UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2609

September Term, 2014

LISA C. GEIBEL

v.

Z BEST LIMOUSINE SERVICE, INC.

Kehoe,
Berger,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: March 3, 2016

Lisa Geibel, appellant, filed suit against Z Best Limousine Service, Inc., appellee, in the Circuit Court for Baltimore City, alleging that she sustained personal injury as a result of appellee's negligence. The circuit court granted summary judgment in favor of appellee. On appeal, appellant presents one question for our review: "Did the trial court commit reversible error by granting the Appellee its Motion for Summary Judgment?" For the reasons that follow, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Our review of the record reveals the following undisputed facts, as developed in the pretrial discovery process. On July 19, 2011, appellant was a passenger in a limousine operated by appellee. She was participating in a scavenger hunt as part of a managers' retreat organized by her employer. The interior floor of the limousine was hardwood, over which there was a custom-made carpet with a rubber backing, which was "cut to [ ] fit [ ] exactly the floorboard of the limo." When appellant exited the limo, the carpet "slipped," and she fell to the ground outside the limousine, sustaining bodily injury.

Prior to appellant's accident, there had been no other incidents in which other passengers had slipped on the carpet, nor were there any reports of problems with the carpeting in the limousine not being secure.

After discovery was complete, appellee filed a motion for summary judgment, asserting that there was no evidence that the carpet runner in the limousine was in an unsafe condition or that [appellee] had any knowledge of any alleged unsafe condition." Appellant

opposed the motion, arguing that the driver of the limousine, Philip Shelton, had testified in his pretrial deposition that he knew that the carpet would move.

After hearing oral argument on appellee's motion for summary judgment, the circuit court announced its ruling from the bench:

> So the standard of care is that of [sic] extended to business invitees because [appellant] clearly was there for purposes of [appellee's] business and was an invited person.
>
> That gives [appellee] a duty of ordinary care to make sure that there are no hazards or not to be negligent in providing the premises. But in this case I find that it's undisputed that there - - [appellant] cannot show [appellee's] knowledge or constructive knowledge of the alleged hazard in this case, the existence of the runner or the mat in the rear of the limousine. There's no evidence that - - the only evidence is that Mr. Shelton knew that it was not secured and that it could, in certain circumstances, move[,] including being removed for cleaning and so on[,] but there's no indication there'd been [a] problem with it on this occasion or any prior occasion in order to indicate that it was a hazard that [appellee] had to have notice of.
>
> So on that basis I'll grant the motion for summary judgment.

STANDARD OF REVIEW

The entry of summary judgment is governed by Maryland Rule 2–501, which provides: "The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2–501(f). "The court is to consider the record in the light most favorable to the non-moving party and consider any reasonable inferences that may be drawn from the

undisputed facts against the moving party." *Mathews v. Cassidy Turley Md., Inc*., 435 Md. 584, 598 (2013). " Because a circuit court's decision turns on a question of law, not a dispute of fact, an appellate court is to review whether the circuit court was legally correct in awarding summary judgment without according any special deference to the circuit court's conclusions." *Id*. (citation omitted). "The mere existence of a scintilla of evidence in support of the plaintiff's claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff." *Hamilton v. Kirson*, 439 Md. 501, 523 (2014) (citations and internal quotations marks omitted). "[O]rdinarily an appellate court will review a grant of summary judgment only upon the grounds relied upon by the trial court." *Id*. (citations and internal quotation marks omitted).

DISCUSSION

The duty owed by a property owner to a person entering upon the property depends upon the person's status:

> In Maryland, the duty that an owner or occupier of [property] owes to persons entering onto the [property] varies according to the visitor's status as an invitee (i.e. a business invitee), a licensee by invitation (i.e., a social guest), a bare licensee, or a trespasser. The highest duty is owed to a business invitee, 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, 387-88 (1997) (citations and internal quotation marks omitted).

The parties concede that appellant was an "invitee" of appellee at the time of the alleged occurrence. The standard of care owed to a business invitee is "reasonable care":

> A business owes an invitee a duty to use reasonable and ordinary care to keep the premises safe and to protect the invitee from injury caused by an unreasonable risk, which the invitee, by exercising ordinary care for his own safety, will not discover. The burden is upon the customer to show that the proprietor had actual or constructive knowledge that the dangerous condition existed.

Univ. of Maryland E. Shore v. Rhaney, 159 Md. App. 44, 56-57 (2004), *aff'd on other grounds*, 388 Md. 585 (2005) (citations and internal quotation marks omitted). *"*Although the business invitor has a duty to protect against unreasonably dangerous conditions, the business invitor is not an insurer of the invitee's safety." *Tennant,* 115 Md. App. at 389 (citation omitted).

Appellant asserts that there was evidence that appellee had notice, through its employee, Mr. Shelton, that the carpet runner had moved in the past, and that it presented an unsafe situation. Appellee responds that there is no evidence that the carpet runner in the limousine was an unsafe condition, or that appellee had any actual or constructive notice of a dangerous condition. We agree with appellee.

Contrary to appellant's assertion, Mr. Shelton did not testify that the carpet had moved in the past, or that he was aware that the carpet posed an unreasonably dangerous situation. According to his deposition testimony, he had worked for appellee for four years prior to the appellant's accident, and, to his knowledge, no one had ever fallen inside the limousine, nor

had anyone ever reported a concern about an unsafe condition. Mr. Shelton did not testify that he had knowledge that the carpet had moved in the past, but only that it was *possible* for the carpet to move:

> [APPELLANT'S ATTORNEY]: And also when you walk on [the carpet] could it move?
>
> MR. SHELTON: Yes, it's possible. Yes.

Shelton also speculated that the carpet might move if someone is getting out of the vehicle in a rush:

> [APPELLANT'S ATTORNEY]: [H]ow much give does that mat have, that runner?
>
> MR. SHELTON: Unless you [sic] escaping or you [sic] getting out of the back in a haste, it's going to slip. It's like if you, like, making a dash for the door it will move because it's not adhered to that vehicle.[1]

(Emphasis added). But there was no testimony from Mr. Shelton or anyone else establishing knowledge on the part of appellee that the carpet had, in fact, ever moved unexpectedly, or that the carpet posed an unreasonable risk to passengers. Significantly, Mr. Shelton specifically stated that he was not aware of any unsafe condition:

> [APPELLEE'S ATTORNEY]: Now you said you specifically were aware that the carpet is - - can move?
>
> MR. SHELTON: Yes, it can.

[1] Appellant testified in her deposition that no one was hurrying to exit the limousine.

> [APPELLEE'S ATTORNEY]: Did you ever report it to anybody or say I think this is dangerous?
>
> MR. SHELTON: Not in an unsafe act [sic], no.
>
> [APPELLEE'S ATTORNEY]: **Did you think it was unsafe?**
>
> MR. SHELTON: **No. If I did I would have told 'em.**
>
> [APPELLEE'S ATTORNEY]: **Did anybody else tell you they thought it was unsafe?**
>
> MR. SHELTON: **No, they haven't**.

(Emphasis added).

At most, the evidence was only that it was *possible* for the carpet to move, but there was no evidence of an unreasonable risk, such that a jury could have reasonably inferred that appellee had actual or constructive notice of a dangerous condition. As we observed in *Tennant*:

> [T]here is no liability for harm resulting from conditions from which no unreasonable risk was to be anticipated, or from those which the [property owner] neither knew about nor could have discovered with reasonable care. The mere existence of a defect or danger is generally insufficient to establish liability, unless it is shown to be of such a character or of such duration that the jury may reasonably conclude that due care would have discovered it.

Tennant, 115 Md. App. at 389–90 (citation and internal quotation marks omitted). "A mere scintilla of evidence of negligence, amounting to no more than surmise, possibility, or conjecture, is not 'legally sufficient' evidence of negligence justifying submission of the case

to the jury." *Herbert v. Klisenbauer*, 12 Md. App. 135, 138 (1971) (citation and internal quotation marks omitted).

Viewing the record in the light most favorable to appellant, we conclude that the facts were insufficient for a jury to have reasonably inferred that appellee had actual or constructive knowledge of a dangerous condition. Accordingly, the circuit court was legally correct in granting summary judgment.

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