

STATE OF MICHIGAN
COURT OF APPEALS

DONALD COFFMAN,

Plaintiff-Appellant,

v

DOWNRIVER COMMUNITY FEDERAL
CREDIT UNION,

Defendant-Appellee.

UNPUBLISHED
February 23, 2012

No. 301129
Wayne Circuit Court
LC No. 10-001601-NO

Before: GLEICHER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition in this premises liability action. Because plaintiff's theory regarding the cause of his fall is purely speculative and he has failed to establish that defendant should have had knowledge of the purportedly hazardous condition, we affirm.

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Cedroni Assoc v Tomblinson, Harburn Assoc*, 290 Mich App 577, 584; 802 NW2d 682 (2010). When reviewing a motion for summary disposition under MCR 2.116(C)(10), we consider the pleadings, affidavits, and other evidence in the light most favorable to the nonmoving party. *Id.* The nonmoving party cannot rely solely on mere allegations or denials in his pleadings and must present documentary evidence setting forth specific facts demonstrating a genuine issue for trial. MCR 2.116(G)(4). Summary disposition under MCR 2.116(C)(10) should be granted "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A genuine issue of material fact exists when "reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Plaintiff fell down half of a flight of stairs on defendant's premises. He argues that his injuries were caused by defendant's negligence in allowing a door near the top of the stairs to remain open while construction workers walked in and out of the building on a wet, snowy December day. To establish a negligence claim, a plaintiff must prove that "(1) the defendant owed the plaintiff a legal duty, (2) the defendant breached the legal duty, (3) the plaintiff suffered damages, and (4) the defendant's breach was a proximate cause of the plaintiff's

damages.” *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; ___ NW2d ___ (2011). The term “proximate cause” encompasses both cause in fact and legal, or proximate, cause. *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004). A landowner who invites others onto his property for commercial purposes has a duty “to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land.” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). The landowner also has a duty to inspect the premises and make any necessary repairs or warn invitees of hazardous conditions. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000).

Plaintiff argues that the causal connection between his injuries and defendant’s negligent conduct is not too speculative to establish his negligence claim, as the trial court concluded. In order to establish cause in fact, a plaintiff must show that, but for the defendant’s negligence, his injuries would not have occurred. *Genna v Jackson*, 286 Mich App 413, 417; 781 NW2d 124 (2009). Although circumstantial evidence can be used to make such a showing, there must be more than a mere possibility that the defendant’s conduct caused the plaintiff’s injuries. *Id.* at 417-418. Speculation and conjecture are not enough to establish causation in fact. *Id.* at 418. “[W]hen the matter remains one of pure speculation and conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict in favor of the defendant.” *Id.* “Normally, the existence of cause in fact is a question for the jury to decide, but if there is no issue of material fact, the question may be decided by the court.” *Id.*

On the date of the incident, December 7, 2007, snow was on the ground outside defendant’s building and workers were completing a construction project inside the building. A door approximately 12 feet from the top of the staircase was left open, presumably to allow the construction workers to easily enter and leave the building. Immediately before his fall, plaintiff saw a “glimmer” on the step below him, about halfway down the staircase. He claims that the glimmer was water or ice, but he is unable to state definitively what it was. The back of plaintiff’s pants were wet after his fall.

The circumstantial evidence on which plaintiff relies is insufficient to create a genuine issue of material fact regarding causation. Although it is possible that the glimmer was water or ice tracked into the building by the construction workers, this conclusion is merely speculative. There is no evidence that the construction workers were coming into the building from outside and going down the stairs. Plaintiff did not see the glimmer until he was halfway down the stairs, and there is no evidence that water or snow was anywhere on the first six or seven steps or on the landing at the top of the stairs. Defendant claims that the glimmer was the reflection of the ceiling lights on the black molding on the steps.¹ Based on the evidence presented, this explanation is just as likely as plaintiff’s theory.

In addition, plaintiff is unable to conclusively state that the “glimmer” caused his fall. He did not maintain that he actually stepped or slipped on the glimmer, and no evidence indicates that anyone else saw water or ice on the stairs. In fact, Ecorse Police Officer Tim Sassak

¹ The steps were carpeted and black molding covered the edge of every step.

examined the staircase after plaintiff's fall and did not see any water, ice, or other defects. According to plaintiff, he was surrounded by people when he regained consciousness. It appears that all of those individuals were able to descend the stairs safely, and none of them reported seeing a hazardous condition, or anything unusual, on the steps. Thus, viewing the evidence in the light most favorable to plaintiff, it is purely speculative that a small pool of water or ice caused his fall. Plaintiff therefore failed to present sufficient evidence to establish a genuine issue of material fact regarding whether defendant's negligence caused his injuries.

Plaintiff also contends that defendant had notice of the hazardous condition. A property owner is liable only for injuries that result "from an unsafe condition either caused by the active negligence of himself and his employees or, if otherwise caused, [was] known to [the defendant] or is of such a character or has existed a sufficient length of time that he should have had knowledge of it." *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001) (quotation marks and citation omitted). Plaintiff claims that defendant had notice of the hazardous condition on the stairs because defendant created the condition. Plaintiff reasons that the door near the top of the staircase was open, there was snow on the ground outside, and he saw something shiny on the step below him immediately before he fell. Plaintiff contends that it is therefore reasonable to infer that defendant's act of leaving the door open for the construction workers created the condition that caused his fall.

Plaintiff's argument is based on his assumption that the glimmer was water or ice that a construction worker tracked into the building through the open door and that the glimmer was what caused his fall. As discussed above, plaintiff's claims are merely speculative, and he failed to present evidence establishing more than a mere possibility that defendant's alleged negligence caused his injuries. See *Genna*, 286 Mich App at 417-418. There is no evidence that the construction workers tracked snow or ice down the steps, and plaintiff did not see the glimmer until he was halfway down the stairs. He did not see any water or snow on the first six or seven steps or on the landing at the top of the stairs. Defendant suggests that the glimmer was the reflection of the ceiling lights on the black molding, and Officer Sassak saw no signs of water, ice, or another abnormal condition when he examined the stairs after plaintiff's fall.

In addition, nothing indicates that defendant had knowledge or should have had knowledge of the allegedly hazardous condition, i.e., the glimmer. Plaintiff did not see the glimmer until he was on the step above it and only saw it out of the corner of his eye. He did not see any water or ice in the surrounding area, and no evidence indicates that anyone else slipped on the stairs or saw anything unusual. Further, nothing indicates that the glimmer was there for an extended period of time. Consequently, plaintiff has failed to show that the condition, if it existed, was present for a sufficient length of time such that defendant should have had knowledge of it.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219

/s/ Patrick M. Meter
/s/ Pat M. Donofrio