

## Williamson v. Evans Nails & Spa Corp.

Appellate Court of Illinois, First District, Fifth Division

March 3, 2023, Opinion Filed

No. 1-22-0084

### Reporter

2023 IL App (1st) 220084 \*; 220 N.E.3d 1231 \*\*; 2023 Ill. App. LEXIS 54 \*\*\*; 468 Ill. Dec. 452 \*\*\*\*

MARIE WILLIAMSON, Plaintiff-Appellant, v.  
EVANS NAILS & SPA CORPORATION,  
Defendant-Appellee.

**Prior History:** [\*\*\*1] Appeal from the Circuit Court of Cook County. No. 2021 L 1414. Honorable John H. Ehrlich Judge presiding.

**Disposition:** Reversed and remanded.

### Core Terms

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ordinance, pedicure, salon, handrail, floor, video, slipped, proximate cause, slip-resistant, platform, chair, summary judgment, proximately, stepping, leg

### Case Summary

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#### Overview

**HOLDINGS:** [1]-The trial court erred by granting summary judgment for the nail salon because, based on the fall victim's deposition testimony and the video of the fall, there was direct evidence in the record to support an inference that the absence of a handrail proximately caused her injury. A photograph of the pedicure chair showed that there was a slip-resistant mat to the side of the chair on the elevated platform, but there was no such material on the step or floor and the victim's expert opined that the local ordinance and industry standards required slip-resistant flooring or mats in areas that could become wet or contaminated with oil or lotion; [2]-Denying leave to amend under 735 ILCS 5/2-616(c) (2020) was an abuse of discretion because every factor weighed in favor of granting leave to amend.

### Outcome

Reversed and remanded.

### LexisNexis® Headnotes

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Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > Absence of  
Essential Element

Civil Procedure > Judgments > Summary  
Judgment > Burdens of Proof

Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > Nonmovant  
Persuasion & Proof

Civil Procedure > ... > Summary  
Judgment > Burdens of Proof > Movant  
Persuasion & Proof

### **HNI Burdens of Proof, Absence of Essential Element**

A "Celotex motion" is a summary judgment motion made by a party who does not have the burden of proof and which asserts that the nonmovant cannot prove an element of its claim.

Civil Procedure > ... > Summary  
Judgment > Entitlement as Matter of  
Law > Appropriateness

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Civil Procedure > ... > Summary  
Judgment > Appellate Review > Standards of  
Review

Civil Procedure > Appeals > Standards of  
Review > De Novo Review

Civil Procedure > Judgments > Summary  
Judgment > Burdens of Proof

Civil Procedure > Judgments > Summary  
Judgment > Entitlement as Matter of Law

### ***HN2* Entitlement as Matter of Law, Appropriateness**

An appellate court reviews a grant of summary  
judgment de novo.

Governments > Local  
Governments > Ordinances & Regulations

Torts > ... > Proof > Violations of  
Law > Ordinances

### ***HN3* Local Governments, Ordinances & Regulations**

A violation of an ordinance designed to protect  
human life is prima facie evidence of negligence. A  
plaintiff injured by such a violation must show: (1)  
she belongs to the class of persons the ordinance was  
designed to protect; (2) it is the type of injury the  
ordinance was designed to protect; and (3) the  
violation proximately caused the injury.

Civil Procedure > Trials > Jury Trials > Province  
of Court & Jury

Torts > ... > Proof > Evidence > Province of  
Court & Jury

Torts > ... > Elements > Causation > Proximate  
Cause

### ***HN4* Jury Trials, Province of Court & Jury**

Where a plaintiff's fall down a stairway was  
potentially caused by the absence of handrails, the  
issue of proximate cause has been held to be a  
question of fact for the jury.

Torts > Negligence > Elements

### ***HN5* Negligence, Elements**

A claim for negligence requires the plaintiff to show:  
(1) a duty was owed by the defendant; (2) the  
defendant breached that duty; and (3) the breach was  
the proximate cause of the plaintiff's injuries.

Torts > ... > Proof > Evidence > Burdens of  
Proof

Torts > ... > General Premises  
Liability > Activities & Conditions > Slip & Fall  
Injuries

Torts > ... > Proof > Evidence > Expert  
Testimony

### ***HN6* Evidence, Burdens of Proof**

In a slip and fall case, an inspection is not a  
prerequisite to a proper expert affidavit.

Civil Procedure > ... > Pleadings > Amendment  
of Pleadings > Leave of Court

### ***HN7* Amendment of Pleadings, Leave of Court**

A pleading may be amended at any time under 735  
ILCS 5/2-616(c) (2020) and leave to amend shall be  
freely given.

Civil Procedure > Judgments > Summary  
Judgment > Burdens of Proof

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Civil Procedure > Discovery &  
Disclosure > Discovery > Undue Burdens in  
Discovery

Civil Procedure > Judgments > Summary  
Judgment > Evidentiary Considerations

### ***HN8* Summary Judgment, Burdens of Proof**

A Celotex motion should only be entertained after the respondent has had adequate time to complete discovery.

**Counsel:** John F. Hedrich, of Law Offices of John F. Hedrich, of Chicago, for appellant.

Gregory T. Glen and Timothy M. Palumbo, of Kopka Pinkus Dolin P.C., of Chicago, for appellee.

**Judges:** JUSTICE MITCHELL delivered the judgment of the court, with opinion. Justice Connors<sup>1</sup> and Justice Lyle concurred in the judgment and opinion.

**Opinion by:** MITCHELL

### **Opinion**

[\*P1] [\*\*1233] [\*\*\*\*454] Plaintiff Marie Williamson appeals a grant of summary judgment in favor of Defendant Evans Nails & Spa Corporation in this slip-and-fall case. The issue presented is whether the circuit court erred in entering judgment as a matter of law because plaintiff had come forward with sufficient evidence to create a fact question as to proximate cause. For the following reasons, we reverse and remand.

[\*P2] Williamson went to Evans Nails & Spa Corporation's salon in Evanston, Illinois, for a manicure and pedicure. The pedicure chair was on a raised platform and connected to a tub containing water. After receiving a pedicure, a salon worker gave

Williamson flip-flops and directed her toward the manicure station. While stepping down from the pedicure chair, Williamson [\*\*\*2] fell and broke her leg. A security camera captured the entire incident.

[\*P3] Williamson filed a complaint against Evans Nails. She alleged Evans Nails was negligent by causing the steps and floor to become slippery, failing to assist Williamson in descending from the elevated chair, and failing to warn Williamson of the slippery steps and floor.

[\*P4] After limited discovery, Evans Nails moved for summary judgment bringing a *Celotex* motion<sup>2</sup> predicated on a supposed absence of evidence on proximate cause and on Williamson's inability to identify where or on what she slipped. The circuit court granted the motion. 735 ILCS 5/2-1005 (West 2020). The court reasoned that the video was insufficient evidence of [\*\*\*\*455] [\*\*1234] proximate cause because the resolution was too low to make out any slip-inducing foreign substance. The court concluded that Williamson's inability to state precisely where she slipped made it impossible to determine whether following an ordinance or industry standards would have changed the outcome. Williamson took this timely appeal. Ill. S. Ct. R. 303 (eff. July 1, 2017).

[\*P5] Williamson argues that the trial court erred in granting summary judgment because there was evidence that (1) Evans Nails violated a safety ordinance that [\*\*\*3] required handrails; and (2) Evans Nails had failed to install slip-resistant flooring around the pedicure station. Evans Nails maintains the trial court did not err because Williamson failed to establish proximate cause. Evans Nails contends that a violation of statute was not alleged in the complaint and that Williamson's expert affidavit is inadequate. *HN2* We review a grant of summary judgment *de novo*. *Cohen v. Chicago Park District*, 2017 IL 121800, ¶ 17, 422 Ill. Dec. 869, 104 N.E.3d 436.

<sup>1</sup>Justice Connors participated in this appeal and the decision to publish, but she has since retired. See *Proctor v. Upjohn Co.*, 175 Ill. 2d 394, 396, 677 N.E.2d 918, 222 Ill. Dec. 384 (1997).

<sup>2</sup>*HN1* A "*Celotex* motion" is a summary judgment motion made by a party who does not have the burden of proof and which asserts that the nonmovant cannot prove an element of its claim. See *Celotex v. Catrett*, 477 U.S. 317, 324-25, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

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[\*P6] This slip-and-fall case presents an ever increasingly common occurrence: it was captured entirely on a video surveillance camera. And pictures do not lie. This visual evidence takes on a singular importance in this case because it readily belies many of the defense's arguments in favor of summary judgment. Consider this still image taken from the surveillance footage of record showing the moment when Williamson begins to fall:



The image shows Williamson reaching out to the salon technician with her left hand and grabbing the adjacent cart with her right hand as her right leg bends and her left leg slips forward. In the fractional [\*\*\*\*456] [\*\*1235] second before, Williamson is plainly stepping down from the pedicure platform.

[\*P7] The video shows the location, circumstance, and biomechanics of Williamson's fall, [\*\*\*\*4] and it became a basis for Scott Leopold's expert opinion. An engineer by training with significant experience investigating slips and falls, Leopold opined that the pedicure platform was unreasonably dangerous because it lacked a handrail in violation of a local Evanston ordinance. *HN3* A violation of an ordinance designed to protect human life is *prima facie* evidence of negligence. *Kalata v. Anbeuser-Busch Cos.*, 144 Ill. 2d 425, 434, 581 N.E.2d 656, 163 Ill. Dec. 502 (1991). A plaintiff injured by such a violation must show (1) she belongs to the class of persons the ordinance was designed to protect; (2) it is the type of injury the ordinance was designed to protect; and (3)

the violation proximately caused the injury. *McCarthy v. Kunicki*, 355 Ill. App. 3d 957, 970, 823 N.E.2d 1088, 291 Ill. Dec. 502 (2005). The Evanston ordinance expressly provides that it is a public safety measure applicable to commercial buildings, and it is self-evident that Williamson, as a patron of an Evanston business, is within the class of persons whom the ordinance is intended to protect.

[\*P8] Based on Williamson's deposition testimony and the video, there was direct evidence in the record to support an inference that the absence of a handrail proximately caused Williamson's injury. Williamson testified that when she first began to slip, the salon technician "put her hand out. I was going [\*\*\*\*5] to grab her hand and that's when I slipped." In *Kalata*, 144 Ill. 2d at 434, the Supreme Court considered a Chicago ordinance that required handrails on both sides of stairways. There, the plaintiff testified that he slipped when he was stepping to the left side of the stairway to use the handrail on that side. *Id.* at 436. The court deemed the plaintiff's testimony sufficient to show that the absence of a handrail on the right side of the stairway proximately caused his injury. *Id.* at 438.

[\*P9] In *McCarthy*, 355 Ill. App. 3d at 971, another case of a handrail ordinance violation, the plaintiff's testimony that she slapped her hand against the wall trying to catch herself created an inference that the absence of a handrail proximately caused her injury. *HN4* The *McCarthy* court summarized the rule to be distilled from Illinois cases: "[W]here plaintiff's fall down a stairway was potentially caused by the absence of handrails, the issue of proximate cause has been held a question of fact for the jury. [Citations.]" *Id.*

[\*P10] Williamson also alleged that Evans Nails was negligent by not providing slip-resistant flooring on the stair or salon floor. *HN5* A claim for negligence requires the plaintiff to show (1) a duty was owed by the defendant, (2) defendant breached that duty, and (3) the breach [\*\*\*\*6] was the proximate cause of the plaintiff's injuries. *Monson v. City of Danville*, 2018 IL 122486, ¶ 23, 425 Ill. Dec. 526, 115 N.E.3d 81. A photograph of the pedicure chair showed that there

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was a slip-resistant mat to the side of the chair on the elevated platform, but there was no such material on the step or floor. Further, plaintiff's expert opined that the Evanston ordinance and industry standards required slip-resistant flooring or mats in areas that could become wet or contaminated with oil or lotion. The owner of Evans Nails testified that the slip-resistant mats on the platform were provided because the area could get wet and that, during a pedicure, the salon technician applies lotion and massage oil to the patron's feet and legs. Williamson confirmed [\*\*\*\*457] [\*\*1236] that lotion and oil were applied to her feet and legs.

[\*P11] Evans Nails raises several arguments for affirmance, none of which are persuasive. First, Evans Nails claims that Williamson cannot satisfy proximate cause because Williamson does not know "where she fell," so it cannot be said that a handrail or slip-resistant flooring would have made a difference. This argument relies on a series of three slip-and-fall cases in which there were no witnesses to the accidents and no other evidence establishing the defendants' [\*\*\*7] negligence. *Truelsen v. Levin*, 24 Ill. App. 3d 733, 735, 321 N.E.2d 528 (1974) ("There were no eyewitnesses to this accident \*\*\*."); *Brett v. F. W. Woolworth Co.*, 8 Ill. App. 3d 334, 336, 290 N.E.2d 712 (1972) ("There were no witnesses to the actual fall."); *McIntuff v. Chicago Title & Trust Co.*, 102 Ill. App. 2d 39, 45, 243 N.E.2d 657 (1968) ("There was no evidence relative to what took place prior to and at the time of the injury in question."). These cases are plainly inapposite in a case such as this where a video camera recorded the entire accident. Further, the video shows individuals in the salon who clearly witnessed Williamson's fall and reacted to it—so there are witnesses. Finally, while responding to an inartful compound question in deposition, Williamson said that she could not say "for sure" where her foot was when she slipped, and moments later she explained that when the salon technician put her hand out, "I was going to grab her hand and that's when I slipped." Under Illinois case law discussed above, that is more than enough evidence to survive a motion for summary judgment.

[\*P12] Second, Evans Nails suggests that the affidavit of Scott Leopold is inadequate because he "never personally inspected" the premises. *HN6* But an inspection is not a prerequisite to a proper expert affidavit. See *Purtill v. Hess*, 111 Ill. 2d 229, 242-43, 489 N.E.2d 867, 95 Ill. Dec. 305 (1986) (affidavit of an expert must establish qualifications and then offer opinions and bases). Leopold averred as [\*\*\*8] to his professional credentials as a licensed Illinois engineer. He explained that his opinions were based on his review of a photo of the pedicure chair and platform, the video of Williamson's fall, photos of the pedicure slipper, and the transcripts of the two depositions completed so far in the case (Williamson's and Tanya Bold's (the owner of the salon)). Further, he set out the relevant municipal ordinances and industry standards. All of this is more than an adequate factual basis for Leopold to offer an expert opinion. See 4 Richard A. Michael, Illinois Practice, Civil Procedure Before Trial § 39:3, Westlaw (database updated Dec. 2022) (an expert may base an opinion on "the expert's firsthand observation, the presentation of data at trial, or the presentation of data to the expert outside of trial and other than by his perception").

[\*P13] Third, Evans Nails asserts that Williamson's complaint "never alleged a violation of a safety code," but that is only because the trial court denied Williamson leave to amend to assert that claim. *HN7* A pleading may be amended at any time (735 ILCS 5/2-616(c) (West 2020)), and leave to amend shall be freely given (*Henderson-Smith & Associates, Inc. v. Nahamani Family Service Center, Inc.*, 323 Ill. App. 3d 15, 26, 752 N.E.2d 33, 256 Ill. Dec. 488 (2001)). Denying leave to amend here was an abuse of discretion, [\*\*\*9] because every factor weighed in favor of granting leave to amend. See *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273, 586 N.E.2d 1211, 166 Ill. Dec. 882 (1992) ("These factors are: (1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue [\*\*\*\*458] [\*\*1237] of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the

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\*\*\*\*458

pleading could be identified.").

[\*P14] Finally, the trial court entered judgment for Evans Nails ten months after Williamson filed her complaint, and months *before* the time for fact discovery in the case management order had expired. *HN8* But a *Celotex* motion should only be entertained after the respondent has had adequate time to complete discovery. See *Celotex*, 477 U.S. at 326; see also *Willett v. Cessna Aircraft Co.*, 366 Ill. App. 3d 360, 369, 851 N.E.2d 626, 303 Ill. Dec. 439 (2006). Here, the hasty summary judgment ruling below denied Williamson the opportunity to secure testimony from eyewitnesses to the fall. From the video, there appears that there were eight individuals in the salon when Williamson fell. Their testimony could further illuminate how Williamson fell and whether the salon floor was contaminated.

[\*P15] Therefore, for all these reasons, we reverse the judgment entered for Defendant Evans Nails and remand the case for further proceedings.

[\*P16] Reversed and remanded. [\*\*\*10]