affected by the continued occupancy and

maintenance of *** premises." He then cites to sections 305.4 and 702 of the DeKalb ordinance of which he alleges Target violated and produced the kind of harm the ordinance was designed to prevent. Plaintiff alleges that he is a member of the class of persons the ordinance was designed to protect, and that his "injuries were proximately caused by defendant's acts ***."

¶ 47 Throughout the proceedings plaintiff presented Count II as both a negligence *per se* claim and a violation of the DeKalb ordinance as *prima facie* evidence of Target's negligence. In his response to Target's first motion for summary judgment, he stated that "[i]n Illinois, violation of a statute, ordinance, or administrative regulation designed for the protection of human life or property is *prima facie* evidence of negligence or other fault." However, in plaintiff's response to Target's second motion for summary judgment, limited to the remaining Count II, his arguments speak specifically to his allegation of negligence *per se*. He states there that "[Plaintiff] has characterized Target's violations of the [DeKalb ordinace] as negligence *per se*, and not as mere violations of the [DeKalb ordinance]. Therefore, Target's contention that the [DeKalb ordinance] does not provide for a private cause of action is irrelevant to [plaintiff's] claim of negligence *per se*." But then, in his memorandum in support of his opposition to Target's motion for summary judgment, he argues that "if the violation of a statute constitutes *prima facie* evidence of negligence, the case cannot be dismissed on the basis of the lack of a common-law duty."

¶ 48 At the hearing on March 15, 2016, on Target's first motion for summary judgment, the trial court, in denying Target's motion as to Count II, stated:

> "I understand what type of theory is being pursued here. We conclude that a violation of a safety statute can be *prima facie* evidence of negligence. That's all this is *** it can be prima facie evidence of negligence. Not that it is, but it can be. And then the issue there

> becomes is it not *prima facie* evidence of negligence because there are other punitive sanctions available, and therefore no private cause of action[?]"

With all of plaintiff's aversions to a theory of Target's violation of the DeKalb ordinance as *prima facie* evidence of negligence, we can analyze his contention here as such. When analyzing a party's request for relief, courts should look to what the pleading contains, not what it is called. *In re Haley D.*, 2011 IL 11086, ¶ 67. Further, as plaintiff points out in his brief to this court, section 2-616(c) of the Code provides that "[a] pleading may be amended at any time, before or after judgment, to conform the pleadings to the proofs, upon terms as to costs and continuance that may be just." 735 ILCS 5/2-616 (c) (West 2016). This leaves us with a single question of law as to whether summary judgment to Target on Count II was proper: Is the DeKalb ordinance's language in derogation of Illinois common-law, therefore abrogating the common-law principle that a landowner has no liability for injuries resulting from natural accumulations?

¶ 49 Plaintiff directs this court to the following provisions of the DeKalb ordinance in support of his argument that its violation is *prima facie* evidence of negligence under Count II:

> "101.2 Scope – The provisions of this code shall apply to all existing residential and nonresidential structures and all existing premises and constitute minimum requirements and standards for premises, structures, equipment and facilities for light, ventilation, space, heating, sanitation, protection from elements, life safety, safety from fire and other hazards, and for safe and sanitary maintenance; the responsibility of owners, operators and occupants; the occupancy of existing structures and premises, and for administration, enforcement and penalties.
>
> 101.3 Intent – This Code shall be construed to secure its expressed intent, which is to ensure public health, safety and welfare in so far as they are affected by the continued

> occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimal level of health and safety as required herein.
>
> ***
>
> 305.4 Stairs and walking surfaces – Every floor, ramp, landing, balcony, porch, deck or other walking surface shall be maintained in sound condition and good repair.
>
> ***
>
> 702.1 General – A safe, continuous and unobstructed path of travel shall be provided from any point in a building or structure to the public way. Means of egress shall comply with the *International Fire Code*."[2] City of DeKalb Property Maintenance Code, Chapter 13, § 101.2 *et cet* (2012).[3]

Section 102.10 of the DeKalb ordinance provided that "the provisions of the Code shall not be deemed to nullify any provisions of local, state or federal law." Section 106.4 of the ordinance provides that any person who violates the Code is *** subject to a fine of not less than $50 nor more than $500 for each offense committed ***."

¶ 50 In Illinois, violation of a statute, ordinance, or administrative regulation designed for the protection of human life or property is *prima facie* evidence of negligence or other fault. *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 58. The violation does not constitute

---

[2] This section appears under Chapter 7 of the DeKalb ordinance, titled "Fire Safety Requirements." Section 701.1, which details the scope of chapter 7, states that the provisions "shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided."

[3] Deleted by DeKalb Municipal Code Ordinance 2017-001.

negligence *per se*, however; the defendant may prevail by showing that he acted reasonably under the circumstances. *Id*. A party injured by such a violation may recover upon showing that the violation proximately caused the injury, that the statute or ordinance was intended to protect the class of persons to which the party belongs, and that the injury suffered was of the type the statute or ordinance was designed to protect against. *Id*. Conduct violating legislated rules is negligent, and if a statutory violation proximately causes an injury of the kind the legislature had in mind when it enacted the statute, the offending party is civilly liable for that injury. *Id*.

¶ 51 In *Bier*, the plaintiffs were a married couple who visited a lake and beach controlled by the defendant homeowner's association. The Husband was injured after falling from a rope swing into the lake, hitting his head, and sustaining a neck injury that rendered him a quadriplegic. *Id*. at 46-47. Plaintiffs alleged that the defendant's conduct with the rope swing was in violation of the Illinois Swimming Pool and Bathing Beach Act (Beach Act) (210 ILCS 125/ *et seq* (West 1994)). *Id*. at 58. Plaintiffs argued that the Beach Act created a duty in tort beyond any duty that may or may not have been owed under a common-law negligence theory. *Id*. Further, plaintiffs argued that defendant violated the Beach Act and that such violation was *prima facie* evidence of negligence or a personal action was implied under the statute. *Id*. The trial court granted defendant's motion for summary judgment, finding that the condition upon the defendant's land was open and obvious, and that the Beach Act did not establish that the plaintiff owed defendant as duty. *Id*. at 50.

¶ 52 This court in *Bier* did not reach whether the Beach Act implied a personal action, but did find that it constituted *prima facie* evidence of negligence because 1) by providing for the establishment and enforcement of minimum standards for safety for all swimming pools and public bathing beaches, the Beach Act was designed to protect human life; 2) the Beach Act was

designed to protect a class of persons to which plaintiffs belonged; and 3) the Beach Act was designed to protect persons from the kind of injury suffered by the plaintiff. *Id*. at 61.

¶ 53 Plaintiff in the present appeal argues that the DeKalb ordinance, like the Beach Act, creates a duty to Target where none exists at common-law, here the presence of a natural accumulation. We agree with plaintiff that the DeKalb ordinance was 1) designed to protect human life; 2) designed to protect a class of persons to which plaintiff belongs; and 3) designed to protect plaintiff from the kind of injury he suffered. However, the DeKalb ordinance's own language is fatal to plaintiff's argument.

¶ 54 "A legislative intent to abrogate the common-law must be clearly and plainly expressed." *Blount v. Stroud*, 232 Ill. 2d 302, 315 (2009). As we stated, Section 102.10 of the DeKalb ordinance provided that "the provisions of the Code shall not be deemed to nullify any provisions of local, state or federal law." The Beach Act, as codified at the time of *Bier*, contained no such language. The DeKalb ordinance explicitly intends not to abrogate Illinois law. The law in Illinois clearly does not allow for liability when falls are due to natural accumulations. See *Lohan*, at 173. Moreover, *Bier* involved an open and obvious condition, as opposed to the natural accumulation that we are presented with here. Our reading of *Bier* does not stand for plaintiff's proposition that a statutory obligation creates a legal duty when Illinois law related to natural accumulation dictates that no duty exists.

¶ 55 Therefore, based on the language of section 102.10 of the DeKalb ordinance and the well-established Illinois common-law that a landowner has no liability for injuries resulting from natural accumulations of substances, no genuine issue of material fact exists as to preclude summary judgment in favor of Target on Count II of plaintiff's complaint.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 58 Affirmed.