Circuit Court for Baltimore City
Case No. 24C15000013

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 220

September Term, 2016

BALTIMORE CITY BOARD OF SCHOOL COMMISSIONERS, et al.

v.

NONA BOYNTON

Eyler, Deborah S.,
Reed,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: August 28, 2018

A jury in the Circuit Court for Baltimore City found Gloria Holt ("Ms. Holt") and the Baltimore City Board of School Commissioners ("BCBSC") (collectively "Appellants") liable to Nona Boynton ("Appellee") for injuries she sustained after falling over an aisle runner at a retirement party in a Baltimore City high school. Appellants challenge the denial of several motions and present four questions for our review, which we have consolidated and rephrased into three for clarity:

I. Did the trial court err in denying Appellants' motion for summary judgment?

II. Did the trial court err in denying Appellants' motion for judgment and judgment notwithstanding the verdict?

III. Did the trial court err in denying Appellants' motions to exclude evidence?

Finding no error, we affirm the judgment of the Circuit Court for Baltimore City.

FACTUAL AND PROCEDURAL BACKGROUND

The Baltimore City Board of School Commissioners ("BCBSC") hosted a retirement party on June 6, 2014, where Appellee was one of several retirees being honored in the cafeteria of George W.F. McMechen High School. Gloria Holt ("Ms. Holt"), a secretary at the school, was invited to volunteer at the party. She purchased a felt fabric aisle runner from Party City to be used at the retirement party to give the "red carpet" treatment to the retirees as their names were called. Along with being a secretary, Ms. Holt is also a reverend who has conducted many weddings where similar aisle runners had been used. With the help of another BCBSC employee, Brenda Parrish, Ms. Holt placed the

aisle runner on the cafeteria floor. Ms. Holt then lined up each of the retirees, including Appellee, outside of the cafeteria to wait for their names to be called.

Video footage of the party shows the honorees walking or dancing down the aisle as their names were called. At some point, the runner began to bunch up. As a result, volunteers straightened out the runner after the third, fourth, and fifth retirees were called. Appellee was the seventh retiree to walk down the aisle runner. When she got close to the end of the runner, Appellee stopped to take a slight bow, stood back upright, and attempted to continue walking. Unsuccessful in her attempt, Appellee fell to the ground and suffered significant injuries to her hip. Appellee left the party and went to the emergency room where she was admitted. She had surgery on June 9, 2014, and stayed in the hospital for about two weeks.

On January 5, 2015, Appellee filed a complaint alleging various counts of negligence against BCBSC and various employees.[1] On June 30, 2015, BCBSC filed a motion for summary judgment. Appellee then filed a response to the motion for summary judgment and a motion to amend the complaint, alleging BCBSC's agent, Ms. Holt, was negligent in placing the aisle runner on the floor. Trial commenced on February 24, 2016, and after three days of testimony the jury found in favor of Appellee. Appellants' subsequent motion for judgment notwithstanding the verdict and motion for new trial were denied on July 12, 2016. This appeal followed.

[1] The complaint included five counts: Count I – Negligence, Count II – Negligence Respondeat Superior, Count III – Respondeat Superior – Negligent Hiring, Supervision or Training, Count IV – Negligence as to Unknown Defendants No. 1, and Count V – Negligence as to Unknown Defendants No. 2.

STANDARD OF REVIEW

We review the denials of Motions for Summary Judgment and Motions in *Limine*, under an abuse of discretion standard. *See Dashiell v. Meeks*, 396 Md. 149, 165 (2006) (citing *Foy v. Prudential Ins. Co. of Am.*, 316 Md. 418, 424 (1989)) ("on appeal, the standard of review for a denial of a motion for summary judgment is whether the trial judge abused his discretion and in the absence of such a showing, the decision of the trial judge will not be disturbed."). Similarly, "[t]he admissibility of evidence, including rulings on its relevance, is left to the sound discretion of the trial court, and absent a showing of abuse of that discretion, the rulings will not be disturbed on appeal." *Brown v. Daniel Realty Co.*, 409 Md. 565, 601 (2009) (internal citations omitted).

Appellants also challenge the denial of their Motions for Judgment and Judgment Notwithstanding the Verdict. The standard of review applicable when these motions have been denied is the same. "If there is even a slight amount of evidence that would support a finding by the trier of fact in favor of the plaintiff, the motion for judgment should be denied." *Washington Metropolitan Area Transit Authority v. Djan*, 187 Md. App. 487, 491 (2009) (citing *Lowery v. Smithsburg Emergency Medical Service*, 173 Md. App. 662, 683 (2007)).

DISCUSSION

1. Motion for Summary Judgment

A. Parties' Contentions

Appellants argue that their Motion for Summary Judgment should have been granted for several reasons. First, Appellants contend that Appellee failed to timely amend her complaint by the May 16, 2015 deadline and failed to show "good cause" for such untimeliness. Second, Appellants maintain that Appellee failed to present a genuine dispute of material fact by proffering facts which would be admissible into evidence. *See Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737 (1993). Next, according to Appellants, the circuit court erred by relying on inadmissible evidence—"an unidentified piece of red material along with a copy of packaging labeled 'red carpet runner'" and a warning label—to deny the motion. Lastly, Appellants assert that Appellee failed to produce "any evidence that appellant Holt had knowledge of a hazardous or dangerous condition prior to Appellee's fall."

Initially, Appellee counters that the trial court did not abuse its discretion in permitting the amended complaint because "[a]mendments shall be freely allowed when justice so permits[,]" and there was evidence of "good cause" for her untimeliness. Md. Rule 2-341(c). Generally, Appellee argues that denial of the motion for summary judgment was proper because there were genuine issues of material fact. Directly to Appellants' argument, Appellee notes that the trial court arrived at its conclusion by considering Ms. Holt's deposition and the video recording "independently of any consideration of the

warning on the felt runner packaging." Therefore, Appellee asserts, material facts as to causation remained at issue.

B. Analysis

We find no reason to disturb the findings of the circuit court. Summary judgment is proper if the motion and response show that there is no genuine dispute as to any material fact. *See* Md. Rule 2-501(e). The Court of Appeals has also stated:

> Ordinarily no party is entitled to a summary judgment as a matter law. It is within the discretion of the judge hearing the motion, if he finds no uncontroverted material facts, to grant summary judgment or to require a trial on the merits. It is not reversible error for him to deny the motion and require a trial.

Dashiell, 396 Md. at 164-65 (citing *Foy*, 316 Md. at 423-24). The trial court correctly found genuine issues of material fact in this case. In its decision to deny the motion, the court indicated that:

> Viewing the evidence in the light most favorable to the non-moving party, a reasonable jury could conclude that Ms. Holt, an agent of BCBSC, created an unusually dangerous condition. Specifically, in her deposition, Ms. Holt, describes purchasing the "red carpet" from Party City and rolling it out on the floor. Since Ms. Holt created this condition, Plaintiff is not required to show that the property owner had actual or constructive knowledge of this hazard . . . Plaintiff presented a video which shows that as the retirees walked down the aisle, the "red carpet" became so bunched up that several party guests had to straighten it out. Thus, there are genuine issues of material fact for a jury to decide concerning whether Defendant created a dangerous condition at the retirement party by utilizing or failing to sufficiently secure the "red carpet."

We agree with the trial court. A reasonable jury could conclude that Appellants created an unusually dangerous condition, and that Appellee's injury was a direct result of Appellants'

actions. Therefore, we hold that the trial court did not abuse its discretion in denying the motion for summary judgment because there were genuine issues of material fact.

2. Motion for Judgment and Judgment Notwithstanding the Verdict

A. Parties' Contentions

Appellants use a similar argument to contend that their motion for judgment or motion for judgment notwithstanding the verdict should have been granted. Appellants argue that Appellee failed to produce any evidence that Ms. Holt was negligent at the retirement party, including any evidence that she "was ever notified, informed, and/or made aware of any 'trip hazards' existing on the aisle runner prior to [a]ppellee's fall." Without such knowledge, Appellants insist, Ms. Holt did not have the opportunity to remove, fix, or warn Appellee about such condition.

Appellee contends that the evidence produced at trial was more than sufficient to support a finding by the trier of fact in her favor and the motions for judgment and judgment notwithstanding the verdict were properly denied. Appellee also notes that "Maryland law imposes no burden on the plaintiff to show that the defendant had knowledge of the condition" when, as we have in this case, the defendant creates the hazardous condition. *See, e.g.*, *Maans v. Giant of Maryland, LLC*, 161 Md. App. 620, 627-28 (2005).

B. Analysis

As we have held, *supra*, we hold that the trial court's denial of the Motion for Judgment and Judgment Notwithstanding the Verdict were proper. Because, "if there is any competent evidence, however slight, leading to support the plaintiff's right to recover,

the case should be submitted to the jury and the motion for directed verdict or the motion for judgment n.o.v. denied." *Kleban v. Eghrari-Sabet*, 174 Md. App. 60, 85-86 (2007). There was more than "a slight amount of evidence" to support a verdict in Appellee's favor here. We explain.

The evidence produced at trial included a video recording showing the aisle runner bunch up several times as the retirees walked on it. The runner was then straightened out on at least three occasions. We can also see that the runner is bunched up and torn after Appellee's fall. Additionally, Appellee testified at trial that she walked down the runner, bowed, righted herself, started to walk again but then "got caught up on something." It is undisputed that Ms. Holt, BCBSC's agent, purchased the aisle runner and placed it on the floor. With the evidence presented, a jury could have reasonably concluded, and in fact did conclude, that Appellee tripped, fell, and was subsequently injured because of the aisle runner provided by and placed on the floor by Appellants. Therefore, the motions were properly denied and we thus find no abuse of discretion.

3. Motion to Exclude Evidence

A. Parties' Contentions

Appellants also argue that evidence of subsequent remedial measures taken after Appellee's fall should have been excluded because the plain language of Maryland Rule 5-407 states that subsequent remedial measures are inadmissible to prove negligence or culpability. At trial, the jury was shown photographs and video footage demonstrating party attendees standing on the sides of the aisle runner as the remainder of the retirees

walked down the aisle. Appellants assert that the evidence was unfairly prejudicial and should have been excluded.

Appellee asserts that the measures taken after her fall were taken by party attendees who were not agents of BCBSC. Thus, where the remedial measures were not taken by a defendant, but rather were initiated by a third party, the trial court may use its discretion to deem the evidence admissible. Alternatively, Appellee argues that even if the party attendees had been agents of appellant BCBSC, the evidence would still be admissible for purposes of impeachment under Md. Rule 5-407(b).

Lastly, Appellants argue that the circuit court should have excluded medical records and bills not produced before the discovery deadline. Appellants argue that they were substantially prejudiced by the late disclosure and had no means to challenge medical bills relating to a second surgery. Furthermore, Appellants contend that the medical records and bills relating to the second surgery were not substantiated by their medical expert.

According to Appellee, the medical records were produced properly and timely under the Maryland Rules. Further, Appellee argues that the evidence in the record "unambiguously shows" that the medical expert witness reviewed the medical records and formed his expert opinion based on that review.

B. Analysis

Maryland Rule 5-407 governs the admission of subsequent remedial measures and provides:

> (a) In General. When, after an event, measures are taken which, if in effect at the time of the event, would have made the event less likely to occur, evidence of the subsequent

> measures is not admissible to prove negligence or culpable conduct in connection with the event.
>
> (b) Admissibility for Other Purposes. The Rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as (1) impeachment or (2) if controverted, ownership, control, or feasibility of precautionary measures.

Under this Rule, video footage of Ms. Holt directing others to stand on the left and right sides of the aisle runner may be admissible for impeachment purposes.

At trial, Ms. Holt testified that Appellee fell because she crossed one foot in front of the other "and when she tried to pull the foot back, she couldn't get her footing[,]" not because of the aisle runner. Ms. Holt also testified that she did not believe she needed to test the runner for safety after putting it down, and that she continued to believe that the runner never posed a danger to Appellee. Ms. Holt further testified that she directed other attendees to stand on the left and right edges of the aisle runner not because of Appellee's fall, but because another honoree who would be walking down the aisle "had just had brain surgery."

Notably, however, the video shows the aisle runner becoming bunched up and then straightened out several times before Appellee's fall. Also, party attendees continued to stand on the sides of the runner as the remaining two honorees were called, not just the particular honoree identified by Ms. Holt. Thus, the evidence of the subsequent remedial measures taken by party attendees after Appellee's fall was admissible not to prove causation, but to impeach Ms. Holt's testimony about the aisle runner not being dangerous as well as her proffered reason for taking the subsequent measures.

Appellants' final argument that medical records and bills pertaining to Appellee's second surgery should have been excluded is without merit. Appellants insist that the information submitted two days prior to Dr. Robert Macht's deposition was produced untimely on the "eve of trial." However, the record shows that Appellee complied with Maryland Rules and supplemented her discovery response promptly after receiving the information. *See* Md. Rule 2-401(e). The information was produced by the hospital on February 8, 2016, and sent to Appellants the same day, two days in advance of Dr. Macht's deposition on February 10, 2016, and more than two weeks before the trial. Appellants also argue that this information should have been excluded because Dr. Macht "never reviewed medical records relating to Appellee's second surgery." Dr. Macht's testimony offered in his deposition defeats this argument. He testified that he did, in fact, review the medical records about the second surgery and used the information to formulate his opinion.

These facts were before the trial court when it denied Appellants' motions to exclude evidence, therefore we hold the court did not abuse its discretion.

JUDGMENT FOR THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.