2014 IL App (2d) 130962-U
No. 2-13-0962
Order filed June 9, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JANE F. WEST, Plaintiff-Appellant, v. UNION PACIFIC RAILROAD COMPANY and REGIONAL TRANSPORTATION AUTHORITY, d/b/a Commuter Rail Division Metra, Defendants-Appellees.	)	Appeal from the Circuit Court of McHenry County. No. 08-LA-107 Honorable Thomas A. Meyer, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendants summary judgment on plaintiff's negligence claim, as plaintiff merely speculated that ice on defendants' ramp caused her fall.

¶ 2 Plaintiff, Jane F. West, sued defendants, Union Pacific Railroad Company and Regional Transportation Authority, d/b/a Commuter Rail Division Metra, in negligence for damages sustained when she slipped on an "unnatural accumulation of frozen water" after exiting a

passenger train. The trial court granted defendants' motion for summary judgment, finding that plaintiff was unable to identify the cause of her fall.[1] Plaintiff timely appealed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff testified at her deposition that, on February 5, 2008, she and her friend, Donna Wysocki, exited a passenger train at Pingree Road Station in Crystal Lake. It was lightly snowing. Because Wysocki had recently undergone knee surgery, the two women intended on using a ramp to exit the platform and then walk to their vehicles, which were parked in a nearby lot. The ramp consisted of a flat concrete area on top, which was immediately adjacent to a downward slope. There were handrails located on the sides of the sloping portion of the ramp. Plaintiff testified that, as she approached the ramp, Wysocki was walking ahead and to the left of plaintiff. Plaintiff noticed that the ramp "was slushy in the middle," so she moved to the right side and grabbed on to the railing. She testified: "I took a couple of steps and my foot went underneath, bent underneath, and just immediately it was instantaneously—fell on ice and it went under me and fell." Plaintiff stated that she did not slip on the slush. When asked if she knew what caused her fall, she replied: "I believe there was ice. It went that—It was that quick, that sudden, that I was just down instantaneously. I mean it was within a second." When asked if she saw any ice on the ramp, she replied: "No."

[1] The motion for summary judgment was filed by defendant Union Pacific Railroad Company. In her brief, plaintiff stated that it was the understanding of the parties and the court that the motion was filed on behalf of both defendants (who are represented by the same counsel), which explains why the entire cause of action was dismissed. Defendants' brief before this court was filed on behalf of both defendants, and defendants make no argument to the contrary.

¶ 5 Wysocki testified that she did not investigate what caused plaintiff to fall and did not know if there was ice on the ramp.

¶ 6 Defendants moved for summary judgment, arguing that defendants owed no duty to plaintiff, because any ice on the ramp was a natural accumulation. In the alternative, defendants argued that plaintiff failed to establish that she slipped on ice.

¶ 7 In response to defendants' motion, plaintiff argued that she presented sufficient evidence that she slipped on an unnatural accumulation of ice. Plaintiff relied primarily on the report and testimony of her expert, John Van Ostrand, an architect. The report included weather reports. According to plaintiff, Van Ostrand established that the location of heating coils in the ramp and the slope of the ramp caused snow to melt and water to accumulate and freeze in the area where plaintiff fell.

¶ 8 Following a hearing, the trial court granted summary judgment for defendants, based on plaintiff's failure to present any evidence that she slipped on ice. The court stated: "None of the witnesses the [*sic*] saw ice. There is nothing that tells me there was ice at or near the location where she fell." The court noted that plaintiff testified only that she "believed" there was ice. The court further noted that it "discounted" the expert testimony, finding that such testimony would be relevant only if there was evidence "that there was actual ice there."

¶ 9 Plaintiff timely appealed.

¶ 10 II. ANALYSIS

¶ 11 Summary judgment is appropriate where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a

matter of law. 735 ILCS 5/2-1005(c) (West 2012). We review *de novo* a grant of summary judgment. *Sollami v. Eaton*, 201 Ill. 2d 1, 7 (2002).

¶ 12 The essential elements of a cause of action based on common-law negligence are the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately caused by that breach. *Ward v. K mart Corp*., 136 Ill. 2d 132, 140 (1990). Proximate cause need not be proved with direct evidence. *Canzoneri v. Village of Franklin Park*, 161 Ill. App. 3d 33, 41 (1987). Rather, causation may be established by facts and circumstances that, in light of ordinary experience, reasonably suggest that the defendant's negligence produced the plaintiff's injury. *Id*. at 41. That said, proximate cause cannot be predicated on surmise or conjecture, and, therefore, causation will lie only when there exists a reasonable certainty that the defendant's acts caused the injury. *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 795 (1999). If the plaintiff cannot identify the cause of her injury or can only guess as to the cause, a court cannot find the defendant liable for negligence. *Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813, 817 (1981).

¶ 13 Plaintiff argues that the trial court erred in granting summary judgment for defendants, because the evidence presented raised a genuine issue of fact that she slipped on an unnatural accumulation of ice. According to plaintiff, she "unequivocally testified that she fell on ice." In addition, she argues that Van Ostrand's testimony about the ramp's heating system and evidence as to the weather conditions established that ice was present at the time of and in the location of her fall. We disagree.

¶ 14 First, plaintiff's claim that she slipped on ice was nothing more than speculation. Although plaintiff stated at one point during her deposition that she "fell on ice" and answered in the affirmative when asked whether her "left foot slipped on some ice," she also testified that she

did not see any ice on the ramp. She said that she "believe[d] there was ice." There was no testimony from anyone that there was ice on the ramp. Given plaintiff's admission that she did not see any ice on the ramp and her statement that she "believe[d] there was ice," it is clear that her claim that she "fell on ice" was nothing more than speculation. Indeed, there are multiple reasons why a surface may be slippery; ice is merely one of them.

¶ 15 Further, Van Ostrand's testimony concerning the presence of the heating coils in the ramp and evidence as to the weather is insufficient to establish that ice caused plaintiff's fall. In *Strutz v. Vicere*, 389 Ill. App. 3d 676 (2009), a tenant suffered fatal injuries when he slipped and fell on a staircase. The plaintiff alleged that the defendants were negligent in failing to maintain the staircase and railing. *Id*. at 678. The tenant's wife testified at her deposition that, immediately after her husband fell, he told her that he had fallen over the railing. *Id*. at 677. On appeal from summary judgment for the defendants, the plaintiff argued that the wife's testimony, when combined with expert testimony establishing that the staircase was in violation of certain building codes, was sufficient to raise a genuine issue of fact as to whether the defendants' negligence was the proximate cause of the tenant's fall. *Id*. at 678. The reviewing court disagreed and affirmed. The court found that none of the testimony addressed the issue of what caused the fall. *Id*. at 681. The court stated:

> "Violations of an ordinance or a failure to comply with the building code, by themselves without evidence that the violations caused the injury, do not establish proximate cause. [Citation.] The possibility that the allegedly unreasonably dangerous staircase had caused [the tenant] to slip and fall is insufficient to establish the necessary causal relationship between [the defendants'] alleged negligence and [the tenant's] injuries." *Id*.

So too here. The possibility that the ramp's heating system caused ice to form does not establish that ice actually did form on the day of the incident or, more importantly, that ice was the cause of plaintiff's fall. As the trial court noted, such evidence might have been relevant to whether any alleged ice was an unnatural accumulation, but only after plaintiff established that ice was actually present.

¶ 16 The cases relied on by plaintiff do not warrant a different conclusion. In *Canzoneri*, the reviewing court reversed summary judgment for the defendant on the plaintiff's slip-and-fall complaint, despite the defendant's argument that the plaintiff did not know what caused her to fall. *Canzoneri*, 161 Ill. App. 3d at 39. The reviewing court found that the plaintiff stated several times in her deposition that a broken sidewalk caused her to fall. *Id.* According to plaintiff, the present case is like *Canzoneri* because, here, plaintiff specifically identified ice as the cause of her fall. We disagree. In *Canzoneri*, there was no dispute that the sidewalk was broken. Here, however, there was no evidence (other than plaintiff's speculation) that ice was even present was on the ramp, let alone that it caused her to fall.

¶ 17 In *Newsom-Bogan v. Wendy's Old Fashioned Hamburgers of New York, Inc.*, 2011 IL App (1st) 092860, the reviewing court reversed summary judgment for the defendant on the plaintiff's slip-and-fall complaint. The plaintiff argued on appeal that there was a genuine issue of material fact as to whether a greasy substance on the floor caused her to fall. *Id.* ¶ 17. The plaintiff had testified at her deposition that, although she did not know what caused her to fall, when she had attempted to get up she noticed a greasy substance on her hands that was so slippery she was unable to get up unassisted. *Id.* ¶ 19. Again, the present case is distinguishable, because plaintiff did no more than speculate that ice was present on the ramp. In *Newsom-Bogan*, although the plaintiff was unable to say that the grease caused her fall, there was

sufficient evidence to show that grease was present on the floor where the plaintiff fell. *Id*. Thus, there was sufficient evidence to support a reasonable inference that the grease caused the fall. *Id*. Here, without testimony that ice was actually present, we can do no more than speculate that ice caused the fall. As speculation cannot establish causation, the trial court properly granted defendants summary judgment. See *Koukoulomatis v. Disco Wheels, Inc.*, 127 Ill. App. 3d 95, 101 (1984) (the plaintiff's theory that the carpet must have " 'gone up a little bit' " and caused her to fall was speculation insufficient to establish causation, and, thus, summary judgment was properly granted).

¶ 18 III. CONCLUSION

¶ 19 For the reasons stated, we affirm summary judgment for defendants.

¶ 20 Affirmed.