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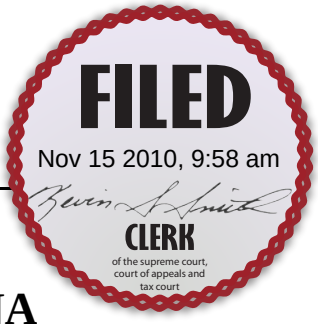

IN THE
COURT OF APPEALS OF INDIANA

SHARLA HACKNEY and RAYMOND HACKNEY, SR.,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 41A01-1003-CC-121
STACY G. TOOLE,	)	
Appellee-Defendant.	)	

APPEAL FROM THE JOHNSON SUPERIOR COURT
The Honorable Donna S. Sipe, Judge Pro Tempore
Cause No. 41D01-0801-CC-101

November 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

While completing an appraisal of Stacy Toole's house, Sharla Hackney fell on the basement stairs. Hackney's granddaughter, Melissa Hackney, witnessed the fall. Hackney sued Toole for negligence, and Toole filed a motion for summary judgment.[1] Hackney designated evidence that the stairway was dimly lit and lacked a handrail; however, neither Hackney nor Melissa could state what caused Hackney to fall. Finding no designated evidence that would raise a genuine issue of material fact as to causation, the trial court granted summary judgment for Toole. We affirm.

Facts and Procedural History

Toole was remodeling his home, and he intended to finance the project with a bank loan. The bank required Toole to obtain an appraisal of his home. On April 19, 2007, Hackney came to Toole's home to complete an appraisal. At that time, Hackney had recently returned to work after having abdominal surgery. She also had bilateral knee replacements in May of 2006. Melissa had been driving for Hackney since the knee surgery, and Melissa drove Hackney to Toole's house.

After questioning Toole about the extent to which the basement was finished, Hackney decided to go downstairs and view the basement herself, and Melissa went with her. The stairway descended for several steps, and then two "winder steps" turned the stairway to the left, and then a few more steps led to the basement floor. Appellants' App. at 96.

[1] Raymond Hackney, Sr., is also a plaintiff in this case. Presumably, Raymond is Sharla's husband; however, the record does not contain a copy of the complaint, so it is unclear who Raymond is and what his role in this lawsuit is. For the sake of simplicity, we will refer to Sharla alone as "Hackney."

Lighted vents along the stairs were lit at the time that Hackney descended the stairs. A switch for additional lighting was at the bottom of the stairs, and those lights were not on at the time. Toole had not yet installed a handrail.

When Hackney reached the winder steps, she fell. Afterwards, Hackney could not state what had caused her to fall: "I just remember going down the steps. And then I remember saying, [']What happened,['] and I'm laying [sic] on the concrete floor of the basement face down. And my granddaughter says, [']Grandma, you fell.[']" *Id*. at 79. Hackney recalled that as she was going down the steps, she "could see to the turn. It turned, but it was dimly lit." *Id*. at 73. Hackney remembered commenting to Toole that the stairway was dark and that there was no handrail; however, she did not ask Toole to turn on the additional lights. She did not think the steps were unusually steep or narrow. Melissa was not able to state what caused Hackney to fall. Melissa did not have trouble seeing the steps, and she did not notice anything dangerous or unusual about the steps.

Hackney sued Toole for negligence. On May 1, 2009, Toole filed a motion for summary judgment. On August 20, 2009, the trial court granted the motion, finding that Hackney had not designated evidence demonstrating the cause of her fall. Hackney filed a motion to correct error, which the trial court denied after a hearing. Hackney now appeals.

Discussion and Decision

Hackney argues that the trial court erred by granting summary judgment for Toole. Summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind.

Trial Rule 56(C). We review a trial court's grant of summary judgment de novo, construing all facts and reasonable inferences from those facts in favor of the non-moving party. *Garriott v. Peters*, 878 N.E.2d 431, 435 (Ind. Ct. App. 2007), *trans. denied*. "A genuine issue of material fact exists where facts concerning an issue, which would dispose of the litigation are in dispute, or where the undisputed material facts are capable of supporting conflicting inferences on such an issue." *Bd. of Tr. of Ball State Univ. v. Strain*, 771 N.E.2d 78, 81 (Ind. Ct. App. 2002). An inference, however, is not reasonable when it rests only on speculation or conjecture. *Midwest Commerce Banking Co. v. Livings*, 608 N.E.2d 1010, 1012 (Ind. Ct. App. 1993). Once the moving party makes a prima facie showing that there are no genuine issues of material fact as to any determinative issue, the non-moving party then has the burden to come forward with contrary evidence. *Auburn Cordage, Inc. v. Revocable Trust Agreement of Treadwell*, 848 N.E.2d 738, 747 (Ind. Ct. App. 2006). "The non-moving party may not rest upon the pleadings but must instead set forth specific facts, using supporting materials contemplated under Trial Rule 56, which show the existence of a genuine issue for trial." *Id*.

Review of a summary judgment motion is limited to those materials designated to the trial court.[2] *Bennett v. CrownLife Ins. Co.*, 776 N.E.2d 1264, 1268 (Ind. Ct. App. 2002). We must carefully review a decision on a summary judgment motion to ensure that a party was not improperly denied its day in court. *Id*. This court will affirm an order granting summary

[2] In her brief, Hackney included a purported quote from page 43 of her deposition. Appellants' Br. at 9. Toole correctly points out that this portion of Hackney's deposition was not designated to the trial court; in addition, it was not included in the record before us. Therefore, we have not considered the purported quote.

judgment on any legal basis supported by the designated evidence. *Merrill v. Knauf Fiber Glass GmbH*, 771 N.E.2d 1258, 1264 (Ind. Ct. App. 2002), *trans. denied*.

On several occasions, we have held that summary judgment was appropriate when the plaintiff could not explain why he or she fell. For example, in *Hayden v. Paragon Steakhouse*, James Hayden was dining at a restaurant operated by Paragon Steakhouse on a winter evening, and when he went to retrieve his car, he fell and broke his wrist. 731 N.E.2d 456, 457 (Ind. Ct. App. 2000). Believing that he had slipped on ice or snow, Hayden sued Paragon. However, in his deposition, Hayden testified that he did not see any snow on the pavement where he fell, that he did not know whether it was icy, and that he did not remember the pavement being slippery. He stated that he suspected that he slipped on something, but he admitted that he did not know "for sure" what caused his fall. *Id*. at 458. The trial court granted summary judgment for Paragon, and we affirmed, holding that "absent some factual evidence, negligence cannot be inferred from the mere fact of an accident, and causation may not be inferred merely from the existence of an allegedly negligent condition." *Id*.

Likewise, in *Ogden v. Decatur County Hospital*, we affirmed summary judgment for the hospital on the plaintiff's claim based on a slip and fall in the hospital's bathroom. 509 N.E.2d 901, 903-04 (Ind. Ct. App. 1987), *trans. denied*. The plaintiff suffered a head injury and was never able to state why he fell, and hospital employees testified that the floor was not wet or slippery and that there were no foreign objects or debris on the floor. We held that the designated evidence did not support an inference that the bathroom floor had been

negligently maintained, stating, "Falling and injuring one's self prove nothing. Such happenings are commonplace wherever humans go." *Id*. at 903 (quoting *Alterman Foods, Inc. v. Ligon*, 272 S.E.2d 327, 332 (Ga. 1980)). *See also Wright Corp. v. Quack*, 526 N.E.2d 216, 218 (Ind. Ct. App. 1998) (reversing jury verdict for plaintiff in a slip and fall case where plaintiff testified that she did not know why she fell and none of the witnesses saw any wet spots or foreign objects on the floor), *trans. denied*.

Hackney argues that her case is more like *Golba v. Kohl's Department Store, Inc.*, 585 N.E.2d 14 (Ind. Ct. App. 1992), *trans. denied*. While shopping at Kohl's, Stella Golba's heel landed on a "rounded object" on the floor, which had a "high gloss finish." *Id*. at 14. Golba fell and sued Kohl's. The trial court granted summary judgment for Kohl's, but we reversed, distinguishing *Ogden*:

> This case does not require such "inferential speculation." There *is* evidence of a defect in or on the floor—Golba's testimony. The pleadings and evidence leave unresolved a number of questions, including whether there was in fact a rounded object on the floor, whether the floor was inordinately slippery, and if so, whether Kohl's knew or should have known of the dangerous condition. However, these questions require the weighing of the credibility of witnesses and the application of the test of reasonableness to the facts. The law assigns those tasks to the trier of fact; they are not questions which may be resolved by summary judgment.

Id. at 17 (emphasis in original).

Hackney argues that she identified two defects with the stairs, poor lighting and no handrail, and her case therefore falls under *Golba*. Golba, however, "stated in her answers to interrogatories and responses to request for admissions that she slipped when her heel landed

on a rounded object such as a small stone or 'B-B' on the high gloss finish of the floor." *Id.* at 17. Thus, Golba was able to identify the cause of her fall.

By contrast, Hackney identified ways in which the stairs could have been made safer, but neither she nor Melissa was able to state that the lighting or lack of a handrail contributed to her fall.[3] In fact, Melissa said that she was able to see where she was going and did not perceive the stairs to be dangerous. Hackney admitted in her deposition that she was able to see at least to the turn in the stairway and, although she thought the lighting was dim, that did not give her pause in deciding to go downstairs. Therefore, we conclude that the trial court correctly granted summary judgment for Toole, and we affirm. *See Hale v. Cmty. Hosp. of Indianapolis, Inc.*, 567 N.E.2d 842, 843 (Ind. Ct. App. 1991) (affirming summary judgment for hospital where plaintiff, who fell as she stepped from a curb near the hospital entrance, later examined the curb and observed it had "bad places," but did not know if they caused her fall).

[3] Hackney contends that the poor lighting, the lack of a light switch at the top of the stairs, and the lack of a handrail are violations of the Indiana Residential Code. Toole contends that the designated evidence does not show that the Code was violated and that the Code does not apply to projects that are under construction. Violation of an administrative regulation is not negligence per se, but may be evidence of negligence for the jury to consider. *Zimmerman v. Moore*, 441 N.E.2d 690, 696 (Ind. Ct. App. 1982). As Hackney has not connected any of the alleged violations to her fall, we conclude that they do not constitute evidence of negligence in this case.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.

We also reject Hackney's reliance on *Peters v. Forster*, 804 N.E.2d 736 (Ind. 2004). Peters fell on a ramp that Forster installed in a manner that he knew did not conform with the building code. The trial court granted summary judgment for Forster on the basis of the "acceptance rule." *Id*. at 738. On transfer, our supreme court devoted most of its opinion to discussion of the acceptance rule, which it ultimately determined should be abandoned. *Id*. at 742-43. The court did not discuss what caused Peters to fall, what the code violation was, and whether there was a connection between the code violation and the fall. The opinion implies that the evidence was such that different inferences could be drawn. *See id*. at 743. In Hackney's case, however, there is a complete lack of evidence as to the cause of her fall. Therefore, there is not a genuine issue of material fact, and summary judgment was appropriate. *See id*. (summary judgment is appropriate in indisputable cases, where only a single inference or conclusion can be drawn).