2017 IL App (1st) 152299-U

FIFTH DIVISION
March 10, 2017

No. 1-15-2299

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

RACHEL PAGE, Plaintiff-Appellant, ROXANNE SAUNORIS, Plaintiff, v. BREAK THRU ENTERPRISES, INC., Defendant-Appellee, and PRONGER SMITH MEDICALCARE, LLP, KRUSINKSI CONSTRUCTION COMPANY, HIGH STREET DEVELOPMENT, LLC, and IREGENS PARTNERS, LLC. Defendant.	)	Appeal from the Circuit Court of Cook County No. 13 L 1443 Honorable Kathy M. Flanagan, Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court of Cook County did not err in granting summary judgment to defendant where plaintiff failed to present an adequate factual basis to support her negligence claim.

¶ 2 Plaintiff Rachel Page appeals an order of the circuit court of Cook County granting summary judgment in favor of defendant Break Thru Enterprises, Inc., a subcontractor, on her claim of negligence. Defendant was hired by general contractor Krusinski Construction Company (Krusinski) to remove the ceramic floor in the lobby area of a medical facility where plaintiff alleged she fell and was injured. On appeal, plaintiff argues genuine issues of material fact exist as to whether (1) defendant's negligence was a proximate cause of her fall, (2) defendant fulfilled all obligations under its subcontract with Krusinski, (3) defendant had a duty to provide adequate warning as to the condition of the floor, and (4) defendant voluntarily undertook a duty to plaintiff. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 2, 2015, plaintiff and her daughter Roxanne Saunoris (Saunoris) filed the operative ten-count fourth amended complaint against defendant, Pronger Smith Medical Care, LLP (Pronger), Krusinski, High Street Development, and Irgens Partners. According to the complaint, in February of 2011, the lobby of Pronger Smith Medical Center (the hospital) located in Tinley Park, Illinois, was being remodeled. On February 3, 2011, defendant removed the ceramic floor in the lobby area of the hospital. After the work was completed, none of defendant's employees returned to the site. A little more than a week later, on February 11, 2011, plaintiff fell on the uneven floor while the lobby was still under construction.

¶ 5 Counts VII and VIII of the fourth amended complaint were directed at defendant, the only appellant in this appeal. In count VII, plaintiff alleged common law negligence. Plaintiff claimed defendant owed a duty to exercise reasonable care for the safety of the hospital's patients and breached that duty when it left the lobby floor "uneven" and "unsafe." Plaintiff claimed defendant's negligence caused her to lose her balance and fall. In count VIII, Saunoris

also alleged common law negligence. Saunoris asserted she was forced to care for her mother and her disabled sister as a result of the incident.

¶ 6 On March 4, 2015, defendant filed a motion for summary judgment, arguing (1) plaintiff cannot establish proximate cause because she was not able to identify the cause of her fall, (2) defendant fulfilled all obligations under its subcontract with Krusinski because the removal of adhesive was specifically excluded from the contract, (3) defendant had no duty to maintain, inspect, warn, or barricade the lobby area because it did not own, possess, or control the premises, and it had completed its work and had left the project site over a week prior to plaintiff's fall, (4) there is no evidence that defendant failed to supervise the work, train its employees, clean the floor, or conduct safety meetings, and (5) there is no evidence that defendant voluntarily undertook any other duty or that plaintiff relied on such voluntary undertaking. The materials submitted by the parties in support of and in opposition to summary judgment disclose the following facts.

¶ 7 A. The Subcontract

¶ 8 Prior to the incident, the hospital was undergoing renovation work. Krusinski was hired as the general contractor for the project (the project). Krusinski, in turn, hired a number of subcontractors, including defendant, to perform assignments at the hospital. On April 23, 2010, Krusunski and defendant entered into a subcontract for defendant to remove the ceramic floor in the lobby area. In relevant part, article 15 of the subcontract provided:

> "[Defendant] is responsible for the complete demolition of all drywall partitions (including perimeter furring), floor finishes (no mastic or adhesive removal included), ceilings, millwork, and doors and frames as noted on the Contract Documents,
>
> ***

> [Defendant] is required to remove, load, haul, and legally dispose of all debris generated as a result of their activity,
>
> ***
>
> [Defendant] is responsible for reviewing all Contract Documents (i.e., Architectural Structural, Civil, etc.) and making Krusinski Construction Company aware of any discrepancies and/or criteria in conflict with [defendant's] scope of work."

Article 15. D further provided:

> "[Defendant] shall be responsible for his own cleanup with the proper union labor. All excess material, rubbish, etc., will be removed and the work area will be broom swept at the end of each work day. The Contractor, after written notice, will cleanup and remove material if not completed, and will backcharge the [defendant]."

¶ 9 B. Deposition of Rachel Page

¶ 10 In her discovery deposition, plaintiff testified that on February 11, 2011, she arrived at the hospital for a medical appointment. Plaintiff entered the hospital through the main entrance and proceeded to the receptionist to check in. She then took "two or three steps" towards the main entrance and stepped down with her right foot onto "uneven tile." She lost her balance and "reached out to grab the wall" but it was a plastic sheet which moved and consequently she fell. The floor covering changed from tile to cement where she fell with the untiled cement portion of the floor being behind the plastic sheet. When asked "what was it about the change from the tile to the cement that caused you to lose your balance?" she answered, "[t]he unevenness." She further testified that the unevenness was due to "thickness of the tile[s]" and "little chips of tile" that she was stepping on.

¶ 11 However, when asked to clarify what she had stepped on before she fell, plaintiff

answered she had "probably" stepped on the tile surface and the concrete surface. When asked whether she stepped partially on the tile and partially on the concrete before she fell, she answered, "Well, I am pretty sure that's what I did because otherwise I would not have lost my balance." She testified again that the "unevenness" caused her to lose her balance. She further testified that while she "did not particularly notice" the concrete surface before she fell, she was able to observe it after she fell. She acknowledged she did not "recall specifically how [she] lost [her] balance," but she testified that she had stepped down with her right foot and had felt the unevenness of the surface.

¶ 12 Further, in a videotaped evidence deposition, plaintiff testified that when she lost her balance, she stepped down on the tile and the concrete with her right foot. She could "feel" pieces of tile "under [her] foot" but did not notice how many pieces she was stepping on. When asked "did you put your foot down *** on the tile and then the front part down on the bare concrete" she answered, "I don't know. The heel would have been on the tile and the front would have been on the [concrete] ***." When asked, "Is that *** what happened or are you speculating or guessing at it," she answered, "I am estimating. I'm not really sure *** of how I put my foot down ***." She further testified she was stepping onto the plastic curtain and tile at the time of her fall. She then corrected her testimony and stated, "I was stepping on the plastic and the tile – I mean [concrete]" when she fell.

¶ 13 C. Deposition of Roxanne Saunoris

¶ 14 During her deposition, Roxanne Saunoris (Saunoris) testified that on February 11, 2011, Saunoris drove plaintiff to the hospital. On prior occasions when she drove plaintiff to the hospital, she usually accompanied plaintiff inside. That day, however, she chose not to when she observed construction vehicles outside the hospital and waited inside her vehicle with her sister.

¶ 15 Saunoris then observed plaintiff enter the hospital. Thereafter, a man approached Saunoris in her vehicle and informed her that an ambulance had arrived for plaintiff. Saunoris entered the hospital through the front entrance and observed plaintiff on the cement floor in the lobby area. Plaintiff was laying back against a plastic sheet that "looked like a fake wall." Saunoris observed "old tile" and cement on the floor where plaintiff was laying.

¶ 16 D. Deposition of Richard Kostecki

¶ 17 Richard Kostecki (Kostecki) testified during his deposition that he was defendant's project manager for the project. Krusinksi hired defendant to remove the ceramic tiles at the main entrance lobby and reception area of the hospital. On February 3, 2011, defendant's employees removed the ceramic tiles and completed the work overnight. This was the last day that any of defendant's employees were on-site at the hospital.

¶ 18 Kostecki further testified that defendant's proposal to Krusinski included a bid clarification which specifically provided that defendant would not remove any mastic or adhesive under the flooring. While Kostecki acknowledged the bid clarification did not mention whether defendant was hired to remove mortar, he explained that mortar and thin-set are "basically an adhesive holding [the] ceramic together." Kostecki testified that accordingly, defendant was not required to remove any residual mortar or thin-set that may have been left behind after the ceramic tiles were removed.

¶ 19 Kostecki admitted he did not observe defendant's employees remove the ceramic tiles at the hospital. Nevertheless, he had observed the employees use hammers to remove ceramic tiles in other projects. During these projects, some of the tiles were broken into smaller pieces because they could not be removed in complete pieces. Kostecki also testified that, in other projects, defendant usually does not display warning signs about possible unevenness of the floor

after a floor is removed.

¶ 20 E. Deposition of Armando Martinez

¶ 21 Armando Martinez (Martinez) testified during his deposition that he was defendant's foreman for the project. On February 3, 2011, at approximately 8p.m., Martinez and his coworkers began removing the ceramic tiles. The work was completed overnight. The ceramic tiles were removed all the way to a plastic sheet that was hanging from the ceiling. The employees were able to remove only a quarter of the tiles in whole pieces. The rest of the tiles had to be broken before they were removed. Martinez further testified that the employees used a shovel and a broom to clean up pieces of tile and debris that were remaining. The pieces of tile and debris were carried in wheelbarrows and thrown in a dumpster outside. The concrete that had been under the tiles was "rough" because the remaining thin-set "left little ridges" on the floor surface. The employees did not remove the thin-set.

¶ 22 When they finished removing the tiles, the employees "double checked for any high spots" and "chipped some of the high spots using a wide chisel *** with a chipping gun." Then they "sweeped" away the pieces of tile that were chipped and vacuumed the area. The employees "double, triple checked," and determined that "[n]othing was loose." After the work was completed, none of defendant's employees returned to the project site. Martinez testified defendant was not hired to remove the thin-set.

¶ 23 F. Deposition of Russell Gabbert

¶ 24 Russell Gabbert (Gabbert) testified in his deposition that he was employed as defendant's superintendent for the project. Defendant was hired to work on select areas at the hospital and removed the reception desk, the carpet in the reception area, and the ceramic floor in the lobby area. Defendant did not remove the ceramic floor in the pharmacy area that was located next to

the lobby nor did it perform work in the waiting area. Defendant was not hired to remove anything underneath the top layer of the ceramic tiles nor to perform "floor prep." Gabbert instructed the employees to use a panther machine, which is a flooring removal machine, to remove the ceramic floor. He also instructed them to use electric Bosch hammers for more detailed work around the edges of the tiles. After the work was completed, defendant did not put up warning signs or barricades. Gabbert explained that defendant "always exclude[s] barricading, signage" because "like in this case we are off-site afterwards. It's hard to maintain. If you put up a sign and someone knocks it over, we are not there to make sure it gets put back."

¶ 25 G. Deposition of Charles Onik

¶ 26 During his deposition, Charles Onik (Onik) testified he was employed as Krusinksi's superintendent for the project. On the evening of February 3, 2011, defendant removed a ceramic floor at the hospital. That evening, defendant was also scheduled to remove the thin-set. Onik testified he would have inspected defendant's work after it was completed to ensure there were no safety issues. He would have also notified defendant if there had been any problems with "patches or areas where the [thin-set] had not been removed," but he did not because he "didn't see anything wrong with the flooring."

¶ 27 Onik further testified that Krusinski hired another subcontractor, Flooring Resources, to install the new ceramic tile flooring. On February 11, 2011, Flooring Resources was scheduled to prep the lobby floor for the installation of the new ceramic floor.

¶ 28 H. Deposition of Thomas Granko

¶ 29 Thomas Granko (Granko) testified during his deposition that he was employed by Pronger as a facility supervisor. During the time period when the old tile was removed and before the new tile was installed in the lobby, Granko "didn't see anything that raised concern"

regarding the condition of the floor and did not raise any issues. In February 2011, Pronger had the ability to block off portions of the lobby where the incident occurred. Further, once a subcontractor completes their work, the area is the responsibility of Pronger. Granko testified that, in this case, the area was made open to the public after defendant finished its work because "there was no defect" in the lobby floor.

¶ 30 I. Deposition of Anita Tencza

¶ 31 Anita Tencza (Tencza) testified during her deposition that on the day of the incident, she was employed by Pronger as a safety officer. In January and February 2011, she walked the area "20 times a day" everyday. After the ceramic tile floor was removed, Granko or Tencza checked the lobby area to ensure that it was safe for the patients to walk on. Tencza also testified that a plastic sheet was hanging from the ceiling to the floor in the lobby area. On the back side of the plastic, some remodeling work was taking place, while the lobby that was on the front side of the plastic was used by Pronger's patients and its staff. The plastic sheet was translucent enough that Tencza could see shapes behind it. The concrete floor in the lobby was "smooth." Tencza did not observe any unsafe conditions on that floor.

¶ 32 On February 11, 2011, Tencza was notified of the incident. When she arrived at the scene, Tencza observed plaintiff lying on her backside on the bare concrete floor in the lobby. She was also partially lying under the plastic sheet. At that time, Tencza did not observe any residual, adhesive, or "grooves" on the concrete floor where plaintiff fell.

¶ 33 J. Deposition of David Seaman

¶ 34 David Seaman (Seaman) testified during his deposition that he was the Chief Executive Officer at Pronger. Seaman testified the plastic sheet that hung from the ceiling in the lobby was not transparent but it was "clear" enough that he could see light through it. During the time

when the old ceramic tile was removed and before the new tile was installed, he entered the hospital through the lobby. On these occasions, the floor in the lobby was bare concrete and it was reasonably level and safe to walk on. During that time, more than 125 staff members and 200 to 300 patients walked on that floor on a daily basis, but Seaman did not receive any reports regarding an issue with the floor.

¶ 35 K. Depositions of Kristi Schmidt and Tamie Korosa

¶ 36 During their depositions, Tamie Korosa (Korosa) testified she was employed by Pronger as a patient service manager and Kristi Schmidt (Schmidt) testified she was employed by Pronger as well. Korosa testified that in January and February 2011, she walked across the lobby area approximately 20 times a day. Korosa and Schmidt both testified that after the old ceramic tile floor was removed in the lobby, the floor was "smooth" and bare concrete. Korosa also testified that she did not notice any conditions which appeared unsafe in the floor at that time.

¶ 37 L. Deposition of Kathleen Murphy

¶ 38 Kathleen Murphy (Murphy) testified during her deposition that she was employed by Pronger as a nursing supervisor. She walked through the lobby area "maybe twice a day" after the old ceramic tile was removed and before the new ceramic tile was installed. The patients and staff at Pronger continued to walk through the lobby area during that time. The surface of the bare concrete floor in that area was smooth and Murphy did not have any problems walking on that floor. If she had observed any unsafe conditions, she would have brought it to someone's attention.

¶ 39 Murphy further testified that on the day of the incident, she received a call for a nurse. When she arrived at the lobby, she observed plaintiff lying on the bare concrete floor. Plaintiff was lying "right next to" a plastic sheet that was hanging from the ceiling. Murphy approached

plaintiff and kneeled on the bare concrete floor to attend to plaintiff. Murphy did not observe anything around plaintiff on the bare concrete floor.

¶ 40 M. Deposition of Philip Serviss

¶ 41 Philip Serviss (Serviss) testified during his deposition that he was employed by Pronger as a facilities supervisor. Serviss walked through the area of the incident "a number of times" after the old ceramic tile was removed and before the new ceramic tile was installed. He did not have any problems walking across the lobby floor nor observe any conditions he would consider to be unsafe.

¶ 42 Serviss further testified that, on the day of the incident, the floor in the lobby was still bare concrete and the surface was smooth. Later that day, he was notified of the incident and ran to the lobby where he observed plaintiff lying on the bare concrete floor. Murphy was attending to plaintiff. Serviss asked what had happened and plaintiff responded "she was sitting down and she lost her balance." Serviss did not observe anything around plaintiff on the concrete floor.

¶ 43 N. Deposition of Nicole Woletz and Karen Backes

¶ 44 Nicole Woletz (Woletz) during her deposition that she was employed by Flooring Resources as a project administrator. Karen Backes (Backes) testified during her deposition that she was employed by Flooring Resources as a project accountant and safety manager. Woletz and Backes both testified that Flooring Resources was scheduled to perform "floor prep" for the installation of a new ceramic floor in the lobby area on February 11, 2011, at 7:00 p.m., which is approximately seven hours after the incident occurred.

¶ 45 O. Trial Court's Decision

¶ 46 After the matter was fully briefed and argued, on July 17, 2015, the circuit court granted defendant's second motion for summary judgment regarding counts VII and VIII. In granting

the motion, the circuit court stated that defendant had complied with the terms of the subcontract. The circuit court also indicated defendant did not owe plaintiff a duty to maintain, inspect, warn, or barricade the area because it did not own, possess, or control the premises and had completed its work a week prior to plaintiff's fall. Further, the circuit court stated the record does not support plaintiff's claim that defendant owed her a duty of voluntary undertaking. In addition, the circuit court stated that while defendant owed plaintiff a duty of care to not create a dangerous condition, the evidence fails to demonstrate defendant had breached that duty or that its alleged negligence was the proximate cause of plaintiff's fall. This appeal followed. Saunoris did not take part in this appeal.

¶ 47 II. ANALYSIS

¶ 48 On appeal, plaintiff argues genuine issues of material fact exist as to whether (1) defendant's negligence was a proximate cause of her fall, (2) defendant fulfilled all obligations under its subcontract with Krusinski, (3) defendant had a duty to provide adequate warning of the floor condition, and (4) defendant voluntarily undertook a duty to plaintiff. Accordingly, plaintiff maintains the circuit court erred in granting summary judgment in favor of defendant.

¶ 49 Summary judgment is proper when the pleadings, depositions, and admissions on file, together with the affidavits, if any, establish there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2012). The purpose of summary judgment is not to decide issues of fact but rather to determine whether any genuine issue of fact exists. *Gilbert v. Sycamore Mun. Hospital*, 156 Ill. 2d 511, 517 (1993). A reviewing court will not reverse an order granting summary judgment unless it finds that a material question of fact is present and the defendant is not entitled to judgment as a

matter of law. *Chmielewski v. Kahlfeldt*, 237 Ill. App. 3d 129, 137 (1992). While a plaintiff need not prove her entire case to survive a motion for summary judgment, she must present a factual basis to support the elements of her cause of action. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). If a defendant supplies facts which, if not contradicted, would entitle the party to judgment as a matter of law, a plaintiff cannot rely on her pleading alone to create a genuine issue of material fact. *Carruthers v. B.C. Christopher & Co.*, 57 Ill. 2d 376, 380 (1974); *Fields v. Schaumburg Firefighters' Pension Board*, 383 Ill. App. 3d 209, 224 (2008). We review the circuit court's grant of summary judgment *de novo*. *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 28. Under *de novo* review, we perform the same analysis that a trial court would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 50 A. Proximate Cause

¶ 51 We turn to address plaintiff's claims that (1) defendant's negligence was a proximate cause of her fall and (2) defendant fulfilled all obligations under its subcontract with Krusinski. To properly state a negligence action, a plaintiff must plead and prove that the defendant owed her a duty, the defendant breached that duty, and that an injury proximately resulted from that breach. *Deibert v. Bauer Brothers Construction Co.*, 141 Ill. 2d 430, 434 (1990).

¶ 52 Proximate cause is defined as a cause which produces an injury through a natural and continuous sequence of events unbroken by an effective intervening cause. *Block v. Lohan Associates, Inc.*, 269 Ill. App. 3d 745, 756 (1993). While proximate cause is generally a question of fact, it becomes a question of law when the alleged facts indicate the plaintiff would never be entitled to recover. *Keating v. 68th & Paxon, LLC*, 401 Ill. App. 3d 456, 472 (2010). To establish proximate cause, a plaintiff bears the burden of " 'affirmatively and positively showing' " that the defendant's negligence caused the plaintiff's injuries. *Id.* at 473. Liability

cannot be established by speculation, surmise, or conjecture as to the cause of an injury. *Mann v. Producer's Chemical Co.*, 356 Ill. App. 3d 967, 974 (2005). Therefore, plaintiff must establish with "reasonable certainty" that the defendant's acts or omissions caused her injury. *Keating*, 401 Ill. App. 3d at 473. Likewise, while it is not necessary that only one conclusion can be inferred from the evidence, "a fact cannot be established through circumstantial evidence unless the circumstances are so related to each other that it is the only probable, and not merely possible, conclusion that may be drawn." *Id.* "[W]here the proven facts demonstrate that the nonexistence of the fact to be inferred appears to be just as probable as its existence, then the conclusion that exists is a matter of speculation, surmise, and conjecture." *Id.* Absent affirmative and positive evidence that the defendant may have proximately caused the plaintiff's injuries, the plaintiff fails to establish the existence of a genuine issue of material fact and summary judgment is proper. *Chmielewski*, 237 Ill. App. 3d at 137; *Keating*, 401 Ill. App. 3d at 473. Moreover, failure to do something which one has no duty to do cannot be proximate cause of injuries for purposes of negligence action. See *Barham v. Knickrehm*, 277 Ill. App. 3d 1034, 1040 (1996).

¶ 53 In her deposition testimony, plaintiff alleged the loose chips of tile and the parts of the old ceramic floor in the lobby created an unevenness that caused her to lose her balance and fall. According to plaintiff, her testimony raises a genuine issue of material facts as to whether defendant's negligence was a proximate cause of her fall.

¶ 54 With regard to the loose chips of tile, we conclude plaintiff has not affirmatively and positively demonstrated with reasonable certainty that the chipped tiles were at the scene due to defendant's negligence. *Keating*, 401 Ill. App. 3d at 473. The record in this matter reveals that defendant's employees "sweeped" away the pieces of tile that were chipped and vacuumed the

area. The employees also "double, triple checked" and determined that "[n]othing was loose" before they left the project site. In addition, Krusinski's superintendent Onik and Pronger's facility supervisor Granko both testified they did not observe any safety issues with the floor in the lobby after defendant had completed its work. As the circuit court noted, there is also no evidence that Krusinski found any chipped tiles or debris in the area after defendant left the work site. In addition, four Pronger employees testified that the floor was "smooth" after defendant removed the tiles and before plaintiff fell, while six employees testified they did not observe any unsafe conditions on the lobby floor during that time period. Moreover, there were no reports regarding the safety of the lobby floor despite the fact that more than 125 staff members and 200 to 300 patients walked on the lobby floor on a daily basis. We note that plaintiff has offered no evidence to refute the testimony of the witnesses.

¶ 55 Further, and most importantly, defendant had already departed the premises over a week prior to the incident. Plaintiff, however, presented no evidence to suggest the property remained in the same condition during that time. Plaintiff also failed to offer any evidence that defendant's alleged negligence produced her injuries through a natural and continuous sequence of events that were unbroken by an effective intervening cause. See *Barham*, 277 Ill. App. 3d at 1040. Based on the facts set forth in the record, we recognize that a trier of fact could consider the possibility that defendant failed to remove the chipped tiles that were allegedly present at the scene. However, it is equally likely that a trier of fact could conclude that the tiles were chipped due to the mere passage of time, the movement of hundreds of patients and staff members that walked in the area on a daily basis, or other common activity in the hospital lobby. Thus, we find plaintiff's claim that the chipped tiles were left at the scene by defendant is merely a possible conclusion, not a probable one. See *Keating*, 401 Ill. App. 3d at 474. Accordingly, we

conclude that plaintiff has failed to establish that defendant's negligence was the proximate cause of plaintiff's injury. *Mann*, 356 Ill. App. 3d at 974.

¶ 56 Additionally, we find plaintiff's reliance on *Bellervie v. Hilton Hotels Corp.*, 245 Ill. App. 3d 933 (1993), to be misplaced. In that case, the plaintiff was a hotel guest who fell while walking down the stairs at the defendant's hotel. *Id.* at 934. The plaintiff testified that while she did not observe where she placed her foot before she fell, she felt that the step was uneven. *Id.* at 937. The *Bellervie* court found that although the plaintiff was uncertain which step caused her to fall, her testimony was sufficient to create an issue of material fact as to whether the worn steps was the proximate cause of her fall. *Id.*

¶ 57 As previously discussed, unlike the hotel owner in *Bellervie*, there is no evidence that defendant had control of the lobby floor on the day of the incident. *Id.* at 934. Prior to the incident, defendant was on-site for one night to perform demolition work. None of its employees returned to the site after that night. As Pronger's facility supervisor Granko testified, a work area becomes the responsibility of Pronger after a subcontractor completes its work. Here, Pronger opened the area to the public after defendant completed its work because "there was no defect" on the lobby floor. Several hundred people walked in the lobby area each day and, as aforementioned, there is no evidence that the area remained in the same condition during that time period. The lobby, obviously, was not under defendant's control at the time of the incident. Given this record, we find no reason to extend *Bellervie* to the facts of this case.

¶ 58 As for the old ceramic floor that had not been removed, the record reveals that defendant was hired to demolish only select areas of the flooring in a hospital that remained open to the public during renovation. Any area which was not included in defendant's scope of work was untouched by defendant. Plaintiff, however, presents no evidence that defendant was hired to

demolish the old tile flooring that had not been removed. As aforementioned, the failure to do something one has no duty to do cannot be the proximate cause of the injury. See *Barham*, 277 Ill. App. 3d at 1040. Since plaintiff fails to present evidence that defendant was hired to demolish the old tile flooring that had not been removed, its failure to remove the old tiles cannot be the proximate cause of plaintiff's injuries. *Id.*

¶ 59 We are also unpersuaded by plaintiff's argument that defendant failed to fulfill its obligations under the subcontract because it did not remove the thin-set. As Kostecki explained in his deposition, thin-set is an adhesive used to hold ceramic tiles together. When interpreting a contract, the primary goal is to give effect to the parties' intentions at the time the contract was formed. *Matthews v. Chicago Transit Authority*, 2016 IL 117638, ¶ 77. The best indication of the parties' intent is ascertained from the plain language of the contract. *Gallagher v. Lenart*, 367 Ill. App. 3d 293, 301 (2006). Here, the plain language of the subcontract expressly states that defendant is not responsible for removing the "mastic or adhesive." This language in the subcontract is further supported by the testimony of Martinez, Kostecki, and Gabbert that defendant was not hired to remove the adhesive material underneath the tiles. Moreover, while Krusinski's superintendent Onik testified that defendant was scheduled to remove the thin-set, he provided no support for this testimony. Further, Onik went on to testify that while he would have notified defendant if there had been any problems with "patches or areas where the [thin-set] had not been removed," he did not because he "didn't see anything wrong." We can infer from Onik's testimony that he "didn't see anything wrong" with defendant's failure to remove the thin-set. Again, the failure to do something one has no duty to do cannot be the proximate cause of the injury. See *Barham*, 277 Ill. App. 3d at 1040. Since plaintiff had no duty to remove the thin-set, its failure to remove the thin-set cannot be the proximate cause of defendant's

injuries. *Id.*

¶ 60 Plaintiff further argues there is a question of fact as to whether defendant failed to properly train and supervise its employees because (1) loose chipped tiles remained on the floor (2) some of the old tile floor was not removed, and (3) defendant's employees incorrectly believed it was not obligated to remove the thin-set. Plaintiff, however, does not cite any case in support of this argument. Also, as previously concluded, plaintiff has failed to establish that defendant's alleged negligence regarding the loose chipped tiles, the old tile floor, and the thin-set was the proximate cause of plaintiff's injury. Accordingly, we reject plaintiff's argument that a question of fact exists as to whether defendant failed to properly train and supervise its employees.

¶ 61 B. Duty to Warn

¶ 62 Plaintiff also contends that defendant had a duty to warn because it failed to remove all of the old ceramic flooring and the chipped tile that created the unevenness in the lobby floor. Generally, " '[a] duty to warn exists where there is unequal knowledge, actual or constructive, and the defendant, possessed of such knowledge, knows or should know that harm might or could occur if no warning is given.' " *Jane Doe-3 ex rel. Julie Doe-3 v. White*, 409 Ill. App. 3d 1087, 1099 (2011) (quoting *Kirby v. General Paving Co.*, 86 Ill. App. 2d 453, 457 (1967)).

¶ 63 In the case at bar, we find that defendant did not have a duty to warn plaintiff of the condition in the lobby. Significantly, the record does not indicate plaintiff had "unequal knowledge" that a person walking in the lobby could be harmed because of the condition of the floor. Rather, the record demonstrates that defendant's employees worked to keep the area safe after they had completed their work. The employees "double checked for any high spots" and "chipped some of the high spots using a wide chisel *** with a chipping gun." They also

"sweeped," vacummed, and checked multiple times that "[n]othing was loose" before they left the project site. Moreover, after defendant had left the site, Krusinksi and Pronger did not raise any safety issues with defendant.

¶ 64 On this point, plaintiff's reliance on *Adams v. Northern Illinois Gas Company*, 211 Ill. 2d 32 (2004), is misplaced. In that case, the estate of a gas customer who died as a result of a natural gas explosion caused by a faulty connector that was not owned or supplied by the defendant. *Id.* at 37. The evidence established that the defendant had known for several years that the connector was faulty and had caused other explosions. *Id.* at 40. The defendant, however, did not warn the decedent of the faulty connector. *Id.* at 54. The *Adams* court found that the gas company had owed the decedent a duty to warn because it had superior knowledge of the danger and had also helped create the dangerous condition. *Id.* The *Adams* court expressly indicated that its holding should be limited to its facts. *Id.* Here, as we previously concluded, there is no evidence that defendant knew that the condition of the floor could cause harm to a person walking in the lobby. Accordingly, *Adams* is not applicable in this case.

¶ 65 C. Voluntary Undertaking of Duty

¶ 66 Plaintiff further asserts defendant voluntarily undertook a duty to plaintiff to exercise reasonable care in performing its duties under the subcontract. Under the voluntary undertaking theory of liability, "one who undertakes, gratuitously or for consideration, to render services to another is subject to liability for bodily harm caused to the other by one's failure to exercise due care in the performance of the undertaking." *Rhodes v. Illinois Central Gulf Railroad*, 172 Ill. 2d 213, 239 (1996). In such a situation, the duty of care is limited to the extent of the undertaking. *Vesey v. Chicago Housing Authority*, 145 Ill. 2d 404, 416-17 (1991). Like other issues of duty, whether a defendant has voluntarily undertaken a duty to a plaintiff is a question of law for the

court that is properly addressed in a motion for summary judgment. *Jakubowski v. Alden-Bennett Construction Co.*, 327 Ill. App. 3d 627, 639 (2002). In the absence of facts from which the court could infer the existence of a duty, summary judgment in favor of the defendant is proper. *Vesey*, 145 Ill. 2d at 411.

¶ 67 As we previously concluded, defendant fulfilled its duties under the subcontract. In doing so, there is nothing in the record to suggest defendant began a voluntary undertaking that would render it liable for plaintiff's injury. At most, defendant's employees undertook to keep the lobby floor safe and performed that by "chipp[ing] some of the high spots," "sweep[ing]," and vacuuming the area after its work was complete. We find nothing to indicate that defendant, by that action, voluntarily undertook to do anything more to decrease the risk of harm to plaintiff. See *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 218-19 (1988) (landlord did not voluntarily assume duty to protect tenants from criminal attacks in providing lighting in the common areas and making sure that the locks were working).

¶ 68 Based on the forgoing analysis, we find that plaintiff has failed to present an adequate factual basis to support her claims. *Gilbert*, 156 Ill. 2d at 517. Accordingly, we conclude the circuit court properly granted defendant's motion for summary judgment. *Robidoux*, 201 Ill. 2d at 335.

¶ 69 III. CONCLUSION

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

¶ 71 Affirmed.