No. 2—10—0265
Order filed March 7, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ANDREA TROPSTEIN and RONALD TROPSTEIN,	)	Appeal from the Circuit Court of Lake County.
Plaintiffs-Appellants,	)	
v.	)	No. 08—L—164
GOLDEN COUNTRY INN, INC., d/b/a Wyncourt Restaurant & Lounge,	)	Honorable David M. Hall,
Defendant-Appellee.	)	Judge, Presiding.

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

ORDER

Held: The trial court properly granted summary judgment in favor of defendant on plaintiffs' negligence complaint; although a plaintiff testified that defendant's preparation of a menu item startled and blinded her, plaintiffs could only speculate that defendant's act then caused her to fall; thus, plaintiffs presented insufficient evidence that defendant's acts were the proximate cause of their injuries.

Plaintiffs, Andrea and Ronald Tropstein, brought suit against Golden Country Inn, Inc., d/b/a Wyncourt Restaurant & Lounge, alleging that Andrea suffered physical injury and Ronald suffered a loss of consortium as a result of defendant's breach of its standard of care. Defendant moved for summary judgment, which the trial court granted. Plaintiffs appeal, contending that the trial court

erred when it concluded that defendant did not owe plaintiffs a duty. For the reasons that follow, we affirm.

The pleadings, depositions, admissions, and affidavits reflect the following. On September 29, 2007, plaintiffs ate dinner at defendant's establishment. Upon completion of the meal, Andrea went to the restroom. As she was returning to the table from the restroom, Andrea encountered one of defendant's servers. The server was preparing to serve a flaming cheese dish called saganaki to patrons at a nearby table. While Andrea was standing near the server, the server, without warning to Andrea, lit the dish on fire. According to the pleadings, the dish flared in Andrea's face and she fell, suffering several permanent injuries. As a result of his wife's injuries, Ronald suffered a loss of consortium.

Defendant filed a motion for summary judgment, arguing that defendant did not owe a legal duty to plaintiffs and that plaintiffs could not establish that defendant's actions were the proximate cause of Andrea's injuries. The trial court granted summary judgment in favor of defendant and against plaintiffs, concluding that Andrea's reaction to the lighting of the saganaki was highly extraordinary, bizarre, and unique and, thus, Andrea's injuries were not foreseeable and defendant did not owe plaintiffs a duty of care. Plaintiffs brought this timely appeal.

On appeal, plaintiffs contend that defendant owed them a legal duty and that defendant's other basis for moving for summary judgment—that it was not the proximate cause of Andrea's injuries—did not warrant a grant of summary judgment. Although the trial court did not address the proximate causation issue, we affirm on the basis that plaintiffs cannot establish that defendant proximately caused Andrea's injuries. See *Northern Illinois Emergency Physicians v. Landau, Omahana & Kopka, Ltd.*, 216 Ill. 2d 294, 305 (2005) ("[W]e may affirm a grant of summary

judgment on any basis appearing in the record, regardless of whether the lower courts relied upon that ground.").

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 2008). We review *de novo* a grant of summary judgment. *Shannon v. Boise Cascade Corp.*, 208 Ill. 2d 517, 524 (2004).

To maintain a claim for negligence, a plaintiff must establish that the defendant owed a duty to the plaintiff, the defendant breached that duty, and the breach proximately caused the plaintiff's injury. See *Sameer v. Butt*, 343 Ill. App. 3d 78, 85 (2003). 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. *Canzoneri*, 161 Ill. App. 3d 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. *Bellerive v. Hilton Hotels Corp.*, 245 Ill. App. 3d 933, 936 (1993).

In her deposition, Andrea testified that when the flame went up she was startled and blinded and that she then fell forward onto her face. Andrea denied tripping over anything, testifying that she was standing still when the flame was lit and she fell. She was asked several times what caused

her to fall forward, and each time she responded either that she did not know or that the startling and blindness caused by the flame caused her to fall. For example, she testified:

"Q. It was the flame that went up in the air, you said it blinded you?

A. Yes, it did.

Q. And that's what caused you to fall?

A. Correct.

* * *

Q. I take it then—and we will go through the details of the waitress lighting the flame. I take it then you didn't trip, did you?

A. No. Well, of course not, I fell over, it blinded me. I couldn't see what I was doing, I couldn't see anything. It was so dark in there you couldn't see anything.

Q. But what I'm getting at is you didn't trip on the carpet or anything, right, you just fell because the flame startled you?

A. The flame startled me."

Andrea further testified:

"Q. Do you know, I mean did the flame startle you so that you misstepped or do you know what caused you to fall?

A. The flame.

Q. But I mean, okay, so the flame goes up, did you like step back so that you fell or do you know or maybe you don't know?

A. I don't know what happened. All I know is I went over right away."

Finally, she also testified:

"Q. I just wanted to clarify as best I can in terms of the flame. It startled you?

A. It startled me.

Q. One thing I can't understand is did it cause you to move in some way that caused you to fall or you just don't know?

A. It startled me so that I went actually over.

Q. Forward?

A. Yes.

Q. Do you know what, in being startled what caused you to move forward?

A. I didn't even think I moved forward, I went down right away.

Q. But you don't know why?

A. No, I got so startled, I was so startled. I mean I was in shock, I couldn't believe it. That's why I asked the paramedics all the way to the hospital what happened to me."

Although depositions of other witnesses were taken, none of them offered any indication as to what caused Andrea to fall.

This evidence, taken in the light most favorable to plaintiffs and assuming that a duty to warn existed, is insufficient to establish that the server's act of lighting the dish without warning Andrea caused Andrea to fall and become injured. To establish proximate cause, Andrea bears the burden "to affirmatively and positively show" that lighting the dish caused plaintiff's injuries. See *Bermudez v. Martinez Trucking*, 343 Ill. App. 3d 25, 29 (2003) (directed verdict affirmed because the plaintiff, a truck driving trainee, could not establish how his crash into a highway barrier was connected with or a result of his driving instructor falling asleep in the truck's cab, which the instructor had done on prior occasions). We recognize that a plaintiff may establish proximate cause

through circumstantial evidence. See *Canzoneri*, 161 Ill. App. 3d at 41. However, 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. *Wiegman*, 308 Ill. App. 3d at 796. In the current matter, the evidence establishes at best a possible link between the lighting of the dish and Andrea's being startled or blinded. There are no other circumstances, however, linking the lighting of the dish and Andrea's fall. The course of ordinary experience does not allow us to infer any connection between being startled or blinded and falling forward onto one's face without even taking a step. See *Canzoneri*, 161 Ill. App. 3d at 41. Because we are unable to infer such a connection, it was incumbent upon plaintiffs to present some evidence connecting the two. Plaintiffs failed to do so, leaving only speculation to connect the events. Because speculation cannot establish causation, the trial court properly granted defendant 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).

For the reasons stated, we affirm the judgment of the circuit court of Lake County.

Affirmed.