

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

2020 CA 0551

RUBY KAY JONES

VERSUS

LOUISIANA MEDICAL CENTER AND HEART HOSPITAL, LLC, AND
ZURICH AMERICAN INSURANCE COMPANY

Judgment rendered: DEC 30 2020

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On Appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
No. 2015-10990, Div. "F"

The Honorable Martin E. Coady, Judge Presiding

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BEFORE: McDONALD, HOLDRIDGE, AND PENZATO, JJ.

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HOLDRIDGE, J.

Plaintiff, Ruby Kay Jones, appeals a summary judgment rendered in favor of defendants, Louisiana Medical Center and Heart Hospital, L.L.C., Zurich American Insurance Company, and Steadfast Insurance Company (sometimes collectively referred to as “the defendants”). We affirm.

BACKGROUND

On March 12, 2015, Ms. Jones filed this personal injury lawsuit against the defendants seeking damages for injuries she claimed to have sustained when she tripped and fell in the front door area of the Louisiana Medical Center in Lacombe, Louisiana. Therein, she alleged that on March 12, 2014, sometime between 4:00 and 5:00 in the afternoon, she was in the lobby on the first floor of the hospital. In a hallway near the lobby, the hospital had placed wiring across the hallway. Ms. Jones alleged that as a result of the wiring, which was not properly secured and “inefficiently marked for caution,” she tripped and fell in the front door area and sustained severe injuries. Ms. Jones sought to recover medical expenses, pain and suffering, mental anguish, and permanent injuries, but acknowledged that the amount of damages sought were insufficient to entitle her to a jury trial.

Answering the petition, the defendants generally denied Ms. Jones’ allegations and asserted affirmative defenses, including that the alleged hazardous condition, if any, was “open and obvious” and should have been known to Ms. Jones prior to the incident, and further, that Ms. Jones’ damages were caused solely by her inattentiveness and negligence.

On September 3, 2019, the defendants filed a motion for summary judgment. The defendants asserted that it is clear from Ms. Jones’ deposition and from closed circuit video and still shots taken from that video, that the hospital exercised reasonable care for its visitors when its workers placed orange warning cones on

the wire to warn visitors of its presence. In support of the motion for summary judgment, the defendants offered the petition for damages, a video that captured the area in question and Ms. Jones' fall, nine still shots taken from that video, and excerpts of Ms. Jones' deposition testimony.¹

In her deposition, Ms. Jones acknowledged that she had seen the hospital video of her fall, recognized herself in that video, and identified herself as the person depicted in the still shots offered in connection with her deposition testimony. Ms. Jones explained that in the early evening, she had visited her sister at the hospital. Prior to her fall, she was walking down the hall to the front door to exit the hospital. According to Ms. Jones, she did not see the wire on the floor or the two orange cones placed on top of it prior to falling. She stated that on way to the exit, she looked up when a receptionist told her something like "goodbye" and that was when she tripped and fell onto the ground on her hands and knees. Ms. Jones testified that she first saw the cones and wire as she was falling to the ground.

The still photos attached to Ms. Jones' deposition show Ms. Jones approaching an entrance/exit door in the hospital lobby. There is a wire running down the door frame to the ground extending onto the hospital floor. Two small cones, placed several feet apart, sit on top of the wire. As Ms. Jones approached the wire, there is a large plant to her left. The photographs show that Ms. Jones walked directly in the path of the cone located closest to the door. Her left foot can be seen on the side of the cone, while her right foot is shown on top of the wire as she looks straight ahead. Another photo shows the cone in an upright position, Ms.

¹ Ms. Jones raised no objection to any of the exhibits attached to the defendants' motion for summary judgment. Therefore, in accordance with La. C.C.P. art. 966D(2) the court "shall consider any documents to which no objection is made" to determine if any evidentiary value should be given to the documents. **Pottinger v. Price**, 2019-0183 (La. App. 1st Cir. 10/23/19), 289 So.3d 1047, 1053.

Jones' left foot on the wire, and her right foot over the wire. The final photo shows Ms. Jones falling forward; both of her feet were beyond the cone and the wire, and the cone remains in an upright position.

In opposition to the motion for summary judgment, Ms. Jones offered only her affidavit. Therein, she acknowledged that she tripped over the cone prior to her fall. She attested that to leave the hospital, she had to pivot at a 45-degree angle to the right where there was a plant which blocked her view. She further stated that the cones, which she did not see prior to her fall, were very small cones, and that at the time she came upon the plant, the 45-degree turn, and fell, an employee of the hospital greeted her and that distracted her as well. She asserted that only a few seconds elapsed from the time when she entered the area and fell.

Ms. Jones also argued that the cones in question were too small to warn her of the presence of the wire on the floor. She further asserted that in order to determine if the defendants are liable for failing to properly warn her of the danger which caused her fall, one must view what she saw when she was exiting the facility; however, the camera is in a fixed position and does not record what she saw, but only shows an overall view of the area to include her. According to Ms. Jones, the angle from which the photographs were captured can be deceiving.

At a hearing on the motion, the defendants introduced into evidence the exhibits filed in connection with their motion, including the closed-circuit video.² The trial court found that there was no genuine issue of material fact in this case, concluding that the hospital exercised reasonable care by securing the wiring and placing cones on the floor. On December 19, 2019, the trial court signed a

² No documents shall be filed or oral testimony allowed at the hearing on the motion. See 2015 Revision Comment (c). Under La. C.C.P. art. 966B(1), "all documents in support of the motion shall be filed and served on all parties in accordance with Article 1313 not less than sixty-five days prior to the trial." In this case, we will not consider the closed-circuit video in our *de novo* review of the evidence.

judgment granting the defendants' motion for summary judgment and dismissing Ms. Jones' lawsuit.

This appeal, taken by Ms. Jones, followed. Ms. Jones claims that the trial court erred in granting summary judgment by misconstruing the evidence and because there are genuine issues of material fact as to whether the hospital's comparative fault contributed to her injuries.

SUMMARY JUDGMENT

A motion for summary judgment is a procedural device used to avoid a full-scale trial when there is no genuine issue of material fact. **Georgia-Pacific Consumer Operations, LLC v. City of Baton Rouge**, 2017-1553 (La. App. 1st Cir. 7/18/18), 255 So.3d 16, 21, writ denied, 2018-1397 (La. 12/3/18), 257 So.3d 194. After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966A(3). In reviewing a trial court's ruling on a motion for summary judgment, an appellate court reviews the evidence *de novo* using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 750; **Bourg v. Safeway Insurance Company of Louisiana**, 2019-0270 (La. App. 1st Cir. 3/5/20), 300 So.3d 881, 888.

The Louisiana Code of Civil Procedure places the initial burden of proof on the party filing the motion for summary judgment. La. C.C.P. art. 966D(1). If the mover will not bear the burden of proof at trial on the issue raised in the motion for summary judgment, the mover is not required to negate all essential elements of the adverse party's claim, action, or defense. La. C.C.P. 966D(1). However, the mover must demonstrate the absence of factual support for one or more of the

elements of the adverse party's claim. La. C.C.P. art. 966D(1). The mover can meet this burden by filing supporting documentary evidence with its motion for summary judgment, consisting of pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, stipulations, and admissions. La. C.C.P. art. 966A(4). The mover's supporting documentary evidence must be sufficient to prove the essential facts necessary to carry the mover's burden. Thus, in deciding a motion for summary judgment, it must first be determined whether the supporting documents presented by the mover are sufficient to resolve all material factual issues. If not, summary judgment must be denied in favor of a trial on the merits. **Crockerham v. Louisiana Medical Mutual Insurance Company**, 2017-1590 (La. App. 1st Cir. 6/21/18), 255 So.3d 604, 608.

Once a motion for summary judgment is made and properly supported, the burden shifts to the non-moving party to produce factual support, through the use of proper documentary evidence attached to its opposition, which establishes the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. C.C.P. art. 966D(1). If the non-moving party fails to produce sufficient factual support with its opposition which proves the existence of a genuine issue of material fact, La. C.C.P. art. 966D(1) mandates the granting of the motion for summary judgment. **Jenkins v. Hernandez**, 2019-0874 (La. App. 1st Cir. 6/3/20), ____ So.3d ____, ____, 2020 WL 2898123, writ denied, 2020-00835 (La. 10/20/20) 303 So.3d 315; **Babin v. Winn Dixie Louisiana, Inc.**, 2000-0078 (La. 6/30/00), 764 So.2d 37, 40 (per curiam); **Horrell v. Alltmont**, 2019-0945 (La. App. 1st Cir. 7/31/20), ____ So.3d ____, ____ 2020 WL 4380659.

Material facts are those that potentially insure or preclude recovery, affect the litigant's success, or determine the outcome of a legal dispute. **Daniels v. USAgencies Casualty Insurance Company**, 2011-1357 (La. App. 1st Cir. 5/3/12),

92 So.3d 1049, 1055. Because it is the substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. **Georgia-Pacific Consumer Operations, LLC**, 255 So.3d at 22.

Under a negligence standard, a hospital owes a duty to its visitors to exercise reasonable care for their safety, commensurate with the particular circumstances involved. **Collins v. Franciscan Missionaries of Our Lady Health System, Inc.**, 2019-0577 (La. App. 1st Cir. 2/21/20), 298 So.3d 191, 195, writ denied, 2020-00480 (La. 6/22/20), 297 So.3d 773; **Smith v. Northshore Regional Medical Center, Inc.**, 2014-0628 (La. App. 1st Cir. 1/26/15), 170 So.3d 173, 176; **Terrance v. Baton Rouge General Medical Center**, 2010-0011 (La. App. 1st Cir. 6/11/10), 39 So.3d 842, 844, writ denied, 2010-1624 (La. 10/8/10), 46 So.3d 1271. The determination of whether the measures taken by a hospital to eliminate the risk of a fall were reasonable is a question of fact. **Toussaint v. Baton Rouge General Medical Center**, 2018-0029 (La. App. 1st Cir. 6/14/18), 251 So.3d 1151, 1154, writ denied, 2018-1107 (La. 10/15/18), 253 So.3d 1301.

Typically, summary judgment is rarely appropriate for the disposition of issues requiring a determination of the reasonableness of acts and conduct of parties under all of the circumstances of a particular case. **Smith v. Kopynec**, 2012-1472 (La. App. 1st Cir. 6/7/13), 119 So.3d 835, 839. However, when reasonable minds must inevitably conclude that the mover is entitled to judgment on the undisputed facts before the court, summary judgment is warranted, since in that case, the reasonableness of the conduct is an issue of law. See **Cavin v. Craig Neal & Sons Farm, LLC**, 2011-1415 (La. App. 1st Cir. 3/23/12), 2012 WL 994625 *3, writ denied, 2012-1205 (La. 9/21/12), 98 So.3d 340; **Rager v. Bourgeois**, 2006-0322 (La. App. 1st Cir. 12/28/06), 851 So.2d 330, 333-34, writ

denied, 2007-0189 (La. 3/23/07), 851 So.2d 1105; **Johnson v. Edmonston**, 383 So.2d 1277, 1281 (La. App. 1st Cir. 1980). Thus, summary judgment is appropriate when all the relevant facts are marshalled before the court, the marshalled facts are undisputed, and the only issue is the ultimate conclusion to be drawn from those facts. **Smith v. Our Lady of the Lake Hospital, Inc.**, 639 So.2d at 752.

As the mover on the motion for summary judgment, the defendants bore the burden of showing there was no genuine issue of material fact regarding the hospital's conduct. See Collins, 298 So.3d at 195; **Smith v. Northshore Regional Medical Center, Inc.**, 170 So.3d at 176. Thereafter, the defendant bore the burden of pointing out an absence of factual support for one or more elements of Ms. Jones' negligence claim. La. C.C.P. art. 966D(1).

In this case, the factual circumstances surrounding the parties' conduct are undisputed. It is undisputed that there was a wire on the floor in the lobby of the hospital. It is undisputed that the hospital alerted the public to the presence of the wire by placing two small cones on top of the wire. The cones and wire were located where all visitors could see them. On our *de novo* review, we find that the defendants produced sufficient evidence on the motion for summary judgment to show the hospital acted reasonably and responsibly to protect its visitors against a potential tripping hazard presented by the wire on its floor by placing two warning cones on top of the wire to alert visitors of its presence. The burden then shifted to Ms. Jones to produce factual support sufficient to establish the existence of a genuine issue of fact or that the defendants were not entitled to summary judgment as a matter of law. She failed to do so.

The only evidence offered by Ms. Jones in opposition to the motion was her affidavit. If anything, the affidavit shows that Ms. Jones was inattentive and that nothing the hospital did prevented her from seeing the cones or the wire. Although

Ms. Jones alleged in her petition that the wire was unsecured and caused her trip and fall, she submitted evidence in opposition to the motion establishing that she actually tripped over the warning cone, not the wire itself. The photographic evidence showed that Ms. Jones had an unobstructed view of the warning cones on top of the wire prior to her fall. Ms. Jones cannot rely on her failure to see what she should have seen in order to prove that the hospital acted unreasonably. See Collins, 298 So.3d at 198. The undisputed facts of this case demonstrate that Ms. Jones lacks evidentiary support for an essential element of her negligence claim. Accordingly, the trial court properly granted summary judgment in favor of the defendants.

CONCLUSION

For the foregoing reasons, the December 20, 2019 judgment is affirmed. All costs of this appeal are assessed to appellant, Ruby Kay Jones.

AFFIRMED.