STATE OF MICHIGAN

COURT OF APPEALS

ROSE SAVA, Plaintiff-Appellant,	UNPUBLISHED January 9, 2018
v	No. 335817 Sanilac Circuit Court
NEWMAN'S PUB N GRUB, INC., Defendant-Appellee.	LC No. 15-036073-NO

Before: CAMERON, P.J., and SERVITTO and GLEICHER, JJ.

PER CURIAM.

Rose Sava slipped and fell on a covered patio at Newman's Pub N Grub. Sava never determined what caused her to slip, and neither did any other witness. To establish a premises liability claim, a plaintiff must establish that a defendant's breach of duty proximately caused his or her injury. Absent any evidence of causation, the circuit court properly granted summary disposition in Newman's favor. We affirm.

I. BACKGROUND

Sava visited Newman's Pub N Grub on a rainy night in January 2015. She stayed at the bar for over four hours, enjoying an evening with friends. Early in the evening, Sava went outside to smoke a cigarette on a patio covered by a tarp to protect patrons from the elements. Several hours and several cocktails later, Sava went back outside to smoke. A handful of other individuals reentered the bar before she did, without incident. When Sava walked back toward the building and reached for the doorknob, however, she slipped and fell on her back.

Sava surmised that she must have slipped on ice as it was raining and the temperature had dropped to 37 degrees. However, Sava did not see or feel any ice before, during, or after her fall. An off-duty bartender who had gone outside to smoke with Sava observed no ice on the patio. And neither did the bar's doorman who had repeatedly inspected the patio area that night both before and after Sava's fall. Ultimately, Sava presented no evidence establishing what caused her to slip and fall beyond her own speculation and conjecture. However, Sava also noted that the lack of lighting on the patio played into her mishap.

The circuit court ultimately dismissed Sava's complaint. Even assuming that Sava had slipped on ice and that the condition was not open and obvious, the court ruled that "there is no evidence that Defendant had actual or constructive knowledge of a dangerous condition" despite

its employee's "reasonably prudent inspections of the premises." The court also rejected that the lack of lighting in the area "created an 'unreasonable risk of harm.' "

II. ANALYSIS

Sava appeals the circuit court's dismissal of her case. We review de novo the circuit court's judgment. *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. When evaluating a motion for summary disposition under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Innovation Ventures, LLC v Liquid Mfg, LLC*, 499 Mich 491, 507; 885 NW2d 861 (2016) (quotation marks and citations omitted).]

"In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) t*he breach was the proximate cause of the plaintiff's injury*, and (4) the plaintiff suffered damages." *Benton v Dart Props, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006) (emphasis added). Here, Sava failed to establish that any potential breach on Newman's part proximately caused her injury. The circuit court had no need to delve any deeper into this matter.

In *Skinner v Square D Co*, 445 Mich 153, 159-160; 516 NW2d 475 (1994), a products liability case, our Supreme Court described in detail the causation element for tort and negligence actions: the plaintiff must present "proof of a causal connection between an established defect and injury" and "establish[] a logical sequence of cause and effect" between the two. Once a defendant challenges the evidentiary support for a plaintiff's claim, the duty falls on the plaintiff to establish that a material question of fact exists that should be considered by a jury. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Sava did not meet her burden in this case.

To establish proximate causation, a plaintiff must present evidence that the defendant's conduct was a cause in fact and legal cause of his or her injuries. *Skinner*, 445 Mich at 162-163. "The cause in fact element generally requires showing that 'but for' the defendant's actions, the plaintiff's injury would not have occurred. On the other hand, legal cause or 'proximate cause' normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences." *Id*. at 163 (citations omitted). The plaintiff may rely on circumstantial evidence to establish causation. "To be adequate, a plaintiff's circumstantial proof must facilitate reasonable inferences of causation, *not mere speculation*." *Id*. at 164 (emphasis added). "The mere possibility that a defendant's negligence may have been the cause, either theoretical or conjectural, of an accident is not sufficient to establish a causal link between the two." *Id.* at 165 (quotation marks and citation omitted).

Sava did nothing more than speculate that ice must have formed on the patio and caused her fall. Absolutely no one, including Sava, saw or felt any ice on the patio. The evidence

supports that Newman's employees conducted reasonable investigations of the area and uncovered no danger. And although it was raining that evening, temperatures did not fall to the freezing point. Absent any evidence to support a causal link between any conduct on Newman's part and Sava's injury, the circuit court was bound to dismiss the action. Accordingly, we need not reach the issues of notice and whether the condition was open and obvious.

We affirm.

/s/ Thomas C. Cameron
/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher