DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

HERMENEGILDA MAUGHAN, Plaintiff/Appellant, v. DILLARD STORE SERVICES, INC., an Arkansas corporation, Defendant/Appellee.	)	1 CA-CV 12-0218 DEPARTMENT A **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2010-027207

The Honorable Colleen L. French, Judge *Pro Tempore*

AFFIRMED

Warnock, MacKinlay & Carman, PLLC
by John T. White — Scottsdale
and Brian R. Warnock — Prescott
Krista M. Carman
Attorneys for Plaintiff/Appellant

The Cavanagh Law Firm, P.A. — Phoenix
by Ralph E. Hunsaker
and William F. Begley
Attorneys for Defendant/Appellee

S W A N N, Judge

¶1 Hermenegilda Maughan appeals the superior court's summary judgment in favor of Dillard Store Services, Inc. ("Dillard's") on her negligence claim. We affirm because Maughan failed to oppose the motion for summary judgment with evidence from which a reasonable jury could find that Dillard's failed to keep its premises in a reasonably safe condition.

FACTS AND PROCEDURAL HISTORY

¶2 Maughan alleged that while exiting a restroom located in a Dillard's store, she fell and was injured when the door to the restroom struck her. She filed a negligence action claiming that Dillard's failed to adequately maintain its premises and failed to discover or correct hazardous conditions on its premises.[1]

¶3 Dillard's moved for summary judgment, arguing that Maughan had not produced sufficient evidence to create a material question of fact regarding whether there was an unreasonably dangerous condition on the premises. Maughan opposed the motion, contending that a question of fact existed concerning whether the restroom door was too heavy and closed too quickly. She offered a letter from Michael J. Kuzel, a registered professional engineer, describing certain door-closure standards. The court granted Dillard's motion for

[1] Maughan also asserted a claim against Dillard's for negligent infliction of emotional distress, which is not at issue in this appeal.

summary judgment, ruling that Maughan had not offered sufficient evidence from which a reasonable jury could find that the restroom door was defective or that any such defect created an unreasonably dangerous condition.

¶4 Thereafter, Maughan filed a motion for reconsideration in which she argued that the evidence established a material question of fact regarding whether the door was unreasonably dangerous. To the motion, Maughan attached her entire deposition transcript, the deposition transcript of Dillard's store engineer, and an affidavit from her daughter, who stated that she visited the Dillard's restroom shortly after Maughan's fall and noticed the door "shut very quickly," taking approximately two seconds to move from fully open to closed.[2]

¶5 The court denied Maughan's motion for reconsideration and entered judgment for Dillard's. Maughan timely appeals from the judgment, which disposed of her entire complaint. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

DISCUSSION

¶6 Maughan contends that the superior court erred by granting summary judgment for Dillard's because genuine issues of material fact existed regarding the closing speed of the door. Dillard's contends that Maughan failed to offer evidence

[2] Maughan also apparently delivered color photographs of her injuries to the court along with the motion, but the photographs are not part of the record.

that an unreasonably dangerous condition existed on its premises.

¶7 Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Ariz. R. Civ. P. 56(a).[3] Summary judgment "should be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

¶8 A plaintiff in a negligence action must show the existence of a duty, a breach of that duty, and an injury proximately caused by the breach. *Berne v. Greyhound Parks of Ariz., Inc.*, 104 Ariz. 38, 39, 448 P.2d 388, 389 (1968). The mere occurrence of a fall on business premises is not sufficient to show negligence by the proprietor. *Preuss v. Sambo's of Ariz., Inc.*, 130 Ariz. 288, 289, 635 P.2d 1210, 1211 (1981). A business owner "is not an insurer of the safety of a business invitee, but only owes a duty to exercise reasonable care to his invitees." *Walker v. Montgomery Ward & Co.*, 20 Ariz. App. 255, 258, 511 P.2d 699, 702 (1973). This duty requires the owner to

[3] At the time of the superior court's ruling, Ariz. R. Civ. P. 56(c)(1) set forth the standard for granting summary judgment.

discover and correct or warn of hazards that the owner should reasonably foresee might endanger an invitee. *Markowitz v. Ariz. Parks Bd.*, 146 Ariz. 352, 355, 706 P.2d 364, 367 (1985). Whether the owner has exercised the care required to keep the premises in a reasonably safe condition for an invitee is usually a question of fact for the jury. *Walker*, 20 Ariz. App. at 258, 511 P.2d at 702. But when no evidence exists from which a reasonable jury could find that the defendant breached its duty of care, summary judgment is warranted.

¶9 Here, the court determined that Maughan, whom Dillard's does not dispute was its business invitee, had not presented sufficient facts to show that the restroom door was defective or that any such defect created an unreasonably dangerous condition. Maughan argues this was error, citing her deposition testimony that the door closed too quickly. We agree with the superior court that this testimony is insufficient to create a material question of fact regarding whether the door was defective and unreasonably dangerous, or whether Dillard's was negligent in maintaining its premises. "Conclusory statements are simply insufficient to raise any genuine issues of material fact under Rule 56(e), Arizona Rules of Civil Procedure." *State ex rel. Corbin v. Challenge, Inc.*, 151 Ariz. 20, 26, 725 P.2d 727, 733 (App. 1986). Without any quantitative evidence regarding the door's closing speed, its deviation (if

any) from the norm, or any evidence regarding prior accidents, Maughan's testimony is simply a self-serving statement of opinion. Her testimony would leave a jury merely to speculate about the condition of the door, and cannot defeat a motion for summary judgment. *Florez v. Sargeant*, 185 Ariz. 521, 526, 917 P.2d 250, 255 (1996); *see also* Ariz. R. Civ. P. 56(e)(4) (adverse party's affidavit must set forth specific facts showing that there is a genuine issue for trial).[4]

¶10 The superior court correctly determined that Maughan's evidence could not establish that the door was defective or that any such defect created an unreasonably dangerous condition. *See Burke v. Ariz. Biltmore Hotel*, 12 Ariz. App. 69, 71, 467 P.2d 781, 783 (1970) ("The mere fact that an injury has been sustained does not give rise to a presumption that a defective condition created an unreasonable risk of harm."); *Orme Sch.*, 166 Ariz. at 309, 802 P.2d at 1008 (a "scintilla" of evidence or evidence creating the "slightest doubt" about the facts may

[4] Maughan also relies on Kuzel's letter. But Kuzel's letter contains neither facts regarding the door's closing speed nor opinions concerning whether it was defective and unreasonably dangerous. In the exercise of our discretion, we decline to consider the deposition testimony of Dillard's store engineer or the affidavit of Maughan's daughter, because Maughan first submitted that evidence to the superior court with her motion for reconsideration. *Ramsey v. Yavapai Family Advocacy Ctr.*, 225 Ariz. 132, 137, ¶ 18, 235 P.3d 285, 290 (App. 2010) (appellate court generally does not consider arguments raised for the first time in a motion for reconsideration).

still be insufficient to withstand a motion for summary judgment).

CONCLUSION

¶11 For the foregoing reasons, we affirm the entry of summary judgment in favor of Dillard's. As the prevailing party, Dillard's is entitled to an award of costs upon compliance with ARCAP 21.

/s/
_____
PETER B. SWANN, Judge

CONCURRING:

/s/
_____
PATRICIA A. OROZCO, Presiding Judge

/s/
_____
PAUL F. ECKSTEIN, Judge *Pro Tempore**

* The Honorable Paul F. Eckstein, Judge *Pro Tempore* of the Court of Appeals, Division One, is authorized by the Chief Justice of the Arizona Supreme Court to participate in the disposition of this appeal pursuant to the Arizona Constitution, Article 6, Section 3, and A.R.S. §§ 12-145 to -147 (2003).