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IN THE
COURT OF APPEALS OF INDIANA

DWIGHT A. SANAKER,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 18A05-1104-CT-154
	)	
DELAWARE ADVANCEMENT	)	
CORPORATION d/b/a HORIZON	)	
CONVENTION CENTER,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Linda Ralu Wolf, Judge
The Honorable Brian Pierce, Master Commissioner
Cause No. 18C03-0906-CT-9

November 10, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Dwight A. Sanaker ("Sanaker") appeals the trial court's order granting summary judgment in favor of Delaware Advancement Corporation d/b/a Horizon Convention Center ("Delaware Advancement"). Sanaker raises the following restated issue: whether the trial court properly granted summary judgment in favor of Delaware Advancement because the designated evidence showed that, at a minimum, a factual issue existed for a jury determination.

We reverse and remand.

FACTS AND PROCEDURAL HISTORY

On December 7, 2007, Sanaker was working as a truck driver for McFarling Foods, with his official duties being to drive delivery trucks and to deliver the product on the trucks to businesses. On that date, Sanaker had a delivery at Horizon Convention Center ("Horizon"), which was managed by Delaware Advancement. Sanaker was accompanied by a co-worker, Chris Chaney ("Chaney"), during this delivery. Neither Sanaker nor Chaney had been to Horizon previously. After ringing the bell at the loading dock, Sanaker and Chaney were let into the facility by a young woman, who directed them to the kitchen. She told them they needed to take the freight elevator down one floor, but did not explain how the elevator operated. Neither Sanaker nor Chaney knew how to operate the elevator.

The elevator had two sets of doors: an exterior metal door and an interior mesh door. The exterior door had a "clam shell" design, where the top portion of the door lowered from above as the lower portion rose up from below, closing in the middle. *Appellee's App*. at 88. The top half of the exterior door had two straps that hung down: one was attached to the

inside of the top part of the exterior door and one was attached to the outside of the top part of the exterior door. The elevator could only be operated when both the exterior door and the interior door were closed.

When Sanaker and Chaney approached the freight elevator, the doors were open. After rolling their cart of items for delivery onto the elevator, Sanaker tried to press the button on the control panel to make the elevator move, which did not work. He next attempted to make the elevator move by closing the interior mesh door, which was closed by manually pulling a strap, causing the door to come down from the ceiling to the floor, similar to a garage door. This also did not cause the elevator to operate. Sanaker then used his right hand to grab both the inside and outside straps hanging from the top part of the exterior door. He attempted to close it like a "heavy garage door," pulling "about as hard as [he] could straight down." *Id*. at 72. As he did this, Sanaker was looking at his hand on the strap and did not notice the bottom half of the exterior door was coming up. As a result, Sanaker's hand was caught between the top and bottom portions of the exterior door, which caused Sanaker injury.

Prior to Sanaker's incident, there were at least two similar incidents involving the freight elevator doors. In 2004, Danny Minor was making a delivery to Horizon when he caught his hand in the exterior elevator door when the bottom portion of the door unexpectedly came up from the floor. *Appellant's App*. at 32-33. Although his employer paid his medical bills due to this incident, there was no evidence that he notified Horizon of the incident. *Id*. at 33. Just six days prior to Sanaker's incident, Michael Caldwell

("Caldwell"), an employee of Horizon, also caught his hand in the exterior elevator door when the bottom portion of the door unexpectedly came up from the floor. *Id*. at 36. Immediately after this happened, Caldwell notified his supervisor at Horizon of his injury and a worker's compensation claim was later filed. *Id*. at 36-37.

On June 29, 2009, Sanaker filed a complaint against Delaware Advancement, alleging that Delaware Advancement was negligent. On December 7, 2010, Delaware Advancement filed a motion for summary judgment, which was granted on March 3, 2011. In its order granting summary judgment in favor of Delaware Advancement, the trial court specifically found that "the instrumentality at issue did not pose an unreasonable risk of harm" to Sanaker. *Id*. at 12. Sanaker now appeals.

DISCUSSION AND DECISION

A grant of summary judgment is reviewed de novo. *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009). When reviewing a grant or denial of summary judgment, we apply the same standard as the trial court. *Dreaded, Inc. v. St. Paul Guardian Ins. Co.*, 904 N.E.2d 1267, 1269 (Ind. 2009). Considering only those facts that the parties designated to the trial court, we must determine whether summary judgment is appropriate because the designated evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Dreaded*, 904 N.E.2d at 1269-70. We construe the pleadings, affidavits, and designated evidence in the light most favorable to the non-moving party, and the moving party has the burden of demonstrating the absence of a genuine issue of material fact. *Beatty v. LaFountaine*, 896 N.E.2d 16, 20 (Ind.

Ct. App. 2008), *trans. denied* (2009). Because a trial court's grant of summary judgment comes to us clothed with a presumption of validity, the appellant must persuade us that error occurred. *Id*. If the trial court's entry of summary judgment can be sustained on any theory or basis in the record, we must affirm. *Irwin Mort. Corp. v. Marion Cnty. Treasurer*, 816 N.E.2d 439, 442 (Ind. Ct. App. 2004). Even so, we must carefully review a grant of summary judgment in order to ensure that a party was not improperly denied his or her day in court. *Smither v. Asset Acceptance, LLC*, 919 N.E.2d 1153, 1156 (Ind. Ct. App. 2010) (citing *Reeder v. Harper*, 788 N.E.2d 1236, 1240 (Ind. 2003)).

Sanaker argues that the trial court erred when it granted summary judgment in favor of Delaware Advancement. He contends that the facts presented to the trial court clearly showed that, at a minimum, a factual issue existed for a jury determination. Specifically, Sanaker claims that the designated evidence showed that, Delaware Advancement, as a possessor of land, owed a duty to Sanaker, as an invitee, to use reasonable care to make certain the freight elevator was safe for use. He asserts that Delaware Advancement breached this duty by failing to warn him of the dangerous condition of such elevator and to provide protection from such danger.

In order to prevail on a claim of negligence, a plaintiff is required to prove: (1) a duty owed by the defendant to the plaintiff; (2) a breach of that duty by the defendant; and (3) an injury to the plaintiff proximately caused by the breach. *Ford Motor Co. v. Rushford*, 868 N.E.2d 806, 810 (Ind. 2007). Summary judgment is rarely appropriate in negligence actions. *Kroger Co. v. Plonski*, 930 N.E.2d 1, 10 (Ind. 2010). "[T]his is so because 'negligence cases

are particularly fact sensitive and are governed by a standard of the objective reasonable person—one best applied by a jury after hearing all of the evidence.'" *Id.* (quoting *Rhodes v. Wright*, 805 N.E.2d 382, 387 (Ind. 2004)).

A property owner must maintain its property in a reasonably safe condition for business invitees. *Smith v. King*, 902 N.E.2d 878, 882 (Ind. Ct. App. 2009). Indiana has adopted the Restatement (Second) of Torts, which provides:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
> (c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts, § 343. Further, section 343A(1) of the Restatement (Second) of Torts provides, "a possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." The Indiana Supreme Court has recognized that, "[i]n premises liability cases, whether a duty is owed depends primarily upon whether the defendant was in control of the premises when the accident occurred." *Rhodes*, 805 N.E.2d at 385. "The rationale is to subject to liability the person who could have known of any dangers on the land and therefore could have acted to prevent any foreseeable harm." *Id.*

In the present case, the trial court granted summary judgment in favor of Delaware Advancement. In its order, the trial court specifically found that "the instrumentality at issue

did not pose an unreasonable risk of harm to [Sanaker]." *Appellant's App*. at 12. In making its determination, the trial court failed to identify the issues upon which it found that no genuine issue of fact existed. In finding that the elevator did not pose an unreasonable risk of harm to Sanaker, the trial court made a factual finding that invaded the province of the jury to determine questions of fact. Delaware Advancement had a duty as a possessor of land to use reasonable care to protect Sanaker, an invitee, against dangerous conditions constituting an unreasonable risk of harm, which Delaware Advancement should expect the invitee will not discover or realize, or will fail to protect himself against the danger. *Smith*, 902 N.E.2d at 882; *see also* Restatement (Second) of Torts § 343. Viewing the designated evidence in the light most favorable to the non-moving party, we conclude that a genuine issue of fact existed as to whether Delaware Advancement breached its duty to Sanaker.

The designated evidence showed that Sanaker entered the freight elevator after being instructed by an employee of Horizon that he should take the elevator in order to get to the kitchen one floor below. *Appellant's App*. at 18. The employee did not give Sanaker any instruction or warning as to the operation of the elevator, and there were no signs or placards in or around the elevator to warn or instruct individuals on the proper operation of the elevator door. *Id*. at 19; *Appellee's App*. at 107. Although Sanaker stated that to his knowledge the elevator door had no defects or malfunctions, *Appellee's App*. at 107, the designated evidence showed that neither Sanaker nor Chaney were familiar with the elevator door's operation and were surprised that the door closed horizontally by meeting in the middle. *Appellant's App*. at 24, 27. Further, evidence was presented that there had been

prior, similar incidents involving the freight elevator where other individuals had suffered injuries when they caught their hands in between the top and bottom portions of the exterior door. *Id*. at 33, 36. Although it was unclear whether one of the incidents was reported to Horizon, the other incident occurred just six days prior to the incident at issue and involved a Horizon employee, who notified his supervisor of his injury and reported the incident to the worker's compensation board. *Id*. at 32-33, 36.

We conclude that the designated evidence showed that there was a genuine issue of material fact as to whether Delaware Advancement breached its duty to Sanaker as an invitee. Specifically, genuine issues of material fact existed as to whether the freight elevator door posed an unreasonable risk of harm and whether Delaware Advancement should have expected that Sanaker would not discover or realize this risk, or would fail to protect himself against the danger. We find this particularly true when Delaware Advancement had been notified of at least one prior, almost identical incident involving someone injuring their hand in the freight elevator door. As this is a negligence case and fact sensitive, we conclude that it would be better suited for determination by a jury after hearing all of the evidence. The trial court erred when it granted summary judgment in favor of Delaware Advancement. We reverse the trial court's judgment and remand for proceedings consistent with this opinion.

Reversed and remanded.

BAKER, J., and BROWN, J., concur.