2012 IL App. (1st) 111834-U

FIRST DIVISION
March 26, 2012

No. 1-11-1834

DEBORAH GAGE,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 L 07276
	)	
THE COUNTY OF COOK d/b/a	)	
JOHN H. STROGER, JR. HOSPITAL,	)	Honorable
	)	Kathy M. Flanagan,
Defendant-Appellee.	)	Judge Presiding.

ORDER

HELD: In this slip-and-fall case, summary judgment in favor of defendant is affirmed where plaintiff failed to present an evidentiary basis sufficient to support an inference that defendant caused unsafe condition or had actual or constructive notice of same.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

¶ 1 Plaintiff, Deborah Gage, brought this suit to recover damages for injuries she suffered as a result of a fall at John H. Stroger, Jr. Hospital (Stroger Hospital), which is owned and operated by defendant, the County of Cook (county). The trial court entered summary judgement in favor of the county and denied a motion to reconsider that order. We affirm.

¶ 2 I. BACKGROUND

¶ 3 In her first-amended complaint, plaintiff alleged, on June 30, 2008, she brought a relative to the emergency room at Stroger Hospital for medical care. Plaintiff asserted that the county owed her

a duty to keep these premises in a reasonably safe condition, and not create or allow any dangerous condition to exist. Plaintiff claimed the county breached its duty and was negligent by allowing "water to exist and/or accumulate on the floor in the hallway area of the subject hospital as a result of routine mopping of said floors when it knew or in the exercise of reasonable care should have known of such hazards." Plaintiff further alleged the county failed to warn her "of the wet floors and mopping taking place in the walkway areas." Plaintiff asserted, as a direct and proximate result of the county's negligence, that she slipped and fell after stepping in water which had "accumulated on the floor" and suffered injuries.

¶ 4 In its answer, the county denied it owed a duty to plaintiff and that it was negligent. The county raised certain affirmative defenses, including it was immune from liability under section 3-102 of the Tort Immunity Act (Act). 745 ILCS 10/3-102 (West 2010).

¶ 5 The parties engaged in discovery, including the taking of depositions. In her deposition, plaintiff testified, on June 30, 2008, she was to work the 2:00 p.m. to 10:00 p.m. shift as a nurse's aid at Alden Estate in Barrington, Illinois. However, she left work at about 9:00 p.m. to take her cousin, Ludell Deveaux, to the emergency room of Stroger Hospital to receive treatment for high blood pressure. Plaintiff was wearing gym shoes. The weather was clear that evening. She described the emergency room as well-lit, and the floor was tiled.

¶ 6 After her cousin registered at the emergency-room desk, they sat down in the waiting area. After five to ten minutes, Ms. Deveaux was called to a room where her blood pressure could be checked by a nurse. This room did not have a door and was within the emergency-room area. Plaintiff went with Ms. Deveaux, but learned that a mistake had been made as to her cousin's name.

Plaintiff decided to return to the registration desk, which was a short distance away, to have the name corrected. As she was walking to the registration desk, plaintiff slipped and fell to the floor. She testified there was an odorless, clear liquid on the floor, which she referred to as water. Plaintiff's deposition transcript includes the following exchange:

> "Q. Did you see any puddles of water, or was it just - - Can you explain to me how you knew there was water on the floor?
>
> A. Well, you know the floor - - the water is not noticeably [*sic*] on a clear white floor, tile floor. You know, it's not like it's a puddle of water, but you could tell, you know. When I fell, I could tell that, you know, it was wet, you know, because I could feel it on my hand, you know. It's slippery.
>
> Q. And was the whole area wet or just the area you fell in?
>
> A. I can't - - I can't tell if the whole area is wet, but where I fell I noticed it was wet. The pavement was wet."

¶ 7 She did not notice whether her clothes were wet after the fall. When plaintiff was on the floor, she could see her cousin, who was still in the nurse's room, less than a foot away.

¶ 8 Plaintiff was not able to get off the floor on her own. A hospital employee, who had a mop and bucket in his hand, came to help her. Plaintiff testified that prior to her fall, she had not seen this employee with a bucket, and had not seen him mopping. Plaintiff said in her deposition that because the floor was wet where she fell, "it seems he already mop[ped] where I was." Plaintiff stated there were no wet-floor warning signs. Plaintiff was not able to look again at the floor where she fell because she was taken for treatment by wheel chair. A nurse made an incident report. Plaintiff

fractured her ankle.

¶ 9 Ms. Deveaux, who lives in the Bahamas, was deposed by telephone. She had been visiting friends in Chicago during June 2008. According to Ms. Deveaux, a friend, and not plaintiff, took her to the hospital that day. However, while she was with the nurse who was checking her blood pressure, Ms. Deveaux saw plaintiff "about to walk to me." Ms. Deveaux testified the nurse screamed. Ms. Deveaux looked and saw plaintiff on the floor. A man helped plaintiff up from the floor. Ms. Deveaux said she then saw water on the floor, and plaintiff's clothes were wet. Ms. Deveaux testified that after plaintiff had been helped up, she saw a man "drying the floor with a mop."

¶ 10 Specifically, Ms. Deveaux testifed in response to questions as follows:

"Q. When Ms. Gage got up from the floor, did you notice any water on the floor itself?

A. Yes.

Q. You did?

A. Yes, I saw her clothes wet and there was still water on the floor.

Q. I know you said you saw her clothes were wet.

A. Yes. I saw water on the floor still, but I saw a gentleman drying the floor.

Q. Who was the man drying the floor?

A. I guess he worked there because he had a mop and he was drying the floor.

Q. He was drying the floor with a mop?

A. Yes.

Q. After she got up?

A. Yes, after she got up.

Q. Where did you see him drying the floor?

A. Where she fell. Right in the area where she fell by the bathroom.

Q. So she fell right in front of the bathroom?

A. Yes, right in front of the bathroom.

* * *

Q. But you did not see anybody mopping the floor there right before she fell, did you?

A. No.

Q. And you don't know whether or not she had anything in her hands before she fell, did you?

A. No."

Ms. Deveaux did not see any signs indicating the floor was wet.

¶ 11 Arndell Ricks, director of environmental services at Stroger Hospital, was also deposed. He administers the cleaning and sanitation services department at the hospital. Mr. Ricks is responsible for investigating and maintaining documents relating to any incidents occurring on the premises and received a document relating to plaintiff's fall from Sue Klein. He was not aware of any "incident report" as to plaintiff's fall. Mr. Ricks then requested a written statement from Edward Powell, a building service worker, who had been assigned to the emergency room that night. In his statement, Mr. Powell said that at the time of the fall, he was spot mopping the floor. Mr. Powell was not

reprimanded as to this incident because Mr. Ricks had concluded Mr. Powell had not been mopping in the area where plaintiff fell.

¶ 12 Mr. Ricks testified the floors are not mopped at a set time, but are "mopped as needed." When mopping floors, employees are required to post a wet-floor sign until the floor is dry.

¶ 13 In his deposition, Mr. Powell testified that on the evening of June 30, 2008, he was assigned to the main triage area of the emergency room during the 3:00 p.m. to 11:00 p.m. shift. At around 10:30 p.m., he saw plaintiff with a cup in her hand, walking near the restrooms, and then saw her fall. Mr. Powell gave the following deposition testimony in response to questions:

"A. Okay. I was cleaning the waiting area of the triage. Normally that's what I do *** before I go home, make sure that the waiting area and certain areas of that–in that area, the triage area, is cleaned because there's a lot of traffic. So we kind of make sure the trash and the floor is straightened.

Q. What did you witness that evening, if anything?

A. Okay. I witnessed a lady. She fell.

Q. What were you doing at the time that she fell?

A. At the time she fell, I was cleaning in the area of the vital sign area.

Q. And how far away from you was the person that you witnessed fall?

A. Oh, about I could say maybe from - - maybe from that wall probably to a little bit outside the door there. I don't know. That would be about what, 30, 40 feet. I'm not for sure exactly as far as that length of that but yeah.

Q. Less than 30 feet?

A. Maybe so, yeah, less than 30.

Q. Would anyone else have been mopping in the area that you were cleaning that evening?

A. No.

* * *

Q. In the area that the lady fell in, had you previously mopped that prior to her falling in that area?

A. No. I hadn't cleaned that area. That's like she fell between I would say the washroom and the exit door there. I was in the waiting area.

Q. And the waiting area and the bathroom area where the blood pressure station is as well, is that adjacent to where you were?

A. Right.

Q. So you had a clear view of where the person fell?

A. Yeah.

Q. What exactly did you see happen to this woman?

A. Okay. I have - - while I was cleaning - - spot mopping the area, the waiting area, I saw the lady which looked like to me came out of the washroom and headed toward the exit area and fell.

* * *

Q. Had someone directed you to mop - - to spot mop the floor that night?

A. No, that's what I do, no. That's part of my job.

* * *

Q. Did you go in the waiting room and look around and see that there were things on the floor to spot mop?

A. Well, first of all, I get the trash off the floor, the paper, pop, flowers, whatever, the trash off the floor. In doing that there, I see the floor need to be spot mopped, so that's what I did.

* * *

Q. Okay. And then at that time, it's your testimony that you hadn't gotten to that area where you saw the lady fall, correct?

A. No. Right.

Q. But you did eventually spot mop the floor of that area [where plaintiff fell]?

A. I just wiped the whole floor of that area because it's a little area. It's not a large area ***.

* * *

Q. Was there a reason in particular that you decided to wet mop that area?

A. Well, since she fell, there could have been–That's the procedure. I mean, I didn't see anything down there where she slipped on, but at the same token, it's part of my job.

Q. Okay. So it's your testimony that you didn't see her spill anything on the floor?

A. No, I didn't. I didn't see anything come out of the cup. She didn't actually slip like and fall like, you know, I would say like slip on some ice or something and everything just goes because she didn't even drop the cup. So I didn't see anything come out of the cup.

But I didn't know there was anything on the floor or not when she said she slipped."

* * *

Q. What is the reason you spot mopped the floor in the area the lady fell in after she fell?

A. I didn't spot mop the floor. I wiped the floor. I mopped the floor itself. That's part of what I do in the shift before I go home is to make sure the area is wiped clean on the floor. I just hadn't gotten to that particular area where she fell yet."

After plaintiff fell, Mr. Powell said he did not see liquid on the floor where plaintiff fell.

¶ 14 Mr. Powell, in his deposition, explained that when mopping, or when there is a spill, he places a wet-floor sign until the area is dry. Mr. Powell testified there were no spills that night that required a wet-floor sign. Mr. Powell testified he did put up a wet-floor sign that night "leading into the waiting area," because he was mopping. The sign was yellow and black "saying 'caution wet floor.' " Mr. Powell cleans the floor with a liquid germicide mixed with water.

¶ 15 Mr. Powell testified he was not the person who helped plaintiff when she was on the floor. Nurses by the vital-signs area assisted plaintiff.

¶ 16 At the request of Mr. Ricks, Mr. Powell gave a written statement the next day which stated:

"[O]n Monday 6/30/08 approx. 10:00 p.m. I was finishing my cleaning in the waiting area of E.R. triage by the male and female washrooms, my manager came to me and told me to check the waiting area for patients waiting to be seen. After I finished sweeping the trash off of the floor I proceeded to spot mop the floor in which I used a wet floor (caution sign as I mopped) I witnessed a lady slip and fall. As she got up she said she was alright, by this time

a nurse said she hopes she is going to be alright. I gave my name to the nurse making out the incident report."

¶ 17 Woldur Nagasi, the supervising nurse on duty in the emergency room on the night of June 30, 2008, was also deposed. He made an incident report relating to plaintiff's fall, which he gave to his supervisor, Karen Paraham, the next day. It appears this incident report was not available at the time of the deposition and is not contained in the record. Mr. Nagasi testified that without the report, he could not remember details about that night. Nevertheless, he did testify in response to inquiries as follows:

"Q. When you went to that area - - after you hear that someone hurt themselves and you go to this area, do you recall whether or not you observed a wet floor?

A. That - - I did not observe anything wet. That is for sure. That was one of the - - I remember that part.

Q. You are absolutely certain you did not?

A. I'm absolutely certain. I didn't come right away. It might have–time lapsed. It doesn't mean there was no wet floor. My saying I did not see does not confirm it was wet or not ***.

***

I don't think I responded right away in minutes. I came after whatever I was doing. And that was the thing I was told. But the patient was saying it was wet. I didn't see any wet floor but it could have dried.

Q. How about the gentleman from environmental services? Did he tell you whether

or not he was mopping?

A. I don't remember what he said.

Q. Do you recall whether or not there was any type of signage of the floor that would say 'caution' or 'wet floor' or - -

A. I don't think I saw anything there. I didn't see anything there. The patient was removed from the area and all I collected was what they told me. And the area–it was not there.

* * *

Q. You're certain of that [no sign]?

A. I'm certain of that. Because - - I don't remember who said what. They were arguing about that. 'This was wet' or 'This was not wet.' She said, 'wet,' someone else said 'not wet.' I'm not saying who said what words.

Q. You said she was arguing. Do you remember who she was arguing with?

A. Her point was, it was wet and she fell. That I remember.

Q. Do you remember who she was arguing with?

A. Let me say for the record not arguing. She was claiming it was wet. Not arguing. She was not talking to anybody. She was talking to me. She told me it was wet.

I didn't see any evidence it might have dried or might have been there. I don't know. But when I came, there was no visible evidence that I could see. And I remember somebody else said she said it was wet. Somebody else was saying it was not wet."

¶ 18 The county moved for summary judgment arguing it had neither actual nor constructive

notice of any water on the floor, and that section 3-102 of the Act protected it from liability. In support of its motion, the county submitted the depositions of plaintiff, Ms. Deveaux, Mr. Ricks, Mr. Powell and Mr. Nagasi. Relying on these same depositions, plaintiff argued, in response, that material issues of fact existed as to whether the condition of the floor was caused by Mr. Powell, and whether the county had actual or constructive notice of the condition. In a written order, the trial court granted the county's motion for summary judgment after finding the evidence showed Mr. Powell was not mopping in the area where plaintiff fell and that the "evidence in the record here fails to raise a question of fact as to the existence of actual or constructive notice".

¶ 19 Plaintiff moved for reconsideration of this order, asserting the trial court had not construed the evidence in the light most favorable to plaintiff, had not drawn inferences from the evidence in favor of plaintiff, and had ignored circumstantial evidence which supported the conclusions that the dangerous condition of the floor was caused by Mr. Powell's mopping, and/or that the county had actual or constructive notice of the condition.

¶ 20 The court denied this motion, finding:

> "As the Court pointed out in the prior ruling, there was no evidence of Mr. Powell mopping the specific area where the Plaintiff fell and no other evidence showing that anyone saw or noticed any wetness on the floor prior to the Plaintiff's fall. Further there was no evidence regarding the length of time the water was on the floor or any other evidence about the condition ro [sic] characteristics of the water. Thus, the Court correctly found that the evidence in the record failed to raise a question of fact as to the existence of actual or constructive notice and summary judgment in favor of the Defendants was proper."

Plaintiff timely appealed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, plaintiff argues the trial court improperly entered summary judgement in favor of the county because the triage nurse and the person at the registration desk were working within a few feet of the wet floor and, thus, should have known of the dangerous condition. Plaintiff also asserts the evidence supports a conclusion that Mr. Powell caused the floor to be wet. The county argues there was no question of material fact as to actual or constructive notice, as plaintiff failed to show the county had notice of the floor's condition or established that the county's inspection system was inadequate under section 3-102(b) of the Act.

¶ 23 A. Summary Judgment Standards

¶ 24 Summary judgment is properly granted where the pleadings, depositions, and admissions on file, together with any affidavits, indicate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2010). Although a drastic means of disposing of litigation, summary judgment is, nonetheless, an appropriate measure to expeditiously dispose of a suit when the moving party's right to the judgment is clear and free from doubt. *Gaston v. City of Danville*, 393 Ill. App. 3d 591, 601 (2009).

¶ 25 A "defendant moving for summary judgment bears the initial burden of production." *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007). The defendant may satisfy this "burden of production in two ways: (1) by affirmatively showing that some element of the case must be resolved in his favor [citation], or (2) by establishing 'that there is an absence of evidence to support the nonmoving party's case.' " *Id.* When the defendant has met this initial burden, the burden shifts to

"the plaintiff to present a factual basis which would arguably entitle her to a favorable judgment." *Id*. A plaintiff is not required to prove her case in response to the motion for summary judgment, but must present evidentiary facts to support the elements of the cause of action. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 885 (2009).

¶ 26 The court must examine the evidentiary matter in a light most favorable to the nonmoving party (*Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001)), and construe the evidence strictly against the movant and liberally in favor of the nonmovant. *Espinoza v. Elgin, Joliet and Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995). When reviewing an order granting summary judgment, "we conduct a *de novo* review of the evidence in the record." *Id*.

¶ 27 B. Negligence Standards

¶ 28 A plaintiff bringing a negligence claim must prove a defendant owed her a duty of care, that a defendant breached that duty, and that this breach was the proximate cause of her injury. *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 236 (2010). Summary judgment is properly entered for a defendant where a plaintiff fails to establish one of these elements. *Pavlik*, 323 Ill. App. 3d at 1063.

¶ 29 C. Tort Immunity Act

¶ 30 The tort liability of a governmental body is governed by the Act. *Burke v. Grillo*, 227 Ill. App. 3d 9, 18 (1992). Section 3-102 of the Act codifies the common-law duty of a public entity to maintain its property for the safety of intended and permitted users. *Vesey v. Chicago Housing Authority*, 145 Ill. 2d 404, 409 (1991). Specifically, section 3-102(a) provides:

"(a) Except as otherwise provided in this Article, 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 10/3-102(a) (West 2010).

¶ 31 Pursuant to section 3-102(a), a public entity is not liable for an injury due to an unsafe condition on its property where the public entity did not have actual or constructive notice of the existence of such a condition. 745 ILCS 10/3-102(a) (West 2010). "Under section 3-102(a), constructive notice is established where a condition has existed for such a length of time, or was so conspicuous, that authorities, by exercising reasonable care and diligence, might have known of it." *Buford by Buford v. Chicago Housing Authority*, 131 Ill. App. 3d 235, 246 (1985); see also *Burke*, 227 Ill. App. 3d at 18 (quoting *Finley v. Mercer County*, 172 Ill. App. 3d 30, 33 (1988) (constructive notice " 'is established where a condition has existed for such a length of time or was so conspicuous, that authorities exercising reasonable care and diligence might have known of it.' ")).

¶ 32 Section 3-102(b) provides, a governmental entity will not be charged with constructive notice of an unsafe condition if it establishes either:

> "(1) The existence of the condition and its character of not being reasonably safe would not have been discovered by an inspection system that was reasonably adequate considering the practicability and cost of inspection weighed against the likelihood and magnitude of the

potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property; or

(2) The public entity maintained and operated such an inspection system with due care and did not discover the condition." 745 ILCS 10/3-102(b) (West 2010).

¶ 33 However, "when an affirmative act of a municipality's agents or employees causes a dangerous condition, no actual or constructive notice of said condition is required." *Harding v. City of Highland Park*, 228 Ill. App. 3d 561, 571 (1992).

¶ 34 D. Discussion

¶ 35 Before further considering the issues on appeal, we make the following initial observations. The county does not dispute plaintiff was lawfully on its premises and was an intended and permitted user of the hospital's floor at the time of the incident. We further note that based on the conflicting deposition testimony, issues of fact exist as to whether the floor was actually wet where plaintiff fell, and whether there were signs warning of a wet floor. Even assuming the floor was wet, however, to survive summary judgment, plaintiff was required to provide a sufficient evidentiary basis to support her claims that the county's own negligence created a hazardous condition, or that the county had actual or constructive notice of the same. See *Lansing v. McLean County*, 69 Ill. 2d 562, 574 (1978) ("The duty of warning against a particular condition or hazard coexists with the corresponding liability for the consequences or hazards of the condition if no appropriate warning is given.").

¶ 36 We first address the issue of whether there is sufficient support for plaintiff's claim that the county negligently created an accumulation of water on the floor. Plaintiff argues on appeal, Mr. Powell "was in the room with a bucket and mop, mopping the floor," and there is no evidence of any source of water "other than Edward Powell and his bucket." She contends this evidence is sufficient to infer that Mr. Powell's activities on that evening were the cause of the wet floor and, therefore, to preclude summary judgment. We do not agree.

¶ 37 In response to the motion for summary judgment, plaintiff was required to provide a factual basis which would support a finding that Mr. Powell caused the unsafe condition. Liability cannot be based on speculation or conjecture, but must, rather, rest upon evidence. *Kociszak v. Kelly*, 2011 IL App. (1st) 102811, ¶ 24 (quoting *Smith v. Tri R Vending*, 249 Ill. App. 3d 654, 657 (1993)). "[W]here reasonable persons could draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact." *Espinoza*, 165 Ill. 2d at 114.

¶ 38 Plaintiff fell on the floor of a busy emergency room, in a particularly high-travel area near the restrooms, vital signs area, and exit doors. It is true that Mr. Powell, as part of his duties, was in the waiting room of the emergency room and was spot mopping the floor. However, the deposition testimony demonstrates Mr. Powell was not mopping in the area where plaintiff fell at the time her fall took place. Mr. Powell testified he was "30 or 40 feet" or "less than 30 feet" away from where plaintiff slipped and fell. The deposition testimony also showed that the area where plaintiff fell that night, had not been mopped prior to the fall. Mr. Powell testified he had not yet mopped in the area of the fall. Furthermore, Ms. Deveaux testified she had not seen anyone mopping

where plaintiff fell until after the occurrence. Plaintiff testified she had not seen Mr. Powell mopping prior to her fall. Plaintiff offered only speculation that Mr. Powell had mopped where she fell because she felt the wet floor after the fall. There was no evidence that the liquid on the floor was the same substance which was in Mr. Powell's bucket. Plaintiff has failed to raise a material issue of fact that Mr. Powell's conduct resulted in an unsafe condition which caused her fall. Plaintiff has indeed not presented evidence from which an even a *reasonable* inference could be drawn that the water was there due to any mopping undertaken by Mr. Powell.

¶ 39 Plaintiff argues that Mr. Powell's handwritten statement creates a material issue of fact as to whether Mr. Powell had mopped in the area where she fell prior to her fall. Plaintiff contends, "[i]n the statement, Mr. Powell admitted that he was finishing cleaning the waiting area of the emergency room 'by the male and female washrooms' shortly before the time of the accident, and that he was wet-mopping." Plaintiff misreads the statement as an admission by Mr. Powell that he had mopped the specific area by the restrooms where she fell. Plaintiff's reading of the statement overlooks the reference to the "waiting room." Mr. Powell testified that at the time of the fall, he was mopping in the waiting room, which was adjacent to the area to where plaintiff fell, was a significant distance from where she fell, and he had not yet mopped the area by the restrooms. Assuming this written statement constitutes admissible evidence as required by Supreme Court Rule 191(a) (Ill. S. Ct. R. 191(a) (eff. July 1, 2002)), does not clearly contradict Mr. Powell's testimony. Furthermore, the statement does not provide an evidentiary basis sufficient to support an inference that the wet floor was caused by Mr. Powell.

¶ 40 Plaintiff also contends there is a factual basis showing the county had actual notice of the

floor's hazardous condition. We disagree. There is no evidence that any county employee had knowledge of the floor's unsafe condition prior to plaintiff's fall. Mr. Powell testified there were no spills in the emergency room that night which required a wet-floor sign. Further, as discussed above, there was no evidence in the record showing Mr. Powell's activities in the emergency room were the cause of any accumulation of water on the floor in the area where plaintiff fell so as to serve as actual notice of an unsafe condition.

¶ 41 Plaintiff argues that Mr. Powell's handwritten statement gives rise to an inference of actual knowledge because he states, "my manager came to me and told me to check the waiting area for patients waiting to be seen." Plaintiff urges, "[a] reasonable jury could infer Mr. Powell was instructed to return to the room and mop because someone had reported water on the floor." We do not find that such an inference is reasonable, or even possible, either based on Mr. Powell's written statement when it is read as a whole or on the other factual evidence in the record. Construing the evidentiary matter liberally in favor of plaintiff, we hold she has not made a showing sufficient to withstand summary judgment as to her claim of actual notice on the part of the county.

¶ 42 Plaintiff finally argues, the unsafe condition of the floor was such that the county employees who were nearby, should have come to know of it before she fell and, therefore, there was constructive notice. We do not agree with her conclusion.

¶ 43 First, plaintiff offered no evidence as to the length of time the floor may have been wet. Plaintiff testified she was in the emergency room waiting room for five to ten minutes before her cousin was called to the nurse's room. Prior to falling, plaintiff never noticed any water on the floor. Mr. Powell had been working in the emergency room, before and at the time of the fall, and there

is no evidence that he saw water or received any report of a wet floor during this time period. Therefore, plaintiff failed to show the water was there for such a length of time that the county should have known of its existence. Second, by plaintiff's own testimony, the water was not plainly visible. She testified the floor was wet, but there was not a puddle. She further testified the wet condition was difficult to see on the light-colored tile floor. Finally, plaintiff could not say the wetness went beyond the spot where she fell. Given the lack of evidence as to the length of time and the evidence describing the condition of the floor as inconspicuous, we find plaintiff failed to satisfy her burden to provide a factual basis for showing the county had constructive notice of any unsafe condition of the floor. Under section 3-102(a), therefore, the county can not be held liable.

¶ 44 The county also argues summary judgment was proper because it was protected from liability pursuant to the provisions of section 3-102(b) of the Act. However, based on our above findings with respect to section 3-102(a), we need not address any questions surrounding the county's inspection procedures under section 3-102(b).

¶ 45 III. CONCLUSION

¶ 46 In response to the county's motion for summary judgment, plaintiff failed to present a sufficient evidentiary showing the county's affirmative acts caused the floor to be wet where she fell, or that the county had actual or constructive notice of the floor's unsafe condition. We, therefore, conclude the trial court properly granted summary judgment for the county and denied reconsideration of that order.

¶ 47 Affirmed.