COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP45

Cir. Ct. No. 2011CV13978

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

DAVID G. CAMPBELL,

PLAINTIFF-APPELLANT,

V.

REGENCY JANITORIAL SERVICE, INC., AMCO INSURANCE COMPANY, BLUE CROSS BLUE SHIELD OF WISCONSIN AND UNITED STATES DEPARTMENT OF LABOR,

DEFENDANTS-RESPONDENTS.

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

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. David Campbell appeals a summary judgment order dismissing his personal injury action against Regency Janitorial Service and

its insurer, AMCO Insurance Company (collectively, Regency Janitorial).[1] Campbell contends the court erroneously resolved the issue of causation, which he asserts presents a question of fact for the jury. We reject Campbell's argument and affirm.

BACKGROUND

¶2 Campbell, an FBI employee, was injured while working the 11:00 p.m. to 7:00 a.m. shift at his employer's building. Around 3:00 a.m., Campbell went to another floor within the FBI building to drop off materials at an agent's desk. After delivering the materials, he proceeded to the men's room on that floor. As he walked the twenty-five to thirty feet to the bathroom, Campbell immediately realized the carpet had been cleaned and was damp because it squished under his feet and smelled of cleaning solution. There were no signs or cones warning of the wet carpet.

¶3 Campbell entered the men's room and took four or five steps across the tile floor to the urinal, followed by a couple steps to the sink to wash his hands. Campbell dried his hands with a paper towel and turned toward the opposite side of the men's room to dispose of the towel. As he turned, both his feet slipped out from under him. Campbell testified he believed his feet slipped due to the wetness from the carpet. The first part of his body that struck the floor was the back of his head.

[1] While the caption also identifies Blue Cross Blue Shield of Wisconsin and the United States Department of Labor as defendants-respondents, no briefs have been filed on their behalves. The circuit court's order for summary judgment applies only to Regency Janitorial and AMCO insurance, and the appellate briefs do not address Blue Cross or the Department of Labor.

¶4 Campbell testified that, prior to the fall, he did not observe any water on the bathroom floor. There was no moisture in the vicinity of the urinals, which did not overflow or spray. Further, he testified no soap or water had dripped onto the floor and there was no debris or other foreign material on the floor. He did not step on anything, and no part of his body or clothing was wet.

¶5 Campbell sued Regency Janitorial for his injuries, alleging negligence and violation of the safe place statute, WIS. STAT. § 101.11.[2] Regency Janitorial moved for summary judgment, which the circuit court granted. After setting forth the applicable legal standards, the court explained:

> While the plaintiff can possibly establish the first two elements of the negligence claim, a duty and breach …, I don't believe the plaintiff can establish the third element, that being a legal causal connection between the negligent conduct and his injury.
>
> Assuming that, first of all, the plaintiff's claim is that a lack of a warning placard or a warning cone is what caused the plaintiff's injury, it's clear from the plaintiff's deposition testimony that he was well aware that the carpet was wet in the absence of such warning signs ….
>
> ….
>
> So having a warning sign would have done nothing to prevent this injury because the plaintiff testified that he was well aware that the carpeting was wet.
>
> ….
>
> There's nothing that a warning sign would have benefitted the plaintiff in any way, because he already knew that the carpeting was wet from his very own testimony.
>
> ….

[2] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

> The plaintiff simply slipped and fell and walked into the bathroom knowing that he had walked across a wet carpet.

Campbell now appeals.

DISCUSSION

¶6 Campbell argues the circuit court erroneously granted summary judgment dismissing his claims. Summary judgment is appropriate where there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Summary judgment decisions are subject to de novo review. ***Metropolitan Ventures, LLC v. GEA Assocs.***, 2006 WI 71, ¶20, 291 Wis. 2d 393, 717 N.W.2d 58. In deciding if genuine issues of material fact exist we draw all reasonable inferences in favor of the nonmoving party. ***Id.***

¶7 To prevail on a negligence cause of action, a plaintiff must prove four basic elements: "(1) a duty of care on the part of the defendant; (2) a breach of the duty; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury." ***Ollerman v. O'Rourke Co.***, 94 Wis. 2d 17, 46, 288 N.W.2d 95 (1980). "Causation is a fact; the existence of causation frequently is an inference to be drawn from the circumstances by the trier of fact." ***Merco Distrib. Corp. v. Commercial Police Alarm Co.***, 84 Wis. 2d 455, 459, 267 N.W.2d 652 (1978). "The test of cause … is whether the defendant's negligence was a substantial factor in contributing to the result." ***Id.*** at 458. Although typically a question for the jury, a court may determine as a matter of law that the plaintiff failed to demonstrate a cause-in-fact connection between the conduct and the injury. *See* ***id.*** at 460-61; ***Morgan v. Pennsylvania Gen. Ins. Co.***, 87 Wis. 2d 723, 735-36, 275 N.W.2d 660 (1979); ***Cefalu v.***

Continental W. Ins. Co., 2005 WI App 187, ¶19, 285 Wis. 2d 766, 703 N.W.2d 743.

¶8 To prevail under the safe place statute, a plaintiff must prove: (1) that there was an unsafe condition associated with the building; (2) the unsafe condition caused the plaintiff's injury; and (3) the building's owner had actual or constructive notice of the unsafe condition before the injury occurred. ***Gulbrandsen v. H & D, Inc.***, 2009 WI App 138, ¶7, 321 Wis. 2d 410, 773 N.W.2d 506. The safe place statute requires employers and owners of a public building to construct, repair or maintain the premises so as to render them safe. ***Id.***, ¶6 (citing WIS. STAT. § 101.11). This duty addresses unsafe conditions, not negligent acts. ***Id.***

¶9 The circuit court dismissed both of Campbell's claims because*, inter alia*, it determined as a matter of law that Campbell failed to demonstrate causation. Campbell argues:

> [Campbell] had no forewarning of the wet area as there were no signs, fans, cones, yellow sandwich boards, or blowers marking the area.
>
> … The hazard in the present case was the unmarked wet area, which in turn caused [Campbell] to have damp or slippery shoes. More importantly, [Campbell] was unaware of the hazard due to the lack of adequate notice until his shoes were already damp. Once [Campbell's] shoes were wet, he did not then have the opportunity to avoid the hazard, even if he "appreciated" the fact that his shoes may have been wet as the circuit court suggested. Had adequate warnings been put in place, Campbell could have at least had the option of electing to traverse or not traverse the wet area.

¶10 We agree wholeheartedly with the circuit court's analysis; further, Campbell's causation argument is conclusory and illogical. First, Campbell never

testified he would not have traversed the carpet had there been signs warning that it was damp. Speculation or conjecture is insufficient to support a finding of causation. ***Merco***, 84 Wis. 2d at 460. Regardless, the lack of warning signs did not cause Campbell to fall. Rather, under the view of the facts most favorable to Campbell, he fell because his shoes were still wet when he was in the bathroom. Campbell testified he observed the carpet was damp immediately after he stepped on it. Thus, he knew the carpet was damp before proceeding to the bathroom and before entering it. A sign warning that the carpet was wet would have provided Campbell with no additional knowledge relevant to avoiding his injury. *See* ***Miller v. Paine Lumber Co.***, 202 Wis. 77, 81, 227 N.W. 933 (1929) (The intent of a "warning is to apprise the employee of the dangers incident to the performance of the service, so that he may exercise care and caution for his own safety, which he might not exercise were he insensible to the danger.")[3]

¶11 There is no material question of fact in dispute with regard to causation. The only reasonable conclusion is that the lack of signs warning of the damp carpet was not a substantial factor causing Campbell's injury. Accordingly, the circuit court properly granted summary judgment dismissing his claims against Regency Janitorial.

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[3] For the first time in his reply brief, Campbell discusses evidence—some set forth and some speculated "upon information and belief"—concerning other witnesses. As a general rule, we do not address issues raised for the first time in a reply brief. *See* ***Swartwout v. Bilsie***, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981). Further, because the evidence is not supported by citation to the record, we may disregard it. ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463. In any event, Campbell fails to explain how the evidence is relevant to causation. We need not address undeveloped arguments. ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.