**S T A T E  O F  M I C H I G A N**

**C O U R T  O F  A P P E A L S**

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DONALD COFFMAN,

Plaintiff-Appellant,

v

DOWNRIVER COMMUNITY FEDERAL CREDIT UNION,

Defendant-Appellee.

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UNPUBLISHED
February 23, 2012

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

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

GLEICHER, P.J. (*concurring in part, dissenting in part*)

I respectfully disagree with the majority's conclusion that "[t]he circumstantial evidence on which plaintiff relies is insufficient to create a genuine issue of material fact regarding causation." *Ante* at 3. In my view, plaintiff's evidence creates a jury question concerning the cause of his fall.

Plaintiff testified that as he placed his foot on the rubberized molding lining the outermost edge of a step leading to the basement of defendant Downriver Community Federal Credit Union's facility, a "glimmer" caught his eye, and he slipped and fell. After regaining consciousness, plaintiff realized that the back of his pants was wet. He recalled that the day was cold and snowy, and that a door leading directly to the stairway had been propped open to permit construction workers access to the building. At his deposition, plaintiff expressed belief that "ice or water" on the molding had produced the glimmer.

When a motion for summary disposition challenges causation pursuant to MCR 2.116(C)(10), "the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial." *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). Viewed in the light most favorable to plaintiff, this evidence gives rise to a reasonable inference that snow or ice had melted on the rubber stairway molding, rendering it slippery. "[I]t usually or reasonably follows according to common experience and observation of mankind" that when a stairway door remains open on a snowy day, people can track snow, ice or water onto the stairs as they descend. SJI2d 3.10. Plaintiff's damp pants after the fall further augment an inference that the stairs were wet.

Contrary to the majority's conclusion that some alternate explanation for the fall "is just as likely as plaintiff's theory," *ante* at 4, defendant merely speculated that a reflection from the ceiling lighting caused the glimmer. No evidence supports this causation hypothesis. "[I]f there is evidence which points to any 1 theory of causation, indicating a logical sequence of cause and effect, then there is juridical basis for such a determination, notwithstanding the existence of other plausible theories with or without support in the evidence." *Kaminski v Grand Trunk Western R Co*, 347 Mich 417, 422; 79 NW2d 899 (1956) (quotation marks and citation omitted). I would hold that drawing reasonable inferences from the evidence, a jury could decide that the stairs were wet and the rubber molding slippery on the day plaintiff fell.

Nevertheless, I concur with the majority that defendant lacked constructive notice of the slippery stairs. Plaintiff admitted that he had no idea how long the stairs had been wet. No evidence suggests that the appearance of the water on the molding should have provided actual or constructive notice to defendant of its presence. Nor did plaintiff testify concerning the length of time the door leading to the stairway had remained open. Because plaintiff failed to present evidence supporting that defendant possessed actual or constructive notice of the wet stairs, I agree that the trial court correctly granted summary disposition on this ground.

/s/ Elizabeth L. Gleicher