IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Marie Williamson,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 21 L 1414
	)	
Evans Nails & Spa Corporation,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment may be granted only if there exists no question of material fact. Proximate cause may be established only if there is reasonable certainty that the defendant's actions caused the injury. In this case, the plaintiff failed to identify what caused her fall and, thus, failed to establish proximate cause. The defendant's motion for summary judgment must be granted.

Facts

On July 23, 2019, Marie Williamson went to Evans Nails & Spa Corporation for a manicure and pedicure. Williamson sat in a spa chair elevated above the floor and connected to a pedicure tub. Williamson placed her feet in the pedicure tub that circulated water and cleansed her feet. She then received standard services from an esthetician, who dried Williamson's feet, painted her nails, and applied oil and lotion to her legs. After Williamson received her pedicure, the esthetician placed flip-flops on Williamson's feet and directed her to exit the spa chair. While getting out of the spa chair, Williamson slipped on the floor surrounding the pedicure chair and tub. Williamson fell and fractured her right leg. A security camera recorded the incident.

On February 8, 2019, Williamson filed a complaint against Evans Nails. The complaint presents one cause of action for negligence. Williamson alleges that Evans Nails owed her a duty of care for her safety at the nail salon. She claims Evans Nails breached its duty by, among other things, failing to: (1) cover the steps and floor adjacent to the elevated chair; (2) remove oil or other slippery substances from the steps and floor adjacent to the elevated chair; (3) remove oil and other slippery substances from Williamson's feet; (4) assist Williamson while she descended from the elevated chair; and (5) warn Williamson of a potentially slippery condition.

The case proceeded to discovery, and Williamson presented for her deposition. Williamson could not definitively say whether any substances had been placed on the bottom of her feet or where she slipped in the salon. Williamson also testified that she did not know what caused her to slip.

On August 9, 2021, Evans Nails filed a summary judgment motion. The parties fully briefed the motion.

Analysis

Evans Nails brings its summary judgment motion pursuant to the Code of Civil Procedure. Summary judgment is authorized "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 432 (2002).

A defendant moving for summary judgment may disprove a plaintiff's case by showing that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called "Celotex test." *See Celotex Corp. v. Catrett*, 477

U.S. 317, 323 (1986), followed by *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

To prevail on a negligence cause of action, a plaintiff must prove the defendant owed the plaintiff a duty, the defendant breached that duty, and the defendant's breach proximately caused the plaintiff's injury. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006). Evans Nails asserts that, in this case, Williamson lacks sufficient evidence to establish proximate cause. A proximate cause is one that produces an injury through a natural and continuous sequence of events unbroken by any effective intervening cause. *Crumpton v. Walgreen Co.*, 375 Ill. App. 3d 73, 79 (1st Dist. 2007) (quoting *Chalhoub v. Dixon*, 338 Ill. App. 3d 535, 539 (1st Dist. 2003). There are two requirements for a showing of proximate cause: cause in fact and legal cause. *Id.* Cause in fact requires that the defendant's conduct be a material and substantial factor in bringing about the plaintiff's injury, or that, in the absence of the defendant's conduct, the injury would not have occurred. *Krywin v. Chicago Trans. Auth.*, 238 Ill. 2d 215, 226 (2010). Legal cause is established if an injury was

foreseeable as the type of harm that a reasonable person would expect to see as a likely result of his or her conduct. *Crumpton*, 375 Ill. App. 3d at 79. It is also plain that liability cannot be based on surmise or conjecture; "proximate cause can only be established when there is a reasonable certainty that defendant's acts caused the injury." *Kimbrough v. Jewel Cos.*, 92 Ill. App. 3d 813, 817 (1981).

As to cause in fact, Williamson alleges that a substance on the floor caused her to slip and fall on the salon floor. She argues there is direct evidence in the form of the salon's security camera footage showing her slip and fall. That may be true, but both parties have commented on the video's poor quality and remarked how difficult it is to make out the scene clearly. This court reviewed the video multiple times and could not spot any substance on the floor.

The video of Williamson's accident is plainly insufficient to create a question of fact. Illinois law is plain that it is factually insufficient merely to show that a fall occurred. *Kimbrough*, 92 Ill. App. 3d at 818. Rather, a plaintiff must go further and prove that some condition caused the fall and that the defendant caused the condition to exist. *Id.* In her deposition, Williamson admitted she did not know what caused her to fall, and she failed to identify any other witnesses to present such critical evidence.

Despite Williamson's deposition testimony, she argues that circumstantial evidence suggests she slipped on a foreign substance, thereby establishing a genuine issue of material fact. Circumstantial evidence may, of course, be used to prove a fact in issue if there are no eyewitnesses. *Estate of Truelsen v. Levin*, 24 Ill. App. 3d 733, 735 (1st Dist. 1974). A fact cannot be established by circumstantial evidence, however, unless the only conclusion is that the circumstances are closely related and conjecture, guess, or suspicion is insufficient. *See Fabschitz v. King*, 10 Ill. App. 3d 43, 45 (1st Dist. 1975).

In *Truelsen*, for example, the decedent was found on the floor in the plaintiff's kitchen. 24 Ill. App. 3d at 734. The plaintiff attempted to introduce evidence that the defendant had a leaky dishwasher, that a rug had been placed under the dishwasher when it leaked, and the rug was gone shortly after the accident. *Id.* at 736. The court found there was no evidence the floor was wet at the time of the accident and that it would be mere conjecture to conclude the defendant's negligent maintenance of the dishwasher proximately caused the decedent's injury. *Id.*

Another persuasive case is *Brett v. F. W. Woolworth Co.*, 8 Ill. App. 3d 334 (1st Dist. 1972). There, rugs with thick rubber backing and edging covered the floor inside the inner door of the defendant's store. *Id.* at 335. The plaintiff testified her foot caught on the rug and she fell, but she also admitted that she did not know why the rug caused her to fall. *Id.* at 336. Brett contended the abutting rugs created an unreasonably dangerous condition along the joined edges and that this depression caused her to fall. *Id.* at 336. The court reasoned that while plaintiff offered an explanation for her fall, "this [was] merely a conclusion which is unsupported by any evidence." *Id.* at 337. The court held that the mere use of the rug did not evidence negligence and that proximate cause could not be based on Brett's speculation. *Id.* at 336-37.

In this case, Williamson correctly indicates that she fell in an area near the pedicure tubs that contain liquids and where estheticians work with various substances. As in *Truelsen*, however, just because water or other substances could potentially have been on the floor when Williamson slipped and fell does not mean any were actually there. In other words, one cannot reason backwards that because Williamson slipped and fell on the floor it must have been wet or contained a slippery substance at the time. *See Truelsen*, 24 Ill. App. 3d at 736. In that regard, Williamson's testimony is similar to Brett's in which, "[b]y her own admission she did not see or feel what caused the fall. The evidence that her body, after the fall, was in close proximity to the alleged [condition] is too ambiguous an inference upon which to predicate

a causal connection." *Brett*, 8 Ill. App. 3d at 337. In sum, Williamson's testimony presents the type of speculation courts are instructed to avoid.

As indicated above, a plaintiff must also establish the defendant's conduct was the legal cause of the plaintiff's injury. As to this requirement, Williamson asserts that Evans Nails violated Evanston ordinances requiring a handrail or slip-resistant mats. Williamson argues these ordinances are designed to protect human life and that violations of them constitute *prima facie* negligence. In *McInturff v. Chicago Title & Trust Co.*, 102 Ill. App. 2d 39 (1st Dist. 1968), the plaintiff fell down a stairway and there were no eyewitnesses. Evidence admitted at trial showed the stairs were worn and that, in violation of a city ordinance, there was no railing on the right-hand side of the stairway. *Id.* at 44. Despite these facts, the court held:

> [t]he fragmentary evidence on the issue of the defendants' negligence did not establish any relationship between the alleged negligence and the proximate cause of the decedent's fall and injury. There was no direct evidence relative to what took place prior to and at the time of the decedent's injury. There was no proof that the condition of the stairway, or the alleged failure to comply with the handrail ordinances, caused the injury or damage suffered by the plaintiff. The burden was on the plaintiff to establish by a preponderance of the evidence the causal relation between the alleged negligence and the injury sustained by the decedent. Absent proof of a causal relationship between the condition of the stairs and the decedent's death, the plaintiff was not entitled to recover. Damages cannot be assessed on mere surmise or conjecture as to what probably happened to cause his injury and death.

Id. at 49.

In this case, Williamson could not testify as to where she stepped when she exited the tub and consequently fell. If Williamson could not identify where she stepped, a handrail or slip-resistant mat would not have changed the outcome. The only conclusion is that the alleged ordinance violations did not constitute *prima facie* negligence and, therefore, were not the legal cause of Williamson's injury.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant's summary judgment motion is granted; and
2. This case is dismissed with prejudice.

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John H. Ehrlich, Circuit Court Judge