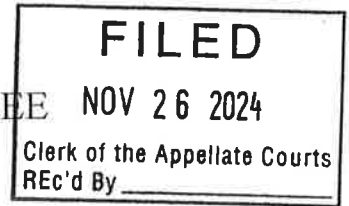


IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 16, 2024 Session



**ANN MARIE ROBERTS v. CHATTANOOGA AREA REGIONAL
TRANSPORTATION AUTHORITY**

Appeal from the Circuit Court for Hamilton County
No. 21C0669 L. Marie Williams, Judge

No. E2023-01744-COA-R3-CV

In this negligence action, the trial court granted summary judgment in favor of the defendant, finding that the plaintiff, who is legally blind, had failed to present evidence that her fall from a street curb and resultant injury were caused by the defendant's alleged negligence in failing to make a courtesy stop at the location the plaintiff had requested for exiting a city bus. The plaintiff has appealed. Discerning no reversible error, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded**

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and JOHN W. MCCLARTY, J., joined.

R. Ethan Hargraves, Chattanooga, Tennessee, for the appellant, Ann Marie Roberts.

Philip Aaron Wells, Chattanooga, Tennessee, for the appellee, Chattanooga Area Regional Transportation Authority.

OPINION

I. Factual and Procedural Background

The plaintiff, Ann Marie Roberts, is legally blind and was injured in a fall from a curb shortly after she exited a bus operated by the defendant, the Chattanooga Area Regional Transportation Authority ("CARTA"), on July 27, 2020. Ms. Roberts boarded the CARTA bus with her service dog, Rosy, on that date. She requested a "courtesy stop" (an unscheduled stop) at the intersection of 6th Street and Market Street in Chattanooga so that she could walk in what she described as a "straight" route to her destination, the YMCA. The bus driver, Patrick Smith, drove past the courtesy stop to

the designated bus stop between 6th Street and 7th Street, and Ms. Roberts exited there. For the purposes of summary judgment, it is undisputed that after Rosy stopped Ms. Roberts from walking into a wall, Ms. Roberts asked a passerby for directions to 6th and Market Streets. It is also undisputed that Ms. Roberts had previously received training, provided by CARTA as a service to disabled individuals traveling via city bus, at both the requested courtesy stop and the designated stop where she exited. At the intersection of 6th and Market, Ms. Roberts failed to locate a curb and fell, fracturing her ankle.

Ms. Roberts filed a complaint in the Hamilton County Circuit Court (“trial court”) on July 16, 2021, naming CARTA and the City of Chattanooga (“the City”) as defendants under the Governmental Tort Liability Act (“GTLA”). *See* Tenn. Code Ann. § 29-20-101, *et seq.* In her complaint, Ms. Roberts alleged that before she exited the bus on the day of the accident, Mr. Smith had told her that the bus was stopped at the courtesy stop location she had previously requested. She further alleged that when she “turned to walk down the sidewalk toward her destination, she was not in the middle of a sidewalk as expected,” and she “stepped off a curb into the street and hit a depression in the street,” causing her to fall. Ms. Roberts asserted that CARTA had breached duties to “take reasonable steps to protect riders from safety hazards the busing system knows or has reason to know about,” “provide special assistance to customers with physical disabilities,” “keep the promises its drivers make to riders regarding dropoff locations within the bus’s route,” and provide accurate information to passengers. She maintained that “[a]s a direct and proximate result of the carelessness, recklessness and negligence of defendants,” she had suffered severe injuries and that the defendants’ negligence caused 100% of her injuries. Ms. Roberts requested compensation in a total amount of \$300,000 for medical expenses, lost wages and future earning capacity, pain and suffering, and other non-economic damages.

On September 21, 2021, the City filed a motion to dismiss itself from this action, pursuant to Tennessee Rule of Civil Procedure 12.02(6), averring that CARTA was not connected as an entity to the City. The trial court entered an agreed order dismissing the City without prejudice on October 13, 2021. The City is not participating in this appeal.

On September 30, 2021, CARTA filed an answer to the complaint, admitting that it was an entity governed by the GTLA, that it permitted courtesy stops for disabled passengers, and that Ms. Roberts had exited the bus on the day of the accident at a location other than the intersection of 6th and Market Streets. CARTA also admitted that Ms. Roberts “discussed getting off at the intersection of 6th Street and Market Street while she was on the bus” but stated that it did not have sufficient information to admit or deny whether Mr. Smith heard Ms. Roberts’s request for a courtesy stop. CARTA did admit that Ms. Roberts had asked Mr. Smith whether “he had stopped at ‘the light’ or ‘the

intersection.” CARTA denied having sufficient information to admit or deny any other substantive allegations.

CARTA filed its motion for summary judgment on July 12, 2023, contending that Ms. Roberts would be unable to prove (1) that CARTA owed her a duty of care once she exited the bus, (2) that CARTA breached any duty of care, or (3) that any act or omission of CARTA was the proximate or legal cause of Ms. Roberts’s injury. CARTA also posited that under the GTLA, it retained immunity from any claim alleging reckless conduct. In addition to a statement of material facts, CARTA attached to its motion excerpts from depositions given by Ms. Roberts, Mr. Smith, and Daniel Collins, a CARTA representative who testified concerning policies related to disabled passengers. CARTA also attached video clips of Ms. Roberts as she boarded and exited the bus on the day of the accident.

On October 9, 2023, Ms. Roberts filed a response opposing CARTA’s motion for summary judgment. She asserted that genuine issues of material fact existed regarding whether CARTA breached its duty of care to a disabled passenger and that Ms. Roberts’s injury was a foreseeable result of CARTA’s breach of duty. In her response to CARTA’s statement of material facts, Ms. Roberts disputed CARTA’s statement that Mr. Smith had not heard her request for a courtesy stop and CARTA’s depiction of her questions regarding the location of the bus once it reached the designated stop where she had exited. Mr. Smith had testified in his deposition that when Ms. Roberts initially boarded the bus, he thought she was talking to a passenger and did not realize that she had asked for the courtesy stop. Ms. Roberts attached to her response a statement of “disputed” material facts and additional excerpts from the three deposition testimonies included with CARTA’s motion. Ms. Roberts also attached excerpts from deposition testimony given by Alana Shores, a CARTA employee who provided travel training for disabled individuals, and Crystal Poole, a supervisor/dispatcher with CARTA.

In a reply to Ms. Roberts’s response, CARTA again asserted that (1) CARTA’s duty to Ms. Roberts ended when she exited the bus, (2) CARTA had not breached any duty owed to Ms. Roberts, and (3) no act or omission of a CARTA employee had caused Ms. Roberts’s injury. For the purpose of summary judgment, CARTA did not dispute Ms. Roberts’s statement of facts concerning what she said when asking questions about the location of the bus on the day of the accident. CARTA did continue to dispute whether Mr. Smith had heard Ms. Roberts’s initial request for the courtesy stop, citing to Mr. Smith’s deposition testimony.

Following a hearing, the trial court entered an order on November 9, 2023, granting summary judgment in favor of CARTA upon finding that Ms. Roberts had not presented evidence that CARTA’s negligence had caused her fall or resultant injury. The

trial court found that Ms. Roberts had established that CARTA had “a heightened duty of care while [Ms. Roberts] was a bus passenger” and that Ms. Roberts had suffered the injury to her ankle when she fell.

As to any breach of CARTA’s duty to Ms. Roberts, the trial court found: “Whether or not CARTA’s conduct fell below the applicable standard of care such that a breach of duty exists is a question of fact which is a material dispute based on the record before the Court.” The court further found that “[t]here is an issue as to whether or not the duty of [CARTA] extends past the exit of [Ms. Roberts] from the bus.” However, the court determined that it was not necessary to reach the breach-of-duty issue because Ms. Roberts had failed to present evidence establishing the element of causation. The court further found that under the GTLA, immunity from suit is removed only for claims of ordinary negligence so that Ms. Roberts would not be able to succeed on a claim of recklessness or gross negligence. Ms. Roberts timely appealed.¹

II. Issue Presented

Ms. Roberts presents the following issue for this Court’s review, which we have restated slightly as follows:

Whether the trial court erred by granting summary judgment in favor of CARTA upon finding as a matter of law that Ms. Roberts had not established causation.

III. Standard of Review

The grant or denial of a motion for summary judgment is a matter of law; therefore, our standard of review is *de novo* with no presumption of correctness. See *Rye v. Women’s Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015); *Dick Broad. Co. of Tenn. v. Oak Ridge FM, Inc.*, 395 S.W.3d 653, 671 (Tenn. 2013) (citing *Kinsler v. Berkline, LLC*, 320 S.W.3d 796, 799 (Tenn. 2010)). As such, this Court must “make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied.” *Rye*, 477 S.W.3d at 250. As our Supreme Court has explained concerning the requirements for a movant to prevail on a motion for summary judgment pursuant to Tennessee Rule of Civil Procedure 56:

[W]hen the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by

¹ Upon Ms. Roberts’s filing of a statement of the evidence and CARTA’s objections, the trial court entered an “Order Settling Objections to Plaintiff’s Statement of Evidence,” which reads as a statement of the evidence. See Tenn. R. App. P. 24 (c), (e).

affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense. We reiterate that a moving party seeking summary judgment by attacking the nonmoving party's evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis. Rather, Tennessee Rule 56.03 requires the moving party to support its motion with "a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial." Tenn. R. Civ. P. 56.03. "Each fact is to be set forth in a separate, numbered paragraph and supported by a specific citation to the record." *Id.* When such a motion is made, any party opposing summary judgment must file a response to each fact set forth by the movant in the manner provided in Tennessee Rule 56.03. "[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56]," to survive summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading," but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, "set forth specific facts" *at the summary judgment stage* "showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. [v. Zenith Radio Corp.]*, 475 U.S. [574,] 586, 106 S. Ct. 1348 [(1986)]. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. If a summary judgment motion is filed before adequate time for discovery has been provided, the nonmoving party may seek a continuance to engage in additional discovery as provided in Tennessee Rule 56.07. However, after adequate time for discovery has been provided, summary judgment should be granted if the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04, 56.06. The focus is on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at a future trial.

Rye, 477 S.W.3d at 264-65. Pursuant to Tennessee Rule of Civil Procedure 56.04, the trial court must "state the legal grounds upon which the court denies or grants the motion" for summary judgment, and our Supreme Court has instructed that the trial court must state these grounds "before it invites or requests the prevailing party to draft a proposed order." *See Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303, 316 (Tenn. 2014).

“Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, ‘[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.’” *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 889 (Tenn. 2019) (quoting *Rye*, 477 S.W.3d at 265).

IV. Propriety of Grant of Summary Judgment

The trial court determined that Ms. Roberts’s evidence at the summary judgment stage was insufficient to establish an essential element of her negligence claim—causation. Ms. Roberts contends that the trial court erred in this finding and thus erred by granting summary judgment in favor of CARTA. Specifically, Ms. Roberts asserts that CARTA’s negligence “was in putting off a visibly blind passenger at a stop when she was clearly confused as to her location.” CARTA responds that the trial court properly granted summary judgment because Ms. Roberts presented no evidence that “the location where she exited was any less accessible or negotiable for a blind person than the place where she intended to exit.” Upon thorough review of the record and applicable authorities, we conclude that the trial court did not err in determining that Ms. Roberts failed to establish causation and therefore could not prevail on her negligence claim.

1. Negligence under the GTLA

At the outset, we note that governmental entities, such as CARTA, possess sovereign immunity from lawsuits except as they consent to be sued. *See Lawson v. Hawkins Cnty.*, 661 S.W.3d 54, 59 (Tenn. 2023). The GTLA, codified at Tennessee Code Annotated § 29-20-101, *et seq.*, governs claims against governmental entities. *See Lawson*, 661 S.W.3d at 59-60. CARTA acknowledges that it is a governmental entity subject to the provisions of the GTLA. As our Supreme Court has explained:

In 1973, the Legislature enacted the GTLA, which reaffirmed generally the grant of sovereign immunity provided at common law and in the Tennessee Constitution by stating that “all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary.” Tenn. Code Ann. § 29-20-201(a). However, in addition to reaffirming the general grant of immunity, the GTLA also enumerates certain statutory exceptions where governmental immunity is specifically removed. *Id.* § 29-20-202 [through-205.]

Young v. City of LaFollette, 479 S.W.3d 785, 790 (Tenn. 2015) (additional internal citations omitted).

In her complaint, Ms. Roberts alleged that through Mr. Smith's actions, CARTA was liable for her injury. She relied on Tennessee Code Annotated § 29-20-310(a) (West March 21, 2023, to current), which provides:

The court, before holding a governmental entity liable for damages, must first determine that the employee's or employees' act or acts were negligent and the proximate cause of plaintiff's injury, that the employee or employees acted within the scope of their employment and that none of the exceptions listed in § 29-20-205 are applicable to the facts before the court.

See Lawson, 661 S.W.3d at 60 (“In particular, the Act lifted immunity for ‘injur[ies] proximately caused by a negligent act or omission of any employee within the scope of his employment.’”). It is undisputed that none of the exceptions provided in Tennessee Code Annotated § 29-20-205 (West August 17, 2020, to November 11, 2021) apply to this action and that Mr. Smith was acting within the scope of his employment when he interacted with Ms. Roberts and oversaw her exit from the bus. Furthermore, on appeal, Ms. Roberts does not challenge the trial court's determination that under §§ 29-20-310(a) and 29-20-205, CARTA could not be held liable for any “recklessness” committed by an employee, as Ms. Roberts had initially alleged in her complaint. *See Lawson*, 661 S.W.3d at 64 (“Common-law precedent and statutory context make clear that the term ‘negligent’ in section -205 means ordinary negligence, not gross negligence or recklessness.”).²

Regarding negligence, this Court has previously explained:

To bring a successful negligence claim, a plaintiff must present evidence to establish each of the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct by the defendant falling below the applicable standard of care that amounts to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate, or legal, causation.

² In her appellate brief, Ms. Roberts refers to what a jury might find if this action were to go to trial. Ms. Roberts demanded a jury trial in her complaint and referred to a potential jury trial in her response opposing CARTA's motion for summary judgment. However, as CARTA notes in its appellate brief, with certain exceptions not applicable here, the GTLA provides that “circuit courts shall have exclusive original jurisdiction over any action brought under this chapter and shall hear and decide such suits without the intervention of a jury[.]” *See* Tenn. Code Ann. § 29-20-307 (West July 9, 2012, to current) (emphasis added).

Peters-Asbury v. Knoxville Area Transit, Inc., 544 S.W.3d 354, 359 (Tenn. Ct. App. 2016) (citing *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 90 (Tenn. 2000)); see *Haynes v. Hamilton Cnty.*, 883 S.W.2d 606, 611 (Tenn. 1994) (“In Tennessee, no claim for negligence can succeed in the absence of any one of [these] elements.”).

2. Duty, Breach, and Injury

In this case, the trial court found that Ms. Roberts had established the above-listed first and third elements of a negligence claim because CARTA, as a common carrier, owed Ms. Roberts a heightened duty of care and because Ms. Roberts undeniably suffered an injury. We agree that CARTA owed Ms. Roberts a heightened duty of care. See *Gibson v. Metro Cmty. Care Home, Inc.*, No. W2008-02417-COA-R3-CV, 2009 WL 4801507, at *3 (Tenn. Ct. App. Dec. 15, 2009) (explaining that “common carriers owe their passengers a heightened duty of care” and that “[w]hen a passenger’s age or infirmity is apparent from their appearance, common carriers will be held to a higher standard of care”). Deposition testimony demonstrated that Mr. Smith noticed Ms. Roberts’s service dog with her and would have been aware that Ms. Roberts had some type of disability even before she stated, “I’m sorry, I don’t see,” as Mr. Smith pointed out the signal light near the designated stop. Ms. Shores testified that CARTA had a strict no-pets policy with the exception of service animals, and it is clear from the video evidence that Mr. Smith did not question Ms. Roberts’s need to board with her service dog. There was also no question that Ms. Roberts suffered an injury when she fell and fractured her ankle.

In its final order, the trial court noted that there was “an issue as to whether or not the duty of [CARTA] extends past the exit of [Ms. Roberts] from the bus.” The court found that it was “not necessary to reach [this] issue” because Ms. Roberts had failed to meet the essential element of causation. On appeal, CARTA urges this Court to determine that, as a common carrier, its duty to Ms. Roberts ended when she “exited the bus at a regular, marked stop.” In support of this postulate, CARTA relies on a federal district court decision, *White v. City of Gallinburg*, No. 3:14-CV-00505, 2016 WL 3093899, at *7 (E.D. Tenn. June 1, 2016), wherein the district court stated that “Tennessee does not impose a duty on common carriers to ensure that adult passengers arrive safely at their destination after exiting a vehicle.” However, we agree with the trial court that in this case, it is not necessary to settle the question of whether CARTA’s duty to Ms. Roberts extended beyond her exit from the bus.

We note that Ms. Roberts has not argued that CARTA’s duty extended beyond her exit. She contends that CARTA’s negligence occurred when Mr. Smith discharged her from the bus at a designated stop rather than the courtesy stop she had requested. In his

deposition, Mr. Smith testified that although he had never called CARTA management to request permission to circle back to a courtesy stop, he understood that it was possible to make such a request, at which point he would have had to receive permission to circle back. According to Ms. Roberts's argument, the alleged breach of duty occurred either when Mr. Smith did not initially make the courtesy stop or when he failed to request that CARTA management allow him to circle back to Ms. Roberts's requested stop and instead discharged her at the designated bus stop.

Moreover, because Ms. Roberts failed to present any facts to support or establish the element of causation, these questions regarding Mr. Smith's actions and observations are irrelevant. To establish causation, Ms. Roberts would have had to establish that CARTA's alleged breach of duty was the cause in fact and proximate cause of her subsequent fall and injury, and she failed to do so. It was due to lack of evidence establishing causation that the trial court granted summary judgment in favor of CARTA.

3. Causation

"[A] negligence claim requires proof of two types of causation: causation in fact and proximate cause." *Hale v. Ostrow*, 166 S.W.3d 713, 718 (Tenn. 2005). The two types of causation "are distinct elements of negligence, and both must be proven by the plaintiff by a preponderance of the evidence." *Id.* (quoting *Kilpatrick v. Bryant*, 868 S.W.2d 594, 598 (Tenn. 1993)). Regarding the first type of causation, cause in fact, our Supreme Court has instructed:

Cause in fact refers to "the cause and effect relationship between the tortious conduct and the injury." *King v. Anderson Cnty.*, 419 S.W.3d 232, 246 (Tenn. 2013) (quoting *Kilpatrick v. Bryant*, 868 S.W.2d 594, 598 (Tenn. 1993) (internal quotation marks omitted)). It is not enough for a plaintiff to show that a defendant's conduct was a possible cause of the injury; the defendant's conduct must be shown to be the probable cause. *Lindsey v. Miami Dev. Corp.*, 689 S.W.2d 856, 861-62 (Tenn. 1985) (quoting Keeton, *Prosser and Keeton on Torts* § 41, at 269); see also *Kilpatrick*, 868 S.W.2d at 601-02.

A defendant's conduct is a cause in fact of a plaintiff's injury if the injury would not have occurred but for the defendant's conduct. *King*, 419 S.W.3d at 246 (quoting *Kilpatrick*, 868 S.W.2d at 598). A plaintiff must prove that the negligence of the defendant more likely than not caused the injury. *Kilpatrick*, 868 S.W.2d at 598-99 (citing *Lindsey*, 689 S.W.2d at 861). Cause in fact may be shown by direct or circumstantial evidence. See *Law v. Louisville & Nashville R.R. Co.*, 179 Tenn. 687, 170 S.W.2d

360, 363 (1943) (Chambliss, J., concurring). Where proof of causation is made by circumstantial evidence, the evidence must be such that it tends to exclude any other cause; in other words, it must be proven to be more likely than not. See *Jones v. Mercer Pie Co.*, 187 Tenn. 322, 214 S.W.2d 46, 49 (1948); *Nashville Ry. & Light Co. v. Harrison*, 5 Tenn. App. 22, 34 (Tenn. Ct. App. 1927); see also *Gandy v. Captain D's Seafood Rest.*, No. C.A. 89-257-II, 1990 WL 33395, at *3 (Tenn. Ct. App. Mar. 28, 1990) (“The facts must tend to exclude any other cause” (quoting *Jones*, 214 S.W.2d at 49)); *The Law of Torts* § 191 (“[T]he plaintiff must ordinarily prove factual cause by a preponderance of the evidence, circumstantial or otherwise.”).

Jenkins v. Big City Remodeling, 515 S.W.3d 843, 851-52 (Tenn. 2017).

The second type of causation, proximate cause (or legal cause), becomes an issue when cause-in-fact (or “but-for” cause) has been established. See *Hale*, 166 S.W.3d at 718-19. (“Once it is determined that the plaintiff’s injury would not have happened but for the defendants’ breach of duty, the next question is whether the defendants’ breach was a proximate cause of the plaintiff’s injury, which is very different from a cause in fact of the injury.”). As the *Hale* Court explained:

Proximate cause puts a limit on the causal chain, such that, even though the plaintiff’s injury would not have happened but for the defendants’ breach, defendants will not be held liable for injuries that were not substantially caused by their conduct or were not reasonably foreseeable results of their conduct. *Haynes*, 883 S.W.2d at 612. “Thus, proximate cause, or legal cause, concerns a determination of whether legal liability should be imposed where cause in fact has been established.” *Kilpatrick*, 868 S.W.2d at 598.

* * *

Proximate cause is addressed with a three-pronged test:

(1) the tortfeasor’s conduct must have been a “substantial factor” in bringing about the harm being complained of; and (2) there is no rule or policy that should relieve the wrongdoer from liability because of the manner in which the negligence has resulted in the harm; and (3) the harm giving rise to the action could have reasonably been foreseen or anticipated by a person of ordinary intelligence and prudence.

Haynes, 883 S.W.2d at 612 (quoting *McClenahan [v. Cooley]*, 806 S.W.2d [767,] 775 [Tenn. 1991]).

Id. at 719.

In the case at bar, the trial court specifically found regarding causation:

The causation factor is a more difficult obstacle for [Ms. Roberts]. The undisputed facts demonstrate [Ms. Roberts] was trained to exit the bus not only at the standard bus stop between 6th Street and 7th Street but also on the courtesy stop location at the intersection of Market and 6th Streets. Even though she exited at a location which was not the location she requested, there is no evidence to establish that any asserted negligence of CARTA in failing to discharge her at the requested location was the cause in fact or legal cause of [Ms. Roberts's] injuries. If any negligence of the CARTA driver existed, it would be negligence in discharging [Ms. Roberts] at a location other than the location she requested and expected. However, [Ms. Roberts] is required to present evidence that the fall was caused by the asserted negligence of CARTA. The record establishes that [Ms. Roberts] ascertained her location after she got off the bus and realized she needed to cross 6th Street. She requested directions on how to arrive at 6th Street. She was experienced in walking downtown and experienced with CARTA transportation. Perhaps most importantly she acknowledged she has fallen multiple times just by missing a step. Deposition of the Plaintiff, Page 27: line 14-20. [Ms. Roberts] cannot establish that it was any negligent act or omission of [CARTA] which breached a duty which was a cause of [Ms. Roberts's] alleged injury. The exit from the bus was half of a block away from where she asked to exit the bus but the injury did not occur in the walk from the bus stop to the intersection of 6th and Market. [Ms. Roberts] knew where she was before she fell and she was aware a curb existed. Her risk of fall was not created by the location where she exited the bus. Even if CARTA had the duty to her after she left the bus which is highly questionable, [Ms. Roberts] has not identified anything about the location where she fell that was created by CARTA, caused by CARTA, or under the control of CARTA. [Ms. Roberts] intended to go to the YMCA. Her path from the exit location she requested to the YMCA would have required her to cross several streets. No evidence is presented which identifies any specific risks inherent in the location where she fell that was any different from any other location she would have traversed on her path. Causation is not established and the absence of that evidence precludes [Ms. Roberts] from defeating the motion for summary judgment. This is an

essential element of her case, which has not been established by the evidence.

Although the trial court stated that Ms. Roberts had failed to present evidence establishing that CARTA's alleged negligence was "the cause in fact or legal cause of [Ms. Roberts's] injuries," the court focused its analysis primarily on causation in fact. *See Jenkins*, 515 S.W.3d at 852 ("A defendant's conduct is a cause in fact of a plaintiff's injury if the injury would not have occurred but for the defendant's conduct."). Upon review, we agree that the record supports the trial court's conclusion regarding causation in fact.

Ms. Roberts posits that the trial court "made three critical errors": (1) "incorrectly fram[ing] the nature of [CARTA's] negligence," (2) "fail[ing] to consider that a blind person may 'know' where she is and yet still be unable to safely navigate her surroundings without sufficient practice," and (3) finding that "there was no difference between the location Ms. Roberts was deposited and the location where she should have been deposited." In support of these allegations of error, Ms. Roberts primarily focuses on foreseeability, one of the prongs of a proximate cause analysis. *See Hale*, 166 S.W.3d at 719.

First, Ms. Roberts argues that because the court framed the negligence question as whether CARTA had been negligent "in discharging [Ms. Roberts] at a location other than the location she requested and expected" rather than in discharging "a visibly blind passenger at a stop when she was clearly confused as to her location," the court failed to consider whether it should have been foreseeable to Mr. Smith that Ms. Roberts's confusion about her location would cause her to fall. Second, Ms. Roberts posits that the court relied in error on the fact that Ms. Roberts ascertained her location prior to her fall because Ms. Roberts testified that she had trained at the designated stop "maybe once or twice" as opposed to "lots of times" at the stop she had requested. Third, Ms. Roberts argues that the trial court failed to consider a difference between the two locations because Ms. Roberts would not have needed to cross 6th Street, the location where she fell, if she had been discharged at her requested location. Ms. Roberts concludes by asserting that "[t]here is a legitimate dispute of material facts in this case relating to CARTA's breach of duty, foreseeability, and being [a] 'substantial factor' in contributing to cause the accident and Ms. Roberts's injuries." Ms. Roberts's argument thus relies on proximate cause, particularly foreseeability, and skirts the essential element of cause in fact.

We find the Tennessee Supreme Court's decision in *Jenkins*, which CARTA has cited on appeal, to be instructive here. *See* 515 S.W.3d 843. In *Jenkins*, the plaintiffs brought a negligence suit against a contractor and two subcontractors after the plaintiffs'

partially completed house had been destroyed in a fire. *Id.* at 845. The trial court had granted summary judgment in favor of the defendants upon finding that there was no proof as to the cause of the fire. *Id.* at 846-47. This Court had affirmed the trial court's judgment in favor of the contractor on a contract claim. *Id.* at 847. However, in a divided decision, this Court had reversed the trial court's determination regarding the subcontractors' negligence, "finding disputed questions of material fact regarding the negligence of the subcontractors based on evidence that they had improperly disposed of flammable rags and cigarette butts and whether their negligence caused the fire." *Id.* at 847 (citing *Jenkins v. Big City Remodeling*, No. E2014-01612-COA-R3-CV, 2015 WL 5695177, at *8 (Tenn. Ct. App. Sept. 29, 2015)). On appeal, our Supreme Court reversed this Court's decision concerning the negligence claim and reinstated the trial court's grant of summary judgment in full, holding that "the plaintiffs did not produce sufficient evidence to establish that any negligence of the subcontractors was the cause in fact of the fire." *Jenkins*, 515 S.W.3d at 845. As the High Court explained:

The Court of Appeals correctly concluded that evidence of the subcontractors' negligence in improperly discarding flammable rags and cigarettes created a disputed issue of material fact as to negligence. However, the Court of Appeals erred by concluding that these disputed facts indicating negligence sufficed to establish disputed questions of fact as to causation. We agree with Chief Judge Susano's separate opinion that even if the flooring subcontractors were negligent, there was a lack of evidence showing a nexus between the subcontractors' conduct and the fire.

Id. at 853.

In the case at bar, there is a lack of evidence showing a nexus between Mr. Smith's conduct as CARTA's employee and Ms. Roberts's fall. There is simply no proof that Ms. Roberts's fall was caused by Mr. Smith's actions or inactions. As the trial court found, Ms. Roberts testified that between exiting the bus and her accident, she had asked for directions to 6th Street, realizing her location and that she needed to cross 6th Street.

Furthermore, the record reveals that Ms. Roberts was accustomed to navigating crosswalks and other locations around the city. Explaining that her injury had made it more difficult for her to be mobile, Ms. Roberts also testified:

I used to be very independent. I used to get on the bus once or twice a week and just ride around town, go walk around town.

Ms. Roberts had clearly walked more routes in the city than the one that she planned on walking the day of the accident. As the trial court found particularly important, Ms. Roberts acknowledged that she had fallen multiple times in the past.

Moreover, although Ms. Roberts may well have been confused when she exited the bus, the evidence demonstrated that she knew where she was by the time she fell, and her fall could have been caused by myriad other factors. Regarding the fall itself, Ms. Roberts testified:

I believe there's a ramp with a – where the curb is it's straight across until it gets to the corner, kind of way down. My dog was on the part not at the actual curb. So when the light turned green, I don't cross immediately, I wait for traffic to come towards me. I go with traffic. In trying to find the curb to step off of it, my foot probably just missed the curb. I didn't even know I fell until I fell.

This testimony indicated that Ms. Roberts followed her typical procedure for crossing an intersection but that her “foot probably just missed the curb.” Although Ms. Roberts may have been able to avoid the exact spot where she fell if she had been taken to the courtesy stop, she presented no evidence that the street curb where she fell was inherently more dangerous than any other street curb and certainly no evidence that the street conditions were due to any act or failure to act on CARTA's part.

The trial court found that Ms. Roberts had failed to establish “but for” causation. Having so determined, there was no need for the trial court to address the element of proximate causation, including foreseeability, any further. *See Hale*, 166 S.W.3d at 719 (“Proximate cause puts a limit on the causal chain, such that, even though the plaintiff's injury would not have happened but for the defendants' breach, defendants will not be held liable for injuries that were not substantially caused by their conduct or were not reasonably foreseeable results of their conduct.”). Upon careful review, we conclude that the trial court did not err in finding that Ms. Roberts failed to present evidence at the summary judgment stage that could establish CARTA's alleged negligence as the cause in fact of her injury. Accordingly, we determine that the trial court properly granted summary judgment in favor of CARTA.

V. Conclusion

For the foregoing reasons, we affirm the trial court's judgment. We remand this matter to the trial court for collection of costs below. Costs on appeal are assessed to the appellant, Ann Marie Roberts.

s/ Thomas R. Frierson, II

THOMAS R. FRIERSON, II, JUDGE