STATE OF MICHIGAN

COURT OF APPEALS

JANE VAN STRATE,

Plaintiff-Appellee,

v

OWOSSO DISTRIBUTING CORP., d/b/a THE PINES COUNTRY HOUSE,

Defendant-Appellant.

UNPUBLISHED
November 1, 2002

No. 233275
Shiawassee Circuit Court
LC No. 98-02367-NO

Before: Cooper, P.J., and Jansen and R. J. Danhof*, JJ.

PER CURIAM.

In this slip-and-fall negligence action, defendant appeals as of right from a denial of motions for a directed verdict and a judgment notwithstanding the verdict (JNOV). We affirm.

Defendant argues that the trial court should have granted either his motion for a directed verdict or his motion for JNOV because the evidence showed no causal link between plaintiff's fall and an unsafe condition on the premises. We review de novo a trial court's denial of motions for a directed verdict or JNOV. *Abke v Vandenberg*, 239 Mich App 359, 361; 608 NW2d 73 (2000). We view the evidence, as well as any legitimate inferences, in the light most favorable to the nonmoving party and decide whether there existed a factual question about which reasonable minds might have differed. *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 663; 575 NW2d 745 (1998) (directed verdict); *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998) (JNOV).

The elements of negligence are (1) a duty owed by the defendant to the plaintiff, (2) breach of that duty, (3) injury suffered by the plaintiff, and (4) causation of that injury by the defendant's breach. *Phillips v Diehm*, 213 Mich App 389, 397; 541 NW2d 566 (1995). Negligence may be proven by legitimate inferences, provided the evidence is sufficient to remove the inferences from the realm of conjecture. *Berryman v Kmart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992). Conjecture is "simply an explanation consistent with known facts or conditions, but not deducible from them as a reasonable inference." *Kaminski v Grand Trunk W R Co*, 347 Mich 417, 422; 79 NW2d 899 (1956) (internal quotation marks omitted). Legitimate inferences that rise above conjecture, however, are logical sequences of cause and effect that point to a theory of causation, regardless of the "existence of other plausible theories." *Id*.

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

The disputed elements in this case are breach and causation. Proof of causation entails proof of two separate elements: (1) cause in fact, and (2) legal, or "proximate," cause. *Skinner v Square D Co*, 445 Mich App 153, 162-163; 516 NW2d 475 (1994). Cause in fact generally requires showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred, whereas proximate cause normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for those consequences. *Id*. at 163. Cause in fact must be established by the plaintiff before proximate cause becomes a relevant issue. *Id*. Notably, a plaintiff need not eliminate all logically alternative causes. *Id.* at 160. Rather, it is enough for the plaintiff to "establish[] a logical sequence of cause and effect, notwithstanding the existence of other plausible theories, although other plausible theories may also have evidentiary support." *Id*. at 160-161 (internal quotation marks omitted).

Defendant argues on appeal that the evidence showed no causal link between plaintiff's fall and an unsafe condition on the premises (spilled syrup). However, the evidence also showed that mopping, done by defendant's employee, could have created an unsafe condition in the area plaintiff was walking, causing plaintiff to fall. Plaintiff thus presented evidence from which reasonable jurors could infer a logical sequence of cause and effect between the spilled syrup and plaintiff's fall. *Skinner*, *supra* at 163; *Kaminski*, *supra* at 422.

Defendant also argues that the floor would have dried by the time plaintiff arrived, but there was no evidence regarding how long it took for the floor to actually dry on the day of the fall. Defendant further argues that plaintiff did not know if she slipped on water or the puddle of syrup, but knowledge of the exact agent that constituted an unsafe condition is not an element of negligence. *Phillips*, *supra* at 397. Reasonable minds could differ in their conclusions, *Berryman*, *supra* at 91, and because the trial court was required to view the evidence in the light most favorable to plaintiff as non-movant, it did not err in denying defendant's motions for directed verdict and JNOV. *Kubczak*, *supra* at 663; *Forge*, *supra* at 204.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Robert J. Danhof