

STATE OF MICHIGAN
COURT OF APPEALS

GLORIA E. WATTS,

Plaintiff-Appellant,

v

LETAVIS ENTERPRISES, INC. d/b/a/ FAST
EDDIE'S OIL CHANGE,

Defendant-Appellee.

UNPUBLISHED
October 20, 2015

No. 322006
Ingham Circuit Court
LC No. 13-000527-NO

Before: M. J. KELLY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

In this suit to recover for injuries allegedly sustained in a slip and fall, plaintiff, Gloria E. Watts, appeals by right the trial court's order dismissing her premises liability claim against defendant, Letavis Enterprises, Inc, which does business as Fast Eddie's Oil Change. Because we conclude that the trial court erred when it determined that Watts failed to establish a genuine issue of material fact on the issue of causation, we reverse and remand for further proceedings.

Watts alleged that she fell while walking to the restroom in Letavis' business. She stated that she fell because an oily substance had accumulated on the dark red cement floor leading to the restroom. Letavis moved for summary disposition on the issue of causation and presented evidence that Watts did not fall as a result of any substance on the floor. It further argued that Watts' deposition testimony was speculative with respect to the cause of the incident and did not establish a question of fact. The trial court agreed and granted Letavis' motion.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). A reviewing court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition should be granted if, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula*, 212 Mich App at 48. A genuine issue of material fact exists if the record, viewed in a light most favorable to the nonmoving party, establishes a matter over which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

In order to establish her claim, Watts had to be able to prove four elements: duty, breach, causation, and damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). The third element requires a plaintiff to prove both that the defendant's negligence was the cause in fact and proximate cause of the injuries. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Cause in fact requires a plaintiff to show that, but for the defendant's negligence, the injuries would not have occurred. *Id.* at 163. "Cause in fact may be established by circumstantial evidence, but such proof must be subject to reasonable inference, not mere speculation." *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 496; 668 NW2d 402 (2003). That is, "a causation theory must have some basis in established fact" and "a basis in only slight evidence is not enough." *Skinner*, 445 Mich at 164.

In this case, Watts testified that she did not see any oil on the floor before she fell. However, that she may not have seen the oil does not mean that she could not identify it as the cause of her fall. She testified that, after she fell, she immediately attributed her fall to oil, exclaiming to nearby employees: "it's the oil, it's the oil." She also testified that the floor looked shiny and slippery and that "there was oil" in the area that she slipped and fell. Although she did not testify to actually feeling or seeing oil on her skin or clothing, she stated that she smelled oil on her person and her clothing. Because she smelled of oil and is allergic to it, she said she disposed of her clothing after the fall.

If the jury were to find Watts credible, it could infer from her testimony that she smelled of oil and felt compelled to dispose of her clothing to avoid an allergic reaction because her clothing actually had oil on it after her fall. From this, the jury could further infer that her clothing became tainted with oil after she fell to the floor at the business. When this is considered in light of her claim that she immediately identified the oil as the cause of her fall, a reasonable jury could conclude that she did in fact slip on oil. Although Letavis presented evidence from which a reasonable jury could infer that Watts' version of events was not credible, it is for the jury to resolve such disputes. *Burkhardt v Bailey*, 260 Mich App 636, 647; 680 NW2d 453 (2004). Taking her testimony as whole and in context, there was a question of fact as to whether oil caused Watts' fall. Consequently, the trial court erred when it dismissed her premises liability claim on the ground that Watts failed to establish a genuine issue of material fact as to causation.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, Watts may tax her costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro