

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 2013

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2012AP2343

Cir. Ct. No. 2010CV20086

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

ELIZABETH J. REDLIN,

PLAINTIFF-APPELLANT,

**KATHLEEN SEBELIUS , SECRETARY OF DEPARTMENT OF HEALTH AND
HUMAN SERVICES,**

INVOLUNTARY-PLAINTIFF,

v.

**NORTHWEST AIRLINES, INC. N/K/A DELTA AIR LINES, INC. AND
G2 SECURE STAFF, LLC,**

DEFENDANTS-RESPONDENTS,

BLUE CROSS BLUE SHIELD OF WISCONSIN,

DEFENDANT.

APPEAL from orders of the circuit court for Milwaukee County:
JANE V. CARROLL, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 BRENNAN, J. Elizabeth J. Redlin appeals from the circuit court's orders granting Northwest Airlines Inc.'s and G2 Secure Staff, LLC's motions for summary judgment and dismissing Redlin's negligence claims against both defendants. Redlin believes that the circuit court incorrectly concluded that the undisputed evidence demonstrated, as a matter of law, that: (1) Northwest and G2 did not breach a duty of care to Redlin; (2) Redlin was the sole cause of her injuries; and (3) Redlin's injuries were not foreseeable. For the reasons which follow, we affirm.

BACKGROUND¹

¶2 On February 14, 2009, Redlin was returning to Milwaukee from a trip to Los Angeles with her daughter Nancy Peters, her niece Lynn Cardinal, and her sister Dolores Kath, on a Northwest flight. The flight included a layover in Minneapolis. Cardinal booked the plane tickets for the group. When doing so, she requested wheelchairs for Redlin and Kath "because there's a distance between getting to the airport and getting on the terminal and vice versa," and she was concerned that the "distance in airports was too much for [Redlin and Kath] to do." Cardinal had the option of requesting a wheelchair for short or long distances or for aisle assistance, and she does not dispute that she chose the long-distance option. The request was made at the time of the reservation and a corresponding code was printed on Redlin's boarding pass. It is undisputed that Redlin never notified Northwest or G2 about a change in her request.

¹ The facts set forth in the background section are those undisputed facts set forth by the parties on summary judgment.

¶3 Redlin has put forth no evidence demonstrating that anyone ever told Northwest or G2 that Redlin could not walk short distances. Likewise, Redlin has put forth no evidence demonstrating that anyone requested a wheelchair be provided for Redlin at the door of the plane. In fact, it is undisputed that Redlin often walked short distances and requested a wheelchair only for long distances.

¶4 In February 2009, Northwest contracted with G2 for the provision of wheelchair services for Northwest passengers at General Mitchell International Airport in Milwaukee. Typically, when notified of a flight's arrival, the G2 employees would take the requested wheelchairs down the jetway with the gate agent and wait for the plane and passengers. In such a situation, the wheelchairs would be waiting for the passengers at the plane door. However, if the G2 employees were not at the gate when the gate agent left to move the jetway, for instance, if a flight arrived early, then the G2 employees would wait with the wheelchairs at the top of the jetway in the gate area. If the jetway was not overly congested and walking up the jetway would not disrupt deplaning, the G2 employees would walk the wheelchairs up the jetway to the door of the plane.

¶5 The flight log for Redlin's flight shows that her flight was eight minutes early to the gate. The dispatch log shows that the G2 wheelchair employees arrived at the gate eleven minutes prior to the flight's scheduled arrival time, likely after the gate agent had already left and locked the jetway door. As

such, the G2 employees would have had to wait in the gate area for the gate agent to return before walking up the jetway with the wheelchairs.²

¶6 When Redlin's flight from Minneapolis landed in Milwaukee, Redlin chose to immediately exit the plane with the rest of the passengers. In fact, she stated at her deposition that she "got off the plane fairly early." She testified that as she walked off the plane, she asked Peters, her daughter, about the wheelchair. Peters told Redlin: "[T]hey're probably up on the top," and the group chose to walk up the jetway to the gate area. Redlin admitted that she never asked the flight attendant, who was standing at the door of the aircraft as Redlin and her party exited, for a wheelchair. She also admitted that she could have asked someone to bring a wheelchair down to the aircraft, or her daughter could have gone up to the gate and asked to have a wheelchair brought down for her. Redlin admitted that she did not have to walk up the jetway.

¶7 Peters also testified at her deposition that she did not ask for a wheelchair for her mother upon departing the plane. Instead, Peters and Redlin decided to get a wheelchair at the top of the jetway or "wherever we could get one." No other member of Redlin's party asked for a wheelchair, even though

² Redlin argues that there is no evidence supporting the conclusion that the wheelchairs were at the top of the jetway because the plane landed early and contends that there could have been some other explanation for why the G2 employees were not able to walk down the jetway with the gate agent and meet the passengers at the plane door. For instance, Redlin suggests, without *any* citation to the record, that it is reasonable to infer that the reason the G2 employees were unable to walk down the jetway with the gate agent was because Northwest did not timely notify G2 that the flight was arriving. But as we just set forth, both the flight log and wheelchair dispatch log support the conclusion that the G2 employees missed the gate agent because the flight was early and therefore had to wait at the top of the jetway as was common practice. Regardless, the reason the wheelchairs were at the top of the jetway rather than at the plane door is irrelevant to our conclusion in this case. As is relevant to this case, the parties appear to agree that a wheelchair was waiting for Redlin at the top of the jetway.

Cardinal admitted during her deposition that, if she wanted to, she could have stopped at the bottom of the jetway and asked the flight attendant for a wheelchair.

¶8 As Redlin walked up the jetway, while holding her daughter's arm, she stumbled and "flew into the wall and hit [her] shoulder." She broke her right shoulder in four places, requiring surgery. Her orthopedic surgeon opined that Redlin suffered a permanent injury.

¶9 Redlin filed a complaint against both Northwest and G2, claiming common law negligence for the manner in which wheelchair services were provided when her flight landed in Milwaukee. She alleged, among other things, that Northwest and G2, through their agents, servants and employees, acted unreasonably and were negligent in that they: (1) failed to provide the wheelchair Redlin requested; and (2) failed to assist Redlin, in any manner, after discovering the requested wheelchair was not present.

¶10 Both Northwest and G2 brought motions for summary judgment, seeking dismissal of Redlin's claims. As to both motions, the circuit court held that: (1) Redlin's request for a wheelchair for long distances did not create a duty for Northwest and G2 such that they were required to provide Redlin with a wheelchair at the door of the plane immediately upon her exit; and (2) Redlin's injuries were caused by Redlin's decisions not to ask about the wheelchair and not to wait for a wheelchair, but to instead immediately begin walking up the jetway. The circuit court further found in response to G2's motion that it was "not foreseeable that a plaintiff who had requested a wheelchair, and [for whom] a wheelchair was being provided, would not wait even three minutes, five minutes, two minutes, but would immediately begin to ascend the jetway unassisted." As

such, the circuit court granted both defendants' motions for summary judgment, dismissing Redlin's claims. Redlin appeals.

DISCUSSION

¶11 Redlin argues that the circuit court erred when it found, as a matter of law, that the undisputed facts demonstrated that: (1) Northwest and G2 did not breach a duty of care; (2) Northwest and G2 were not at least a partial cause of her injuries; and (3) her injuries were not foreseeable. Because we agree with the circuit court that Northwest and G2 did not breach their duty of ordinary care when providing wheelchair services to Redlin, we need not address the other issues she raises.³ See *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (We decide cases “on the narrowest possible ground.”).

¶12 Redlin contends that the circuit court incorrectly believed that she was claiming that Northwest and G2 had a duty to provide her with a wheelchair at the plane's door when she disembarked. Instead, Redlin asserts that her claims against both Northwest and G2 are actually based upon a breach of the duty of ordinary care that everyone owes to all persons and that the only question that could have been answered by the circuit court was whether Northwest or G2 owed a duty of ordinary care in providing wheelchair services generally. Redlin contends that whether Northwest and G2 had the specific duty to make the wheelchair available at the plane's door immediately upon her exit from the plane was a question for the jury. We disagree and affirm.

³ We also need not address other defenses raised by Northwest and G2, to wit, that Redlin's negligence claims are barred by public policy or that her claims are preempted by federal law. See *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (We decide cases “on the narrowest possible ground.”).

¶13 Our review in cases on appeal from summary judgment is well known. We review the circuit court’s summary judgment decision *de novo*, employing the same method as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). A party is entitled to summary judgment when there are no disputed issues of material fact and that party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2) (2011-12)⁴. Here, the undisputed facts show that neither Northwest nor G2 breached its duty of care to Redlin.

¶14 In order to establish a claim for negligence, a plaintiff must prove four elements: (1) the existence of a duty of care; (2) a breach of that duty of care; (3) a causal connection between the defendant’s breach of the duty of care and the plaintiff’s injury; and (4) actual loss or damage resulting from the breach. ***Hoida, Inc. v. M&I Midstate Bank***, 2006 WI 69, ¶23, 291 Wis. 2d 283, 717 N.W.2d 17. The first element—the duty of care—“involves two aspects: (1) the existence of a duty of ordinary care; and[] (2) an assessment of what ordinary care requires under the circumstances.” *Id.*, ¶27.

¶15 Our supreme court has summarized the duty to exercise ordinary care under the circumstances thusly:

If a person, without intending to do harm, acts, or fails to do an act, that a reasonable person would recognize as creating an unreasonable risk of injury or damage to a person or property, he or she is not exercising ordinary care under the circumstances, and is therefore negligent. Ordinary care involves the concept of foreseeability, in that a reasonable person exercising ordinary care would have foreseen injury as a consequence of his act.

⁴ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Id., ¶30 (internal citations omitted).

¶16 Here, the undisputed facts are that when Cardinal booked Redlin's ticket with Northwest she informed Northwest that Redlin would need a wheelchair for long distances. She did not request a wheelchair for short distances or otherwise request Redlin receive "aisle assistance." For whatever reason, the G2 employees were not at the jetway before it was locked by the Northwest gate agent, and therefore, the G2 employees waited with Redlin's wheelchair at the top of the jetway, requiring Redlin to walk a short distance. Redlin admits that she did not wait for the other passengers to exit the plane, but instead immediately began to exit the plane after being permitted to do so by the flight attendants. Redlin further admits that neither she nor anyone else in her party inquired about the wheelchair when passing the flight attendants upon their exit.

¶17 Based upon these facts, it is clear to us, as a matter of law, that Northwest and G2 did not breach their duty of ordinary care to provide Redlin with a wheelchair. Northwest and G2 had been informed that Redlin required a wheelchair for long distances. As such, they could not foresee that Redlin would injure herself during her short walk up the jetway without the assistance of the wheelchair or that she would not ask for one or wait for one. Based upon the information Cardinal and Redlin provided to Northwest, it was reasonable for Northwest and G2 to provide a wheelchair for Redlin at the top of the jetway. If Redlin required the assistance of a wheelchair sooner, it was incumbent upon her

to inform Northwest and G2 that such accommodations were necessary.⁵ Our holding is consistent with that of other jurisdictions that have ruled upon the negligence claims of similarly situated plaintiffs. *See, e.g., Glass v. Northwest Airlines, Inc.*, 761 F. Supp. 2d 734, 745 (W.D. Tenn. 2011) (holding that an airline could not reasonably foresee that a passenger who had requested a wheelchair would wait less than ten minutes for the wheelchair before leaving and attempting to ascend an escalator unassisted).

¶18 Furthermore, we reject Redlin’s contention that, based upon the undisputed facts, it was a question for the jury to determine whether Northwest and G2 had a duty to provide Redlin with a wheelchair at the plane’s door, at the top of the jetway, or out in the parking ramp. It has been firmly established that “whether a duty exists and the scope of such a duty are questions of law for the courts to decide.”⁶ *Hoida*, 291 Wis. 2d 283, ¶23 n.12. We can and do decide as a matter of law that the duty of ordinary care does not require an airline to provide short-distance wheelchair services for a passenger who has only requested long-distance wheelchair services.

⁵ Redlin spends a great deal of time arguing that the flight attendants on the plane should have understood Redlin’s wheelchair needs, pointing to deposition testimony from the lead flight attendant that she only knew which passengers requested wheelchairs and did not know if the wheelchairs were for short or long distances. According to Redlin, the flight attendant also testified that she was not trained to ask passengers about their wheelchair needs. We fail to see how that information is relevant when, even if the flight attendants here had been so trained, Redlin, when given an opportunity to tell Northwest about her needs, only told Northwest that she needed long-distance wheelchair assistance. As we set forth above, Northwest and G2 acted reasonably given the information provided to them by Redlin about her own abilities.

⁶ We also note that Redlin offers no legal citation for her proposition that whether a party has a duty and the scope of that duty are issues properly addressed by a jury.

¶19 Redlin had an opportunity to tell Northwest and G2 at the time Cardinal reserved her ticket what type of accommodations she needed. She told them that she needed long-distance wheelchair services. If Redlin’s needs had changed since booking, she needed to inform Northwest and G2 of her new needs. It was reasonable for Northwest and G2 to rely on the information given to them by Redlin. Because we conclude, as a matter of law, that Redlin has failed to establish that Northwest and G2 “exercising ordinary care would have foreseen [Redlin’s] injury as a consequence of [their] act[ions],” based upon the information provided to them by Cardinal and Redlin, we affirm the circuit court. *See id.*, ¶30.

By the Court.—Orders affirmed.

Not recommended for publication in the official reports.

