NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MURIEL DIEFENDERFER AND RICHARD DIEFENDERFER, HER HUSBAND Appellant v. GARY A. WIEAND, JR., AND CHRISTOPHER R. SHALA Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 707 EDA 2012

Appeal from the Order Entered February 3, 2012
In the Court of Common Pleas of Northampton County
Civil Division at No(s): C-48-CV-2007-7453

BEFORE: PANELLA, J., OLSON, J., and FITZGERALD, J.*

JUDGMENT ORDER BY PANELLA, J. Filed: January 3, 2013

Appellants, Muriel Diefenderfer and Richard Diefenderfer, her husband, appeal from the order entered February 3, 2012, by the Honorable Edward G. Smith, Court of Common Pleas of Northampton County, which entered Summary Judgment in favor of Appellees, Gary A. Wieand, Jr., and Christopher R. Shala. We affirm.

For a detailed recitation of the facts and procedural history of this case, we direct the reader to Judge Smith's memorandum opinion. ***See*** Trial Court Opinion, 2/3/12, at 1-3.

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* Former Justice specially assigned to the Superior Court.

On appeal, Appellants argue that the trial court erred in entering summary judgment in Appellees' favor. Our standard of review of an order granting summary judgment is as follows:

> In evaluating the trial court's decision to enter summary judgment, we focus on the legal standard articulated in the summary judgment rule. Pa.R.C.P. 1035.2. The rule states that where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law, summary judgment may be entered.... [W]e will view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

State Farm Fire & Cas. Co. v. PECO, 54 A.3d 921, 925 (Pa. Super. 2012) (citation omitted). "As our inquiry involves solely questions of law, our review is *de novo.*" ***Catlin v. Hamburg***, --- A.3d ---, 2012 WL 5286226 at *4 (Pa. Super., filed Oct. 26, 2012) (citation omitted).

With our standard of review in mind, and after examining the briefs of the parties, the ruling of the trial court, as well as the applicable law, we find that Judge Smith's ruling is supported by the record and free of legal error. We further find that the trial court ably and methodically addressed Appellants' issues raised on appeal. Accordingly, we affirm on the basis of Judge Smith's thorough and well-written opinion. ***See*** Trial Court Opinion, filed 2/3/12.

Order affirmed. Jurisdiction relinquished.

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION – LAW

MURIEL DIEFENDERFER and)
RICHARD DIEFENDERFER, her Husband,)
)
Plaintiffs,)
) No. C-48-CV-2007-7453
v.)
)
GARY A. WIEAND, JR. and)
CHRISTOPHER R. SHALA,)
)
Defendants.)

FILED
2012 FEB -3 P 3:12
COURT OF COMMON PLEAS
CIVIL DIVISION
NORTHAMPTON COUNTY, PA

ORDER

AND NOW, this 3rd day of February, 2012, after considering the Motion for Summary Judgment filed by the defendants, Gary A. Wieand, Jr. and Christopher R. Shala, and after reviewing the applicable record and the parties' submissions, and after hearing argument from the parties on January 3, 2012, it is hereby **ORDERED** that the motion is **GRANTED** and judgment is hereby entered in favor of the defendants and against the plaintiffs, Muriel Diefenderfer and Richard Diefenderfer.

STATEMENT OF REASONS

I. Factual Allegations and Procedural History

On August 30, 2007, the plaintiffs, Muriel Diefenderfer ("Mrs. Diefenderfer") and Richard Diefenderfer ("Mr. Diefenderfer"), initiated this action by a praecipe for writ of summons. The plaintiffs later filed a praecipe to reissue the writ of summons on November 27, 2007.

On January 8, 2009, the plaintiffs filed a Complaint. The defendants, Gary A. Wieand, Jr. and Christopher R. Shala, filed Preliminary Objections to the Complaint and a supporting brief on January 28, 2009. In response to the Preliminary Objections, the plaintiffs filed an

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II. Discussion

The defendants contend that we should grant their Motion for Summary Judgment primarily because the plaintiffs failed to present any evidence of a defective condition in the area of the alleged fall and failed to present evidence linking the defective condition and the cause of the fall. The defendants also alternatively argue that we should grant their motion because at the time of the accident, Mrs. Diefenderfer was a trespasser.

In opposing the motion, the plaintiffs argue that Mrs. Diefenderfer was a business invitee (and not a trespasser) at the time of the incident. The plaintiffs also point out that various courts in the Commonwealth have concluded that summary judgment should not be granted in premises liability cases. Moreover, the plaintiffs argue that Mrs. Diefenderfer's "inability to specify precisely the mechanism that caused her to fall on the Defendants' property should not be used to prevent her from going to trial and exercising her right to have her claims heard by a jury." [Plaintiff's [sic] Brief in Opposition to Defendants' Moti[o]n for Summary Judgment, at 4.] As discussed below, we are constrained to agree with the defendants that the plaintiffs have failed to present any evidence of a defective condition in the area of the fall or how said defective condition caused Mrs. Diefenderfer's fall.

A. Standard – Motion for Summary Judgment

Summary judgment is properly granted where no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. Pa.R.C.P. No. 1035.2; *O'Brien Energy Sys. Inc. v. Am. Employers' Ins. Co.*, 629 A.2d 957, 960 (Pa. Super. 1993). The grant of summary judgment is proper where the pleadings, depositions, answers to interrogatories, admissions, and affidavits support a conclusion that no genuine issue of material

fact exists and that the moving party is entitled to judgment as a matter of law. *Penn Ctr. House Inc. v. Hoffman*, 553 A.2d 900, 902 (Pa. 1989).

Summary judgment is appropriate only in those cases which are clear and free from doubt. *Lyman v. Boonin*, 635 A.2d 1029, 1032 (Pa. 1993). The record must be viewed "in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." *Ertel v. Patriot News Co.*, 674 A.2d 1038, 1041 (Pa. 1996) (citing *Pa. St. Univ. v. County of Centre*, 615 A.2d 303, 304 (Pa. 1992)). Pennsylvania Rule of Civil Procedure 1035.2 states that a party may move for summary judgment where "an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Pa.R.C.P. No. 1035.2.

A non-moving party may not avoid summary judgment by "rest[ing] upon the mere allegations or denials of his pleading." *Ertel*, 674 A.2d at 1041. In this regard,

> [a]llowing non-moving parties to avoid summary judgment where they have no evidence to support an issue on which they bear the burden of proof runs contrary to the spirit of Rule 1035. We have stated that the 'mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for a trial.' We have a summary judgment rule in this Commonwealth in order to dispense with a trial of a case (or, in some matters, issues in a case) where a party lacks the beginnings of evidence to establish or contest a material issue.

Id. (internal citations omitted). As such, "a non-moving party must adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor." *Id.* "Failure to adduce this evidence establishes that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.*

B. Mrs. Diefenderfer's Deposition Testimony

As previously noted, the plaintiffs did not file a response to the Motion for Summary Judgment, and the plaintiffs did not attempt to introduce any evidence other than the evidence attached to the defendants' motion. Nonetheless, the only evidence outside of the pleadings that the defendants attached to their motion is the deposition testimony of Mrs. Diefenderfer on March 9, 2011. During the deposition, Mrs. Diefenderfer testified in relevant part as follows:

At approximately 11:00 p.m. on September 3, 2005, one of the plaintiffs' employees, Douglas Gilford, entered the plaintiffs' apartment inside the Bath Hotel and alerted them that there was a fire in the building. [Transcript of Deposition of Muriel Diefenderfer ("T."), 3-9-11, at 39, 43, 44-45, 54.][1] Rachel, a girlfriend of one of the plaintiffs' tenants, assisted Mr. Diefenderfer with exiting the premises. [*Id.* at 46, 47.][2] In particular, Rachel helped Mr. Diefenderfer down the stairs inside the premises, and she took him across the street to the defendants' property. [*Id.* at 46.]

Mrs. Diefenderfer, who was already wearing a "pajama top," put on a pair of sweat pants and some slippers and then exited the premises after her husband had left. [*Id.* at 48, 49.] After exiting the hotel, Mrs. Diefenderfer entered the parking lot for the hotel and looked at the fire on the third floor. [*Id.* at 50.] Despite the ongoing fire, she returned into the building and went to her apartment. [*Id.*] Mrs. Diefenderfer retrieved her purse and her keys inside of the apartment, and then exited the hotel. [*Id.*]

Once she returned outside, Mrs. Diefenderfer went to the barroom of the Property (Kicker's Pub) to find her husband. [*Id.* at 56, 57.] When she entered the barroom, she walked up the steps and entered the leftmost of the two doors of Kicker's Pub. [*Id.* at 58, 63 &

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[1] The transcript is attached to the defendants' motion as Exhibit D.

[2] At the time, Mr. Diefenderfer was in poor health and needed a walker. [T. at 42.]

Defendants' Exhibit 2.][3] Upon entering, she noticed that Mr. Diefenderfer was sitting at a table just inside of the door. [*Id.* at 59, 63.]

Mrs. Diefenderfer told her husband that she wanted to call their daughter, Sharon, to let her know what happened, but it was too loud inside of the bar. [*Id.* at 60, 61.] She told him that she was "going to go over to the vestibule and call her from there." [*Id.* at 60.] Mrs. Diefenderfer then exited the bar through the same door that she entered, navigated the steps without issue, walked down the sidewalk, and then navigated the steps there, and went in the other door on the right of the Property. [*Id.* at 60, 63.]

While inside, Mrs. Diefenderfer used her cellular telephone to call her daughter. [*Id.* at 61, 64.] Mrs. Diefenderfer was unable to reach her daughter because she could not get a signal inside of the premises. [*Id.* at 61.] As a result, after approximately one or two minutes, she left the Property through the same door she entered. [*Id.* at 61, 62, 64.] Mrs. Diefenderfer described her actions inside and her immediate actions subsequent thereto as follows:

> Q Okay. And how long were you inside that second doorway?
>
> A Just until I tried to call her and I couldn't get a signal and I left.
>
> Q What did you do next then? You walked back down those steps for the second doorway?
>
> A *I opened the door, and I went flying, simple as that. I stepped out to leave. And it was like I just stepped into an empty space.*
>
> Q Okay.
>
> A *I went flying.*
>
> Q So you fell at the second doorway?
>
> A Um-hum. Yes.

[*Id.* at 61-62 (emphasis added).][4]

[3] The last time that Mrs. Diefenderfer was inside that doorway was "years" ago. [T. at 58.]

Mrs. Diefenderfer also described her fall as follows:

Q And you were in that number two entryway, or inside the doorway at the location identified as number two for what? A minute or two?

A Yes.

Q And then walked back down?

A I went to leave. Yes.

Q And then what happened?

A *I don't know. There was no step there. I just went flying.*

Q *Okay. So you thought you were stepping down?*

A *Yes.*

Q *And suddenly, you found yourself on the ground?*

A *I stepped in a space. Yes.*

Q *Do you know how that happened? How it was that you stepped and then suddenly were on the ground?*

A *How it happened?*

Q *Yes. Do you know what happened that you stepped, and then you ended up on the ground?*

A *Well, what else can I say? There was -- I went to step down and there was no step, and I went flying. That's it.*

[*Id.* at 64-65 (emphasis added).][5]

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[4] We note that counsel for the defendants presented Mrs. Diefenderfer with a photograph of the outside of the Property (Defendants' Exhibit 2), and Mrs. Diefenderfer circled the doorways that she first entered the barroom and the one that she subsequently entered the vestibule. [T. at 62.]

We further note that the defendants' counsel provided us with a copy of Defendants' Exhibit 2 during the argument on the motion. While of minimal relevance to the resolution of the defendants' motion, the photograph appears to show two fairly similar doors, with the steps leading to each door consisting of one concrete-looking step. It also appears that the doors are set slightly inside of the frame of the building wall, so there may be a slight landing that one could stand on before opening the doors to the Property.

[5] Mrs. Diefenderfer believes she stepped out onto the step with her right foot. [T. at 65, 69.]

After she fell, Mrs. Diefenderfer landed on her back somewhere between the two entryways. [*Id.* at 66, 68.] Mrs. Diefenderfer was eventually helped off of the ground by a female paramedic, but she could not identify anyone who saw her fall (including the paramedic). [*Id.* at 66, 67, 69.]

In addition to the foregoing, the defendants' counsel and Mrs. Diefenderfer had the following exchange:

> Q Okay. Now, I'm showing the photographs produced by your counsel that have been marked as part of Exhibit 3, which showed two parts of a step. Do you see that?
>
> A Here.
>
> Q Yes. In the Exhibit 3. Do you see those photographs?
>
> A Yes.
>
> Q You see that there's items circled there?
>
> A Yeah. Yes.
>
> Q Do you know which steps those are photographs of?
>
> A No.
>
> Q I'm going to show you what were produced by your counsel, which are better quality copies of those same photographs. And we can mark those as Exhibit 4 and 5.
>
> (Exhibits 4 and 5 were marked.)
>
> BY MS. HERZOG:[6]
>
> Q I'm going to show you color copies of photographs that have been marked as Exhibits 4 and 5. And I'll represent to you that these steps, as depicted here, are the same as the steps depicted in Exhibit 3, except that Exhibit 3 has circles as well. Penned circles. You see that?
>
> A Yeah. That's the one. That's this one.

[6] Attorney Herzog is one of the defendants' attorneys.

Q Okay. So you don't have a problem with that. Do you understand that, is that correct?

A (Witness nodded head affirmatively.)

Q Now, in response to the requests for admissions, it indicates that these photographs 4 and 5 were taken by your daughter Sharon. Is that your understanding?

A Yes. She told me she took pictures

Q Were you present when she took the pictures?
A No.

Q Do you know when she took the pictures?

A I was in the hospital. I was in rehab. What's that mess there?

Q . . . In response to the request for admissions, it was your position that there was -- that these photographs, 4 and 5, depict defective conditions of the stairs. Is that your understanding?

A Yes. She said they weren't very good.

Q Okay. Now, in response to part B of that question, it says, state whether any condition identified in response to Interrogatory 4A caused the alleged trip and fall incident that forms the basis of plaintiff's cause of action.

And the answer was, yes. That the conditions identified in 4 and 5 caused the trip and fall accident. Is that correct?

A I don't know. I guess.

Q And then you were asked to circle on the attached photographs, any and all conditions that were the cause of your trip and fall. And do you -- if you take a look, can you see what was circled here, please. Do you see what was circled there?

A Yes.

Q Is it your testimony today that the conditions that are circled in the photographs attached to Exhibit 3 were the cause of your trip and fall on the date of the fire?

A All I could say something was wrong with that step because it wasn't there when I went to step. I don't know. What can I say?

Q Do you know whether the conditions that are circled in Exhibit 3, are the conditions that caused your trip and fall?

A Do I know? No. I don't know.

[*Id.* at 74-77.]

C. Analysis

To establish a cause of action in negligence, a plaintiff must demonstrate that the defendant owed a duty of care to the plaintiff, the defendant breached that duty, the breach resulted in injury to the plaintiff, and the plaintiff suffered an actual loss or damage. *Martin v. Evans*, 711 A.2d 458, 461 (Pa. 1998). Thus, to prove negligence a plaintiff must show that the defendant was negligent and that the negligence proximately caused the accident. *Harvilla v. Delcamp*, 555 A.2d 763, 764 (Pa. 1989) (citation omitted).

In addition, "[a]lthough questions of negligence and causation are generally for the jury, the question of the sufficiency of the evidence prior to presenting an issue to the jury is clearly within the trial judge's discretion." *Caldwell v. Commonwealth*, 548 A.2d 1284, 1286 (Pa. Cmwlth. 1988). Further, a "jury may not be permitted to reach its verdict on the basis of speculation or conjecture; there must be evidence upon which its conclusion may be logically based." *Cuthbert v. Philadelphia*, 209 A.2d 261, 264 (Pa. 1965). Thus, a plaintiff must prove that an accident and injury was due to some particular negligence of the defendant and the cause may not be simply a guess or speculation. *Puskarich v. Trustees of Zembo Temple*, 194 A.2d 208 (Pa. 1963); *see also Cuthbert, supra* (reversing jury's verdict in favor of plaintiff because plaintiff failed to show that defect in street was proximate cause of her fall); *DuBois v. City of Wilkes-Barre*, 189 A.2d 166, 167 (Pa. 1963) ("[I]t is necessary for the plaintiff to prove what *actually* caused the accident, not what *might* possibly have caused it. The jury cannot be allowed to *guess* that the fall resulted from the existence of a foreign substance on the sidewalk.").

Although a jury may not reach a verdict based on speculation,

> it is equally clear that a jury may draw inferences from all of the evidence presented. *Cade v. McDanel,* 451 Pa.Super. 368, 679 A.2d 1266 (1996).
>
> It is not necessary, under Pennsylvania law, that every fact or circumstance point unerringly to liability; it is enough that there be sufficient facts for the jury to say reasonably that the preponderance favors liability....The facts are for the jury in any case whether based upon direct or circumstantial evidence where a reasonable conclusion can be arrived at which would place liability on the defendant. It is the duty of [the] plaintiffs to produce substantial evidence which, if believed, warrants the verdict they seek. The right of a litigant to have the jury pass upon the facts is not to be that a reasonable man might properly find either way. A substantial part of the right to trial by jury is taken away when judges withdraw close cases from the jury. Therefore, when a party who has the burden of proof relies upon circumstantial evidence and inferences reasonably deductible therefrom, such evidence, in order to prevail, must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion as to outweigh in the mind of the fact-finder any other evidence and reasonable inferences therefrom which are inconsistent therewith.
>
> *Cade,* 679 A.2d at 1271 (quoting *Smith v. Bell Telephone Co. of Pennsylvania,* 397 Pa. 134, 153 A.2d 477, 480 (1959)).

First v. Zem Zem Temple, 686 A.2d 18, 21 (Pa. Super. 1996).

Here, although Mrs. Diefenderfer clearly testified that she fell, she was unable to identify what condition of the defendants' steps caused her to fall. We recognize that

> "[n]egligence may be established by circumstantial evidence, and where a plaintiff describes the nature and location of a fall, it is for the jury to determine whether a defect which existed in the *small* area described was the cause of the injury, and if the defect was of sufficient consequence to charge defendants with negligence [or strict products liability] ... is for the jury."

Id. at 22 (quoting *Frazier v. City of Pittsburgh,* 15 A.2d 499, 500 (Pa. Super. 1940) (emphasis in original)). Despite the foregoing, Mrs. Diefenderfer never identified what aspect of the defendants' steps caused her to fall. Instead, during her deposition, she repeatedly stated that she stuck out her foot and the step merely was not there. Thus, there is no condition of the actual steps, *i.e.* that they were slippery or otherwise defective, that the plaintiffs can point to (by

circumstantial evidence or otherwise) as the cause of her fall. Moreover, the plaintiffs have not provided any evidence to show that a step was missing or even that a part of the step was missing. The plaintiffs have also not introduced any expert testimony indicating that the steps were defectively designed.

The plaintiffs' evidence in this case is even less significant than that presented in *Freund v. Hyman*, 103 A.2d 658 (Pa. 1954). In *Freund*, the plaintiff testified that she fell on a raised step while walking outdoors on a sidewalk. The parties did not identify any witnesses that would testify as to how, if at all, the step caused the plaintiff to fall. Thus, the plaintiff's only evidence was that a raised step was involved in her fall. On appeal, the Supreme Court of Pennsylvania concluded that the trial court properly granted a nonsuit in favor of the defendant because there "*was no evidence that this elevation caused her fall.* [The plaintiff] merely said she fell on this [raised] step near the tree. There is no evidence whether she turned her ankle or slipped or stumbled or tripped, or what caused her to fall." 103 A.2d at 659.

Unlike the plaintiff in *Freund*, Mrs. Diefenderfer was unable to definitively testify as to the exact cause of her fall. Thus, her testimony is wholly speculative as to the proximate cause of the fall. There is no evidence that Mrs. Diefenderfer's feet ever touched the defendants' steps as she exited the second door. Thus, there is insufficient evidence elicited connecting an alleged defective condition with Mrs. Diefenderfer's fall. Accordingly, even when examining the evidence in the light in which all reasonable inferences are in the plaintiffs' favor, the plaintiffs have clearly failed to meet their burden of demonstrating that the allegedly defective or dangerous steps were the proximate cause of Mrs. Diefenderfer's injuries.

We also note that the plaintiffs' argument that "[m]any opinions in the Commonwealth have held that summary judgment may not be granted to defendants in premises liability cases,"

is not accord with our review of the case law. As indicated above, numerous appellate courts have upheld trial courts' orders granting summary judgment (or nonsuits) in premises liability cases. Moreover, the cases cited by the plaintiffs in support of their argument, *First v. Zem Zem Temple*, 686 A.2d 18 (Pa. Super. 1996), *Harris v. Hanberry*, 613 A.2d 101 (Pa. Cmwlth. 1992), and *Baker v. City of Philadelphia*, 603 A.2d 686 (Pa. Cmwlth. 1991), are all easily distinguishable from the instant case.

In *First*, the plaintiff was a guest at a wedding reception who was injured when she fell on the dance floor. The Superior Court reversed a trial court's order granting summary judgment because the court concluded that there was sufficient circumstantial evidence presented that would allow the jury to reasonably conclude that the plaintiff fell "either because the dance floor was slippery or because it was raised in a certain area." 686 A.2d at 22. In particular, the court noted that the disc jockey working the wedding had testified that the dance floor contained two "hazardous" conditions, "a slippery, discolored area and a raised area," and he further testified that the plaintiff fell after she had passed through these hazardous areas. *Id.*

In *Harris*, the Commonwealth Court determined that the trial judge erred in granting summary judgment because there were genuine issues of material facts as to the exact location of the hole in the sidewalk that allegedly caused the plaintiff's fall. 613 A.2d at 103, 104. The plaintiff had clearly indicated that the hole in the sidewalk is what caused him to fall. *Id.* at 103. Finally, in *Baker*, the Commonwealth Court reversed a trial court's order granting summary judgment after the court determined that a genuine issue of material fact existed as to whether a design or maintenance failure of a sewer created a "dangerous condition" that caused the plaintiff's injuries. 603 A.2d at 688.

Unlike the evidence in *First*, *Harris*, and *Baker*, the plaintiffs here have not identified any direct or circumstantial evidence to create a genuine issue of material fact concerning whether the defendants' steps constituted an unsafe condition or how the steps caused Mrs. Diefenderfer's injuries. Additionally, while the plaintiffs in *First*, *Harris*, and *Baker* were able to specifically point to the cause of their injuries, the Diefenderfers have not identified how the steps caused Mrs. Diefenderfer injuries. Moreover, Mrs. Diefenderfer clearly testified during her deposition that she never physically touched the steps themselves as she exited the door on the Property to return outside.

In this regard, we note that "[w]here the allegations of the non-moving party's pleading have been controverted by the moving party's supporting material, the non-moving party must by affidavit, or in some other way provided for by [Pa.R.C.P. No. 1035], set forth specific facts showing that a genuine issue of material fact exists." *Tom Morello Constr. Co., Inc. v. Bridgeport Fed. Sav. and Loan Ass'n*, 421 A.2d 747, 750 (Pa. Super. 1980). As explained above, the plaintiffs had alleged that Mrs. Diefenderfer "tripped and fell because of an unsafe condition of the steps of the premises, specifically cracked, broken and uneven steps." [Amended Complaint, at ¶ 11.] Additionally, the plaintiffs averred that the defendants were negligent because they

(a) fail[ed] to maintain their premises in a reasonably safe condition;

(b) fail[ed] to inspect the condition of their premises in a reasonable manner;

(c) fail[ed] to repair the steps to their premises, when they knew or should have known that their premises were not in a reasonably safe condition and were in need of repair;

(d) fail[ed] to warn the Plaintiff of an unsafe condition on their premises, of which they were or should have been aware;

(e) fail[ed] to take adequate and reasonable precautions for the safety of the

Plaintiff, who was an invitee on their premises; and

(f) fail[ed] to take adequate and reasonable precautions for the safety of the Plaintiff, who was a licensee on their premises.

[*Id.* at ¶ 13.]

Here, the deposition testimony of Mrs. Diefenderfer directly contradicts the allegations set forth above. Since she did not actually touch the steps on her way out of the building, she could not have tripped and fell because of an unsafe condition of the steps of the premises. In other words, the fact that the steps were cracked, broken, or uneven would not have caused her fall in the manner described during her deposition testimony. Even we could interpret Mrs. Diefenderfer's testimony as somehow identifying an unsafe condition of the defendants' steps, she has introduced no evidence (or has otherwise pointed us to any evidence in the record) linking that unsafe condition to the cause of her fall.

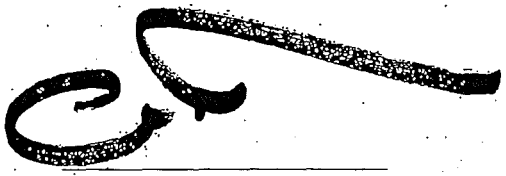
Since we have concluded that the evidence introduced by the defendants contradicted the plaintiffs' allegations, the plaintiffs, as the non-moving parties, had to set forth the specific facts showing that a genuine issue of material fact exists in this case. We are constrained to find that the plaintiffs have failed to show that a genuine issue of material fact exists and, thus, we must grant the defendants' motion as they are entitled to judgment as a matter of law.

III. Conclusion

Recognizing the standard by which we must analyze motions for summary judgment, and even after viewing the record in the light most favorable to the plaintiffs, as the non-moving parties, it is clear in this case that no genuine issue of material fact exists and the defendants are entitled to judgment as a matter of law. As explained in more detail above, the plaintiffs have not introduced any evidence identifying an allegedly unsafe condition of the defendants' steps or otherwise identified or established what about the steps caused Mrs. Diefenderfer to fall. The

plaintiffs have the obligation to prove "what *actually* caused the accident, not what *might* possibly have caused it." *DuBois v. City of Wilkes-Barre*, 189 A.2d 166, 167 (Pa. 1963). Here, the deposition testimony presented (as the plaintiffs did not identify any other evidence in the record to support their claims) was wholly insufficient to prove what actually caused Mrs. Diefenderfer to fall. Accordingly, the defendants' right to the entry of summary judgment in this case is clear and free from doubt.

BY THE COURT:



EDWARD G. SMITH, J.