STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH PLUTSCHUCK,

Plaintiff-Appellant,

v

FRANCIS MANDEL,

Defendant-Appellee.

UNPUBLISHED
February 3, 2009

No. 282980
Macomb Circuit Court
LC No. 2007-000216-NO

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability case. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff slipped and fell on defendant's tiled bathroom floor. At the time, plaintiff was wearing nylon-type socks. A guest in defendant's home the previous evening found the floor sticky and slipped about a half-inch on a rug. After plaintiff fell, defendant said she should not have cleaned the floor with toilet bowl cleaner, and allegedly referenced the guest's slip and near fall the previous evening.

The parties agreed that plaintiff was a licensee in defendant's home. "A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). In reviewing a motion under MCR 2.116(C)(10), we "must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion, and grant the benefit of any reasonable doubt to the opposing party."[1] *Radtke v Everett*,

[1] We do not consider defendant's alleged statement that after plaintiff's slip and fall she scrubbed the floor with Comet cleanser to remove toilet bowl cleaner residue. Only admissible evidence may be considered in determining a summary disposition motion. See MCR 2.116(G)(6). This evidence would arguably be excluded as a subsequent remedial measure. See MRE 407.

442 Mich 368, 374; 501 NW2d 155 (1993). We review an order granting summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

We need not address whether a genuine issue of material fact existed relative to whether defendant had prior knowledge of a slippery condition, because we conclude there was insufficient evidence to create an issue of fact regarding whether the toilet bowl cleaner was the cause of plaintiff's slip and fall. Although defendant believed there was "a connection" between the slip and the toilet bowl cleaner, in *Skinner v Square D Co*, 445 Mich 153, 164-167; 516 NW2d 475 (1994) (footnotes omitted), our Supreme Court stated that "a plaintiff's circumstantial proof [of causation] must facilitate reasonable inferences of causation, not mere speculation." Here, plaintiff did not establish a foundation that allows reasonable inferences to arise from defendant's admissions. There is nothing to suggest that defendant had any knowledge that would allow her to accurately connect plaintiff's fall with earlier use of the cleaner. Defendant appears to have presumed that the toilet bowl cleaner created a slippery condition, apparently because plaintiff slipped and another guest previously slipped. In other words, defendant is deducing the cause solely from the result and use of the cleaner. However, there is no evidence that cleaning a floor with toilet bowl cleaner would leave a slippery film.

Moreover, the mere fact of its use did not demonstrate that the toilet bowl cleaner was the cause of the fall. To assign the cleaner as cause would be a matter of speculation and conjecture. In *Kaminski v Grand Trunk W R Co*, 347 Mich 417, 422; 79 NW2d 899 (1956), our Supreme Court stated that where there are "2 or more plausible explanations as to how an event happened or what produced it. . . , if the evidence is without selective application to any 1 of them, they remain conjectures only." Quoting 57A Am Jur 2d, Negligence, § 461, p 442, the *Skinner* Court stated:

> [E]vidence must exclude other reasonable hypotheses with a fair amount of certainty. Absolute certainty cannot be achieved in proving negligence circumstantially; but such proof may satisfy where the chain of circumstances leads to a conclusion which is more probable than any other hypothesis reflected by the evidence. However, if such evidence lends equal support to inconsistent conclusions or is equally consistent with contradictory hypotheses, negligence is not established. [*Skinner*, *supra* at 166-167.]

Here, the toilet bowl cleaner was no more likely a cause than was the fact that plaintiff was wearing nylon socks, which in common experience are not known to provide friction, when she came into contact with the tile floor. That plaintiff slipped because of her socks is as plausible as the cleaner being the cause of her fall. Accordingly, the trial court correctly held that plaintiff did not present enough evidence of causation to withstand summary disposition.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra