An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-657
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

MICHAEL SKIPPER,
Plaintiff,

v.

WAYNE OIL COMPANY, INC.,
Defendant.

Wayne County
No. 12 CVS 312

Appeal by plaintiff from Order entered 19 December 2012 by Judge Arnold O. Jones, II in Superior Court, Wayne County. Heard in the Court of Appeals 5 November 2013.

Whitley Law Firm, by Ann C. Ochsner and Whitney J. Butcher, for plaintiff-appellant.

Walker, Allen, Grice, Ammons & Foy, L.L.P., by O. Drew Grice, Jr., for defendant-appellee.

STROUD, Judge.

Michael Skipper ("plaintiff") appeals from an order entered 19 December 2012 granting summary judgment in favor of Wayne Oil Company, Inc. ("defendant"). We affirm.

I. Background

In January 2011, plaintiff was a foreman working for a company that installs cell phone towers across the eastern

United States. Plaintiff lived in eastern Tennessee, but was assigned to build a cell tower in North Carolina. On 11 January 2011, plaintiff was staying at a hotel, near the intersection of Highway 42 and Interstate 40, south of Garner, North Carolina. That morning, defendant dressed in his normal work attire and put on his work boots. He left the hotel and began walking toward the nearby Hasty Mart convenience store and gas station owned by defendant. To get there, plaintiff walked down the street and crossed the parking lot of a closed gas station. He then came to defendant’s parking lot. When he arrived, the parking lot did not appear to be slippery or icy. He crossed part of the parking lot, stepped up to a slightly raised sidewalk in front of the store, and walked inside to make his purchases.

After purchasing some sandwiches, beverages, and other items, defendant began walking back the way he came. When he stepped off the raised sidewalk to the asphalt parking lot, he slipped. Plaintiff rolled his ankle and fell to the ground. He then stood back up and continued heading back to the hotel. Part of the way back, he noticed that his ankle was hurting severely. By the time he got back to the hotel, he was “ghost white” and asked the front desk clerk to call an ambulance. Plaintiff had

broken his ankle in multiple places; the injuries required two surgeries to fix. Plaintiff continued to suffer some residual pain and discomfort as of his deposition in August 2012.

Dennis Coyle, a maintenance worker employed by defendant, stopped by the Hasty Mart store sometime between 7 and 9:30 a.m. on 11 January 2011.[1] He testified that he had noticed that there was already salt down on the sidewalks when he arrived, but that he put more out that morning. Mr. Coyle further testified that he salted those parts of the parking lot and sidewalk where he thought people were likely to walk, including the ground and raised sidewalk near the air pump and around the diesel gas pumps.[2] Mr. Coyle then checked around once more for ice before leaving.

On 13 February 2012, plaintiff filed a complaint in Wayne County alleging that defendant had negligently caused him to slip on black ice and fall, resulting in severe personal injury. After several months of discovery, defendant moved for summary

---

[1] Plaintiff contends that there is a contradiction in the evidence as to whether Mr. Coyle was actually present on the day in question. Mr. Coyle and the manager on duty, Paula Tibbs, testified that he was there. The cashier on duty, Jessica Dallin, simply testified that she did not remember seeing him—not that he was not there. Thus, there is no contradictory evidence as to this fact.

[2] The area where plaintiff slipped was at the corner of the store, between an air hose hookup and the small propane tanks, on the side of the building with diesel gas pumps.

judgment on 26 November 2012. The evidence forecast to the trial court showed the facts summarized above. The trial court granted defendant's motion by order entered 19 December 2012. Plaintiff filed timely written notice of appeal to this Court.

II. Summary Judgment

A. Standard of Review

> We review a trial court order granting or denying a summary judgment motion on a *de novo* basis, with our examination of the trial court's order focused on determining whether there is a genuine issue of material fact and whether either party is entitled to judgment as a matter of law. As a part of that process, we view the evidence in the light most favorable to the nonmoving party.

Cox v. Roach, ___ N.C. App. ___, ___, 723 S.E.2d 340, 347 (2012) (citation and quotation marks omitted), *disc. rev. denied*, 366 N.C. 423, 736 S.E.2d 497 (2013).

B. Analysis

Plaintiff contends that the trial court erred in granting defendant's summary judgment motion because he forecast sufficient evidence that defendant negligently failed to adequately prevent or remove ice from its parking lot or to warn plaintiff of the dangerous conditions. We disagree.

"The elements of negligence are: 1) legal duty; 2) breach of that duty; 3) actual and proximate causation; and 4) injury."

Mabrey v. Smith, 144 N.C. App. 119, 122, 548 S.E.2d 183, 186, *disc. rev. denied*, 354 N.C. 219, 554 S.E.2d 340 (2001).

> As a general rule, issues of negligence are not ordinarily susceptible to summary disposition. It is only in the exceptional negligence case that summary judgment is appropriate, because the rule of the prudent man or other standard of care must be applied, and ordinarily the jury should apply it under appropriate instructions from the court.

Hockaday v. Morse, 57 N.C. App. 109, 112, 290 S.E.2d 763, 766 (citation omitted), *disc. rev. denied*, 306 N.C. 384, 294 S.E.2d 209 (1982). Nevertheless, "[p]laintiff is required to offer legal evidence tending to establish beyond mere speculation or conjecture every essential element of negligence, and upon failure to do so, summary judgment is proper." *Young By and Through Young v. Fun Services-Carolina, Inc.*, 122 N.C. App. 157, 162, 468 S.E.2d 260, 263 (citation, quotation marks, and brackets omitted), *disc. rev. denied*, 344 N.C. 444, 476 S.E.2d 134 (1996).

> North Carolina landowners . . . are required to exercise reasonable care to provide for the safety of all lawful visitors on their property. Whether a landowner's care is reasonable is judged against the conduct of a reasonably prudent person under the circumstances. There is no duty to protect a lawful visitor from dangers which are either known to him or so obvious and

> apparent that they may reasonably be expected to be discovered.

Kelly v. Regency Centers Corp., 203 N.C. App. 339, 343, 691 S.E.2d 92, 95 (2010) (citations omitted).

In his complaint, plaintiff alleged that he slipped on black ice while on defendant's property, severely injuring his ankle. He further alleged that the injury was caused by defendant's failure to maintain its property in a safe condition.

> It is well established that the proprietor of a store is not an insurer of the safety of his customers and that no inference of negligence on his part arises from the mere fact of a customer's injury on his premises, the doctrine of *res ipsa loquitur* not being applicable.

Cagle v. Robert Hall Clothes, 9 N.C. App. 243, 245, 175 S.E.2d 703, 704 (1970). Summary judgment in favor of defendant is appropriate if the forecast of evidence, taken in the light most favorable to plaintiff, does not show that plaintiff's injury was caused by defendant's alleged negligence. *See id.*

The forecast of the evidence here fails to show that plaintiff actually slipped on ice. Plaintiff walked from his hotel, down the street, across one closed gas station, to reach defendant's gas station. He was wearing his normal work boots. Although it was around 30 degrees and some light precipitation

was falling, plaintiff did not notice any ice in the hotel parking lot or in the parking lot of the gas station adjacent to defendant's. Plaintiff then walked through defendant's parking lot, stepped up on to the slightly raised sidewalk, and walked into defendant's store. On his way in, plaintiff did not think the lot was slippery or icy.

On his way back to the hotel, plaintiff followed the same general path in reverse. When he stepped off the raised sidewalk to the asphalt parking lot, he slipped and fell, rolling his ankle. Although plaintiff initially reported to defendant's employees that he thought he had slipped on ice, he testified at his deposition that he was not certain what, if anything, he actually slipped on. He did not look to see if there was ice where he was stepping either before or after he fell. Ms. Dallin, the cashier at the Hasty Mart on 11 January, did notice some small amounts of ice around the parking lot, but it was thin enough to break up just by kicking at it. Ms. Dallin said that the ice she noticed was by the gas pumps. When she was shown a picture that included the area where plaintiff fell, Ms. Dallin said the spot where she observed the ice was not visible. No one testified or averred that there was ice near where plaintiff slipped.

"Proximate cause is a cause which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff's injuries, and without which the injuries would not have occurred." *Lord v. Beerman*, 191 N.C. App. 290, 294, 664 S.E.2d 331, 334 (2008) (citation and quotation marks omitted). "The connection or causation between the negligence and [injury] must be probable, not merely a remote possibility." *White v. Hunsinger*, 88 N.C. App. 382, 387, 363 S.E.2d 203, 206 (1988) (citation omitted).

Thus, some forecast of evidence that plaintiff actually slipped on ice is central to his claim. Based upon his deposition testimony, plaintiff simply assumed that he must have slipped on ice because of the weather conditions, but he never saw any ice in the area where he fell. If plaintiff did not slip on ice, any alleged negligence in treating the parking lot with ice melt, salt, or other substances was not causally related to plaintiff's injury. If plaintiff did not slip on ice, the presence of ice in other areas is not causally related to plaintiff's injury; it is relevant only to show that conditions were such that ice may form and that defendant may have had a duty to try to prevent it or to warn of its presence. Here, plaintiff could not say why he slipped. Plaintiff had

successfully navigated the same step minutes before and did not notice that it was slippery or that ice was present. The "remote possibility" that plaintiff slipped on ice, simply based on the general weather conditions and the presence of small patches of ice in other areas of the parking lot, is insufficient. *Cf. Jacobson v. J.C. Penney Co., Inc.*, 40 N.C. App. 551, 554, 253 S.E.2d 293, 295-96 (1979) (holding that the plaintiff could not recover for a slip and fall where she "did not observe any foreign matter on the floor and . . . she did not recall seeing any water on the floor."); *Byrd v. Arrowood*, 118 N.C. App. 418, 420, 455 S.E.2d 672, 675 (1995) (holding that a plaintiff could not prevail in a legal malpractice claim where the underlying tort action was unwinnable because the plaintiff "d[id] not know what caused her to fall.").

We conclude that the forecast of evidence does not show any causal connection between plaintiff's injury and a negligent act or omission by defendant, a necessary element in a negligence claim. *See Lord*, 191 N.C. App. at 294, 664 S.E.2d at 334. Therefore, we hold that the trial court correctly granted defendant's motion for summary judgment and affirm the trial court's order to that effect. *See Lavelle v. Schultz*, 120 N.C. App. 857, 861, 463 S.E.2d 567, 570 (1995) ("Summary judgment may

be properly granted where the alleged negligence of the defendant was not a proximate cause of the plaintiff's injury."), *disc. rev. denied*, 342 N.C. 656, 467 S.E.2d 715 (1996); *Fun Services-Carolina*, *Inc.*, 122 N.C. App. at 162, 468 S.E.2d at 263.

III. Conclusion

We affirm the trial court's order granting defendant's motion for summary judgment because the evidence forecast fails to show, even in the light most favorable to plaintiff, that defendant's alleged negligence in maintaining its premises caused plaintiff's injury.

AFFIRMED.

Judges MCGEE and BRYANT concur.

Report per Rule 30(e).