

NOTICE
Decision filed 02/10/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-09-0637
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

KRISTAL HOLTON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Madison County.
)	
v.)	No. 06-L-468
)	
HENDERSON ASSOCIATES ARCHITECTS,)	
INC., and GRS CONSTRUCTION, INC.,)	Honorable
)	Barbara L. Crowder,
Defendants-Appellees.)	Judge, presiding.

JUSTICE DONOVAN delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

R U L E 2 3 O R D E R

Held: The circuit court properly entered a summary judgment in favor of the defendants where there were no genuine issues on any material facts and where the plaintiff failed to set forth some evidentiary facts to support essential elements of her claims against the defendants.

The plaintiff, Kristal Holton, brought an action in the circuit court of Madison County against the defendants, Henderson Associates Architects, Inc., and GRS Construction, Inc., and alleged that she suffered personal injuries as a result of negligence in the design and the construction of restroom facilities in an assisted-living facility for senior citizens. The circuit court entered a summary judgment for the defendants. The court found that the plaintiff failed to produce any facts to show that the defendants breached their respective standards of care and that the plaintiff failed to establish a causal connection between the alleged negligence and her injuries. The plaintiff appealed. We affirm.

This action arises from an incident that occurred while the plaintiff was employed as a direct care attendant at an assisted-living facility for senior citizens called "Fountains III."

Fountains III contains 63 apartment units, and each unit has a private bathroom. Direct care attendants employed by Fountains III are responsible for assisting the residents with activities of daily living, such as dressing, bathing, and transferring from a wheelchair to the toilet. They do not provide nursing services.

On August 20, 2005, the plaintiff was working a morning shift at Fountains III, when she responded to a call by a resident for assistance in apartment unit 117. Unit 117 is referred to as "room 117" throughout these proceedings. A fellow named Mr. Williams lived in room 117. When the plaintiff entered room 117, Mr. Williams advised that his wife, Anna Williams, was in his bathroom and that she needed assistance. Mrs. Williams was also a resident of the facility, but she lived in a different apartment. The plaintiff proceeded to the bathroom. She observed Mrs. Williams sitting in her wheelchair, facing the wall alongside the toilet. A grab bar was mounted on the wall alongside the toilet. With the plaintiff's assistance, Mrs. Williams was able to stand up and grasp the grab bar. She held the grab bar with both hands while the plaintiff moved the wheelchair out of the way. The plaintiff then turned back toward Mrs. Williams. The plaintiff saw Mrs. Williams falling to the floor. The plaintiff grabbed Mrs. Williams under the arms in an effort to break her fall, but instead the plaintiff was pulled down to the ground. The plaintiff landed on her backside. Mrs. Williams ended up on the plaintiff's lap. Shortly after the fall, Mr. Williams entered the bathroom. He was able to lift his wife and help her to the toilet. Mrs. Williams was not injured in the incident. The plaintiff claimed that she injured her back. After checking on Mrs. Williams, the plaintiff went to the service desk and reported the incident to her supervisor. The plaintiff completed an incident report and then went to the hospital for evaluation and treatment.

The plaintiff filed this action in the circuit court of Madison County against Henderson Associates Architects, Inc. (Henderson Associates), and GRS Construction, Inc.

(GRS), and alleged that she suffered severe and permanent injuries to her back as a result of the defendants' negligence in the design and the construction of the restroom facilities in room 117 at Fountains III. The plaintiff's allegations of professional negligence focused on the location, size, and texture of the grab bar in the bathroom. Pared down to the basics, the plaintiff alleged that the grab bar was mounted too high from the floor to allow Mrs. Williams and similarly situated residents to reach it, that the diameter of the grab bar was too wide to allow Mrs. Williams and similarly situated residents to hold the bar securely, that the grab bar lacked a nonslip finish to prevent a loss of grip, and that the plaintiff's injuries resulted from negligence in the design and construction of the grab bar.

Both Henderson Associates and GRS moved for a summary judgment, and the plaintiff filed arguments in opposition. Transcripts of the discovery depositions of the plaintiff and the corporate representatives of the defendants were referenced and relied upon in support of and in opposition to the defendants' respective motions for a summary judgment. Pertinent portions of the deposition testimony are summarized next.

The plaintiff testified that she completed an incident report shortly after the accident. She acknowledged that her written account of how the injury occurred differed from her deposition testimony. In the incident report, the plaintiff indicated that she felt a pop between her shoulder blades when she lifted Mrs. Williams from the wheelchair. During the deposition, the plaintiff stated that she injured her back as she fell while she was trying to prevent a resident's fall. The plaintiff testified that she did not accurately describe the incident in the written report because she was in a lot of pain. She felt that her recollection of the incident was fresher and more accurate at the time of her deposition than it was on the date of the incident.

The plaintiff testified that there were two grab bars in the bathroom in room 117. One grab bar was on the side of the toilet and one was behind the toilet. Mrs. Williams had been

holding onto the bar on the side of the toilet. The plaintiff did not know whether Mrs. Williams lost her grip on the grab bar or simply let go of the grab bar. The plaintiff said that it appeared that Mrs. Williams had a grip on the bar and then she did not. The plaintiff did not inspect either bar. She was not able to identify any building code or safety code violations pertaining to the design and the location of the grab bars. The plaintiff testified that she thought the grab bar alongside the toilet was mounted too high from the floor. She also thought that the grab bar should have been smaller in diameter and that it should have had a nonslip grip. The plaintiff based her opinions on her observations that Mrs. Williams had difficulty reaching the grab bar, that Mrs. Williams could not wrap her hand around it, and that Mrs. Williams lost her grip on it. The plaintiff later acknowledged that she had not inspected the grab bar and did not know whether it had a nonslip finish. The plaintiff opined that the accident would not have occurred if there had been side rails on each side of the toilet. She felt that Mrs. Williams would not have needed help transferring from her wheelchair to the toilet if there were side rails attached to the toilet seat. The plaintiff acknowledged that she had never seen the side-rail apparatus in any bathroom at Fountains III and that she was not aware that any resident had ever requested such an apparatus.

Alternatives for Seniors, Inc., was the corporate owner of Fountains III. Richard Brueger was the secretary of the corporation. Brueger testified that the architectural design plans for Fountains III were generated by the architect, Henderson Associates, and that the plans were approved by the City of Shiloh, the state plumbing inspector, and the Illinois Department of Public Health.

James R. Henderson, a licensed architect and the president of Henderson Associates, testified that his company entered into a contract with Alternatives for Seniors, Inc., to perform architectural services for the construction of Fountains III. Henderson stated that his firm had prepared the design plans for two other assisted-living facilities, Fountains I and

Fountains II, and that the plans for Fountains III were substantially similar to the plans for those other facilities. Henderson stated that all the bathrooms at Fountains III were handicapped-accessible. Henderson testified that the design plans for the bathrooms at Fountains III, including the design and configuration of the grab bars, were submitted to and approved by the City of Shiloh and that the design plans were inspected and approved by the Illinois Department of Public Health. He stated that the design of the bathrooms, including the dimensions, size, placement, and finish of the grab bars, complied with all state and federal statutes and regulations. He also stated that the design plans and specifications complied with the Americans with Disabilities Act, the Illinois Accessibility Code, the 1999 BOCA building code, the BOCA National Mechanical Code, the Illinois State Plumbing Code, the BOCA National Fire Prevention Code, the NEC Electrical Code, and all the applicable local building codes.

Henderson testified that he personally inspected the bathroom in room 117. He noted that the grab bars near the toilet were stainless steel with a textured, nonslip finish, that the diameter was one-and-one-quarter inches, and that the bars complied with the applicable regulations and codes. Henderson testified that the location of the grab bars are regulated by the Illinois Accessibility Code. He stated that the regulations regarding the dimensions and the locations of the bars were intended to allow for the greatest ease and maneuverability in the transition from a wheelchair to the toilet. He noted that the grab bars were designed to work with a toilet that was located 18 inches from the wall. Henderson testified that the apparatus advocated by the plaintiff, the additional side rails mounted to the toilet seat, could possibly interfere with maneuverability. Henderson testified that the alternative apparatus was not approved under the applicable codes at the time his company drew the design plans for Fountains III and that it was not referenced in the codes for new construction. Henderson stated that GSR constructed the bathroom in room 117 according to his company's design

plans and specifications.

Gary Bockhorn, the president of GRS, testified that his company oversaw the construction of Fountains III. Bockhorn stated that the units in the facility, including the handrails in the bathroom in room 117, were constructed in accordance with the design plans and specifications provided by Henderson Associates. He stated that the design plans and specifications set forth the dimensions of the bathrooms, the types of handrails to be installed, and the location of those rails. Bockhorn noted that the design plans and specifications prepared by Henderson Associates mandated compliance with the Americans with Disabilities Act and the Illinois Accessibility Code. Bockhorn testified that the handrails had been installed in accordance with requirements detailed in the Fountains III construction specification book and that the specification book mandated compliance with the Americans with Disabilities Act and the Illinois Accessibility Code.

Bockhorn stated that he visually inspected the bathrooms before the occupancy permit was issued for Fountains III. He noted that the grab bars and toilet accessories had been installed according to the plans, but he did not measure the grab bars in each bathroom in the facility. Bockhorn testified that he inspected the bathroom in room 117 after the lawsuit was filed. During his inspection, he determined that the grab bar was of the same type and specifications as those originally installed and that the grab bar conformed to the measurements specified in the original drawings. Bockhorn acknowledged that he did not know if the grab bar had been replaced since the original construction.

Henderson Associates filed a motion for a summary judgment. In its motion, Henderson Associates acknowledged that it prepared the design plans and specifications for Fountains III and that the plans included specifications for the grab bars in the bathroom in room 117. Henderson Associates argued that it properly discharged any duty it might have owed to the plaintiff and any other user of the Fountains III facility when it designed the

facility in accordance with the requirements of its contract with the facility owner and in compliance with the applicable codes and regulations governing assisted-living facilities. Henderson Associates noted that in accordance with the Assisted Living and Shared Housing Act (210 ILCS 9/1 *et seq.* (West 2008)), the design, specifications, and construction of assisted-living facilities such as Fountains III are regulated by the Illinois Department of Public Health (Department) and that the Department prescribes minimum standards for construction, including plumbing, heating, lighting, and other physical conditions, and provides that the standards shall include compliance with the local and state building codes for the building type and the accessibility standards of the Americans with Disabilities Act (ADA) (42 U.S.C. §12101 *et seq.* (2006)). See 210 ILCS 9/20(1) (West 2008). Henderson Associates noted that the undisputed facts show that the grab bars included in its design plans complied with all the requirements of the ADA and the Assisted Living and Shared Housing Act (210 ILCS 9/1 *et seq.* (West 2008)). Henderson Associates pointed out that the plaintiff did not offer any evidence, beyond her own testimony, to support her allegations that there were defects in the design of the grab bar and the bathroom facilities. Henderson Associates also pointed out that the plaintiff did not know what caused Mrs. Williams to fall and that the plaintiff produced no facts to establish that defects in the design of the grab bar or the bathroom facilities caused her injuries.

GRS also filed a motion for a summary judgment. GRS acknowledged that it was the general contractor for Fountains III and that it oversaw the construction of Fountains III, including the bathroom in room 117. GRS argued that under Illinois law, a contractor owes no duty to a plaintiff if it carefully carries out the designs and specifications provided by the architects and designers of the structure. GRS further argued that it reasonably relied on the design plans and specifications prepared by Henderson Associates, that there were no obvious defects in the plans, and that it constructed the facility in accordance with those

plans. GRS noted that the design plans and specifications complied with the regulations of the Health Department of Public Health regulations, the ADA, and the Illinois Accessibility Code. GRS pointed out that the plaintiff did not offer any evidence, beyond her own testimony, to support her allegations of defects in the design or construction of the bathroom facilities or the grab bar. GRS also point out that plaintiff offered no facts to show that any alleged defects in the design or construction of the grab bar or the bathroom facilities caused her injuries.

Upon reviewing the pleadings, the depositions, the responses to the plaintiff's requests for admission, and the oral and written arguments of counsel, the court concluded that there were no material issues of genuine fact at issue and that the defendants were entitled to a summary judgment. In regard to Henderson Associates, the court found that there was no dispute that the design of the bathroom complied with all the requirements for assisted-living centers set forth in the ADA, the Illinois Accessibility Code, the 1999 BOCA code, and all the requirements of the Illinois Department of Public Health and that the grab bar at issue met the code requirements in terms of location, diameter, and finish. The court found that the plaintiff offered no expert testimony indicating that the architects were professionally negligent in complying with the codes and in failing to seek a variance from the codes. The court found that the plaintiff's opinion that the architects were negligent in failing to use a different safety-rail apparatus was unsupported by any expert testimony and that her opinion that the apparatus would have prevented the accident was speculative.

In regard to GRS, the court found it undisputed that GRS built the restroom facilities to meet the design plans which were prepared by Henderson Associates and which were governed by numerous codes and regulations regarding safety and accessibility. The court noted that the plaintiff did not claim or present facts to show that the design plans were in any way defective or failed to comply with the applicable codes and requirements. The court

found that under Illinois law a contractor is justified in following the design plans unless the plans are so obviously defective that the contractor is on notice that the resulting structure could cause an injury.

A summary judgment is proper only if the pleadings, depositions, admissions, and affidavits, when construed in a light most favorable to the nonmoving party, show that there is no genuine issue on any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2002); *Jones v. Chicago HMO Ltd. of Illinois*, 191 Ill. 2d 278, 291, 730 N.E.2d 1119, 1127 (2000). Although a plaintiff is not required to prove her case at the summary judgment stage, she must present some evidentiary facts to support the elements of her cause of action. *Krueger v. Oberto*, 309 Ill. App. 3d 358, 367, 724 N.E.2d 21, 28 (1999). In reviewing an order granting a summary judgment, the standard of review is *de novo*. *Jones*, 191 Ill. 2d at 291, 730 N.E.2d at 1127.

Architects represent themselves to be competent in the preparation of plans and specifications necessary to the construction of suitable structures, including knowledge of and compliance with applicable building codes, and where they fail to use reasonable care to produce a satisfactory structure in compliance therewith, they may be sued for negligence. *Himmel Corp. v. Stade*, 52 Ill. App. 3d 294, 298, 367 N.E.2d 411, 415 (1977). Architects have a duty to apply the knowledge and to use the skill and care that is ordinarily used by reasonably well-qualified architects in the locality. *Cadral Corp. v. Solomon, Cordwell, Buenz & Associates, Inc.*, 147 Ill. App. 3d 466, 475, 497 N.E.2d 1285, 1291 (1986). Architects owe a duty to those who would be likely to use a structure to exercise care that the design is safe for the structure's intended use. *La Bombarbe v. Phillips Swager Associates, Inc.*, 130 Ill. App. 3d 896, 898, 474 N.E.2d 942, 944 (1985). Generally, when the professional negligence of an architect is alleged, a plaintiff must present expert testimony to establish the appropriate standard of care against which the defendant's conduct may be

evaluated. *Fence Rail Development Corp. v. Nelson & Associates, Ltd.*, 174 Ill. App. 3d 94, 98, 528 N.E.2d 344, 347 (1988). But when the professional negligence is so grossly apparent that a layperson would have no difficulty in appraising it, expert testimony on the standard of care would not be required. *Fence R. Development Corp.*, 174 Ill. App. 3d at 98, 528 N.E.2d at 347.

In this case, the plaintiff failed to produce any facts from which to find or infer that Henderson Associates breached any professional duty of care in the design of the bathroom facilities. Likewise, the plaintiff failed to produce any facts from which to find or infer that Henderson Associates breached any duty imposed under the terms of its contract with the owners. The plaintiff gave her opinions that the grab bar was mounted too high from the floor, that the diameter of the bar was too wide, and that the bar was not of a nonslip finish. The plaintiff conceded that she did not inspect the grab bars and that she based her opinions on her observations that Mrs. Williams had difficulty reaching the grab bar. The plaintiff further opined that an alternative apparatus, one in which side rails were mounted directly on the toilet, would have prevented the accident. The plaintiff did not offer expert testimony or other facts in support her allegations and opinions.

In this case, it was undisputed that the design of the bathroom complied with all the requirements for assisted-living centers set forth in the Americans with Disabilities Act, the Illinois Accessibility Code, the 1999 BOCA code, and all the requirements of the Illinois Department of Public Health. It was undisputed that the grab bar at issue met accessibility and safety code requirements in terms of location, diameter, and finish. James Henderson, an architect and the president of Henderson Associates, testified that the regulations regarding the dimensions and the locations of the grab bars in the restrooms were intended to allow for the greatest ease and maneuverability in the transition from a wheelchair to the toilet. Henderson noted that the side-rail apparatus advocated by the plaintiff could possibly

interfere with maneuverability. Henderson also noted that the alternative apparatus was not approved under the applicable codes at the time his company drew the design plans for Fountains III and that it was not referenced in the codes for new construction. This is not a case where the negligence alleged by the plaintiff was so grossly apparent, so glaringly obvious, that a layperson would have no difficulty appraising it. Expert testimony was necessary. The plaintiff did not offer expert testimony to establish that Henderson Associates was professionally negligent in preparing its design plans for the restroom grab bars in compliance with the codes. She did not offer expert testimony that Henderson Associates was negligent because it did not seek a variance from the codes requirements for the restroom grab bars. She did not offer any expert testimony to establish that the architects were negligent in failing to use a side-rail apparatus. The plaintiff failed to present any evidentiary facts to support a duty and a breach of duty, essential elements in her cause of action against Henderson.

A contractor is justified in relying on the design plans and specifications which he has contracted to follow, unless the plans and specifications are so apparently defective that no competent contractor would follow them. *Hunt v. Blasius*, 74 Ill. 2d 203, 209, 384 N.E.2d 368, 371 (1978). In this case, the plaintiff did not produce any facts from which to find or infer that GRS failed to construct the bathroom in room 117 in compliance with the design plans and specifications provided to it. In this case, the plaintiff did not produce any expert opinion or any facts from which to find or infer that the design plans and specifications for the bathroom, including the grab bars, were so apparently defective that no reasonably well-qualified contractor would have followed them. The plaintiff failed to present any evidentiary facts to support a duty and a breach of duty, essential elements in her cause of action against GRS.

Additionally, a fair reading of the plaintiff's testimony shows that she did not know

what caused Mrs. Williams to fall. The plaintiff could only speculate. Thus, the trial court properly concluded that the plaintiff failed to set forth any facts to establish the element of proximate cause.

A review of the record shows that the circuit court properly entered a summary judgment in favor of Henderson Associates Architects, Inc., and GRS Construction, Inc. Accordingly, the judgment of the circuit court is affirmed.

Affirmed.