STATE OF MICHIGAN

COURT OF APPEALS

LEO HELLEBUYCK and MARCELLA HELLEBUYCK,

Plaintiffs-Appellants,

v

CRITTENTON HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
June 13, 1997

No. 180008
Oakland Circuit Court
LC No. 93-459786-NO

Before: Hood, P.J., and Saad and T.S. Eveland,* JJ.

PER CURIAM.

In this "slip and fall" case, plaintiffs appeal as of right from a circuit court order which granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Mr. Hellebuyck testified that when he went into the bathroom located in his semi-private hospital room at Crittenden Hospital, he did not see any water on the floor near the sink outside the bathroom. Visiting hours were over, and the only persons authorized to be in the hospital at that time were other patients and hospital personnel. Plaintiff was unsure whether he heard anyone use the sink while he was in the bathroom. When he emerged from the bathroom a few minutes later, there was water on the floor, on which he slipped and fell.

The lapse of time (twenty minutes at most) was insufficient to present a triable issue of fact as to whether defendant had constructive knowledge of the dangerous condition. However, plaintiff's alternative theory of liability is that defendant or its agents or employees caused the water to be on the floor. Plaintiff argues that it was more likely than not that all visitors had left the hospital since visiting hours had ended, and that it would be unusual for a patient from another room to have used the sink in plaintiff's room. According to plaintiff, the only people in the hospital who would have been in position to cause the water to be on the floor at that time were hospital personnel.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Viewing the facts in a light most favorable to plaintiffs for purposes of the summary disposition motion under MCR 2.116(C)(10), we find plaintiffs have failed to raise a material question of fact sufficient to go to the jury. Plaintiff's case is built on speculation, conjecture and assumptions, and is insufficient to create a dispute of material fact to preclude summary disposition. While circumstantial evidence may be used to establish a case, a party opposing a motion for summary disposition "must present more than conjecture and speculation to meet [its] burden of providing evidentiary proof establishing a genuine issue of material fact." *Libralter Plastics, Inc v Chubb Group of Ins Companies*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Here, plaintiff "assumes" that the water on the floor resulted from actions of an employee of defendant, rather than visitors or patients and then he further "assumes" that defendant had actual notice of the condition. This is insufficient. The trial court properly granted summary disposition to defendant.

Affirmed. Defendant being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Henry William Saad
/s/ Thomas S. Eveland