UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2067

September Term, 2014

UNIVERSITY SPECIALTY HOSPITAL, INC.

v.

STACEY RHEUBOTTOM

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Nazarian, J.

Filed: February 10, 2016

Stacey Rheubottom brought a negligence action in the Circuit Court for Baltimore City against University Specialty Hospital (the "Hospital"), seeking damages for injuries she received when she slipped and fell while exiting the hospital after a sleep study. After a trial in November 2014, the jury returned a verdict for Ms. Rheubottom and awarded damages for medical expenses and for pain and suffering. The Hospital moved for judgment notwithstanding the verdict ("JNOV"), contending that the jury's verdict was not supported by the evidence presented at trial. The circuit court denied the Hospital's motion, the Hospital appeals, and we reverse.

I. BACKGROUND

At 5:00 A.M. on March 11, 2011, Ms. Rheubottom was leaving the Hospital after participating in a sleep study.[1] The study took place on one of the Hospital's upper floors, so Ms. Rheubottom took the elevator down to the first floor to exit the building. She entered the elevator and descended without incident, and she testified that when the elevator doors opened, she observed a man wearing a gray-colored uniform riding a machine used to mop floors. The man, whom she inferred was an environmental services employee of the Hospital, travelled from Ms. Rheubottom's left to right and began to park the machine in a corner. Ms. Rheubottom stepped out of the elevator, turned left, walked down the hallway, and made a right. After walking a few feet, and with her attention focused ahead toward the Hospital's exit, Ms. Rheubottom's left leg slipped backwards

[1] University Specialty Hospital closed permanently in July 2012.

and she fell forward, striking her left knee on the floor. She also testified at trial that her right knee may have struck the floor. She testified that the floor was damp to the touch, but with no puddles or visible spots of water. From this, she surmised that the environmental services employee she had just seen must have recently finished mopping the area.

Ms. Rheubottom went on to testify that when she stood up, a female employee yelled that someone had fallen. A security guard responded to the scene and spoke with the female employee, but neither of them addressed Ms. Rheubottom. She continued toward the hospital exit and sat down to wait for her fiancé, James McDonald Jr., to pick her up. He eventually arrived, and as she left the building the security guard handed her a piece of paper with the female employee's name (Carol Johnson) and phone number written on it.

As Ms. Rheubottom walked from the hospital entrance to the car, Mr. McDonald noticed that she was limping. He asked her what happened and suggested that she go to the emergency room. He then drove her to Bon Secours Hospital, where the emergency personnel treated her left knee and gave her a cane. Thereafter, she underwent five months of physical therapy for injuries to her knees and back.

Ms. Rheubottom brought suit against the Hospital, alleging that it was liable for her injuries under a premises liability theory. At trial, she argued that the Hospital breached its duty of care to her, an invitee, by creating a dangerous condition that caused her injuries. After plaintiff's counsel presented her case-in-chief, the Hospital moved for summary judgment under Md. Rule 2-519, and the court denied the motion. In its case, the Hospital

presented evidence from Ms. Johnson, who testified that she did not recall seeing Ms. Rheubottom slip or fall during the time she worked there. In addition, the Hospital presented evidence that the area where Ms. Rheubottom fell was not routinely wet-mopped; that the machine she recalled seeing neither used water nor left any fluids on the tile floors where it was used; and that the machine was never used on the slate floor on which Ms. Rheubottom claims she slipped. The Hospital renewed its motion for judgment at the close of the evidence, and the circuit court elected to reserve its ruling and present the case to the jury. We will discuss additional testimony given at trial as necessary below.

The jury returned a verdict for Ms. Rheubottom, and awarded her about $7,000 in damages for medical expenses and $50,000 in non-economic damages. The Hospital then sought JNOV under Md. Rule 2-532(b), which the court denied. The Hospital filed a timely appeal.

II. DISCUSSION

The Hospital challenges the circuit court's decision to deny its motion for JNOV. It argues that Ms. Rheubottom failed to present sufficient evidence at trial upon which the jury could conclude that it was negligent,[2] and we agree.

When reviewing a motion for JNOV, "we are concerned with the dichotomy between the role of the judge, to apply the law, and the rule of the jury, to decide the facts."

[2] In the Hospital's words, the issue before this Court is "[w]hether the Circuit Court erred in denying Appellant's motion for judgment notwithstanding the verdict where the verdict of the jury was not supported by the weight of the evidence but was predicated on Appellee's presentation of a mere hypothesis?"

Blue Ink, Ltd. v. Two Farms, Inc., 218 Md. App. 77, 91 (2014). A motion for JNOV "tests the legal sufficiency of the evidence," and "gives the circuit court a last chance to order the judgment that the law requires." *Id.* (internal quotations and citations omitted). The proper inquiry is whether, viewing the evidence in the light most favorable to the non-moving party, the jury could find the elements of negligence by a preponderance of the evidence. *Wash. Metro. Area Transit Auth. v. Djan*, 187 Md. App. 487, 491 (2009). "[I]f the record presents *any* evidence, however slight, from which the jury could have reached its verdict, then [the Hospital] is not entitled to a JNOV." *Blue Ink*, 218 Md. at 92 (emphasis added).

Ms. Rheubottom is right that the Hospital owed her, as a business invitee,[3] a duty to "use reasonable and ordinary care to keep [its] premises safe . . . and to protect [her] from injury caused by an unreasonable risk which the invitee, by exercising ordinary care for [her] own safety will not discover." *Rowley v. Mayor and City Counsel of Baltimore*, 305 Md. 456, 465 (1986) (citations omitted); *see Tennant*, 115 Md. App. at 388. At the same time, the Hospital was not an insurer of Ms. Rheubottom's safety: "no presumption of negligence on the part of the proprietor arises merely from a showing that an injury was sustained" on the premises. *Rawls v. Hochschild, Kohn & Co.*, 207 Md. 113, 118 (1955). She bore the burden of producing evidence from which the jury could infer that the Hospital created the dangerous condition or had actual or constructive knowledge of its existence. *Id.* at 119; *see also Rehn v. Westfield America*, 153 Md. App. 586, 593 (2003) (quoting

[3] A "business invitee" is defined as "one invited or permitted to enter another's property for purposes related to the landowner's business." *Tennant v. Shoppers Food Warehouse Md. Corp.*, 115 Md. App. 381, 388 (quoting *Casper v. Chas. F. Smith & Son, Inc.*, 71 Md. App. 445, 457 (1987)).

Moulden v. Greenbelt Consumer Serv.'s, Inc., 239 Md. 229, 232 (1965)). We need not, and do not, question the fact or scope of the Hospital's duty to Ms. Rheubottom, and we assume it to be true that she suffered injury to her knees and back as a result of a fall on the Hospital property. The question before us is whether she produced evidence at trial from which the jury could draw reasonable inferences connecting the dangerous condition to the Hospital's actions.

Unfortunately, she didn't. Ms. Rheubottom's premises liability theory depended on the presence of a slippery condition that the Hospital at least plausibly created. She testified that she did not see any water or any other substance on the floor, either before or after she fell—indeed, she was unable to articulate what exactly she slipped on. She contended that dampness resulted from the Hospital's treatment of the floor, and reached this surmise because, she said, the floor where she fell was damp to the touch; it looked to her like it had been mopped; she saw a hospital employee "parking" or "riding" a floor cleaning machine nearby; and that "floor techs" responsible for cleaning the floors were on duty at the time she was exiting the hospital.[4] We recognize our duty to consider the sufficiency of the evidence in the light most favorable to Ms. Rheubottom. *See, e.g., Grady v. Brown*,

[4] Ms. Rheubottom also argues that Earl Johnson's testimony, read into the record during her case-in-chief, shows that the Hospital created the wet floor by confirming that the hallway where she slipped was one that was customarily mopped. But that's not what Mr. Johnson said. His testimony merely established the difference between dry-mopping, a process to get dust and debris off floors, and wet-mopping, a process to remove stains. When asked whether the floor where Ms. Rheubottom fell was ever wet-mopped he responded "I don't know specifically whether they would use that in that particular area," and shortly thereafter clarified, "[w]hether they use [wet-mopping] on the slate which generally didn't hold stains, they would use it on that, I guess."

408 Md. 182, 196 (2009); *Orwick v. Modawer*, 150 Md. App. 528, 531-32 (2003). The problem is that even when we accept her allegations as true, the evidence cannot support a finding or inference that Ms. Rheubottom slipped on a floor that the Hospital dampened by mopping or some other treatment.

First, although Ms. Rheubottom saw an environmental services employee riding or pushing a floor-cleaning machine in front of the elevator, this sighting neither took place in the area where she slipped (much less the same hallway), nor on the same type of floor. *Second*, although she saw the hospital employee "parking" the floor-cleaning machine, she did not see him, or any other employee, mopping the area where she fell or any other area. *Third*, although Ms. Rhuebottom presented testimony that two "floor techs" were on duty on the night of March 11, 2011, that fact doesn't mean that they (or anyone) mopped the floor on which Ms. Rheubottom slipped that morning. Even if we credit for present purposes Ms. Rheubottom's opinion was that the floor looked to her like it had been mopped, the evidence she offered to support her opinion would not allow a reasonable juror to connect the condition of the floor to the Hospital's actions by a preponderance of the evidence. And that's before we get to the Hospital's undisputed evidence refuting the floor treatment theory. Mr. Johnson, director of ancillary services at University Hospital and responsible for building operations at the time of the accident, testified that the floor where Ms. Rheubottom slipped was not regularly wet-mopped, and that the machine Ms. Rheubottom described seeing by the elevator is used to *shine* floors, did not use water, and would not leave any liquid behind.

The evidentiary record at trial left nothing from which a reasonable jury could conclude that the Hospital dampened the floor on which Ms. Rheubottom slipped. And "where the plaintiff has not shown by any evidence that the injuries sustained by [her] were a direct consequence of negligence on the part of the defendant, and there is no rational ground upon which a verdict for the plaintiff could be based, the trial judge should direct a verdict in favor of the defendant." *Moulden*, 239 Md. at 232 (1965). On this record, then, the Hospital was entitled to judgment notwithstanding the verdict.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. COSTS TO BE PAID BY APPELLEE.