IN THE CIRCUIT COURT FOR THE 21ST JUDICIAL DISTRICT
AT WILLIAMSON COUNTY, TENNESSEE

FILED 7/18/17
ENTERED BOOK ____ PAGE ____
DEBBIE McMILLAN BARRETT

ANNE B. SHACKLETT, Plaintiff, V. ANTHONY A. ROSE, SUCCESSOR EXECUTOR OF THE ESTATE OF W. ALEXANDER STEELE, DECEASED, and SAUNDRA STEELE, Defendants.	)	Case No. 09218

MEMORANDUM AND ORDER

This case is before the Court upon a Motion for Summary Judgment filed by Defendants[1] pursuant to Tenn. R. Civ. P. 56. Having applied the proper standard to the facts of this case, the Court makes the findings of fact and conclusions of law stated in this Memorandum and Order.

PROCEDURAL HISTORY

This case arises out of personal injuries the Plaintiff, Anne B. Shacklett, sustained while working a catered event at the Steele home. Ms. Shacklett filed her Complaint on April 13, 2009, alleging the Steeles were negligent by failing to assure the stairwell used by the catering staff was safely maintained and well lit. The Steeles filed their Answer on May 28, 2009, denying liability.

[1] Originally, this matter was filed against W. Alexander Steele and his wife, Saundra Steele. Mr. Steele has since passed away, thus the Defendants are now comprised of Anthony A. Rose, Successor Executor of the Estate of W. Alexander Steele, Deceased, and Saundra Steele.

On March 17, 2017, the Steeles filed the present Motion for Summary Judgment, asserting Ms. Shacklett's claim for negligence must fail (1) due to the absence of a duty owed by the Steeles to Ms. Shacklett; (2) due to the open and obvious nature of the dangers of the Steeles' stairway; and alternatively, (3) because Ms. Shacklett was fifty percent or more at fault for the incident and her resulting injuries.

In response, Ms. Shacklett submits the Steeles owed her a duty to provide a safe, illuminated area of ingress and egress. In support, Ms. Shacklett contends, due to the nature and design of the stairwell, it was reasonably foreseeable that a member of the catering staff may fall from the steps in the dark.

STANDARD OF REVIEW

To be entitled to summary judgment, the moving party must show that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Tenn. R. Civ. P. 56.04. A fact is material when it "must be decided in order to resolve the substantive claim or defense at which the motion is directed." *Byrd v. Hall*, 847 S.W.2d 208, 215 (Tenn. 1993); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."). A dispute of material fact is genuine when the evidence "is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248; *see also Byrd*, 847 S.W.2d at 212.

The moving party is required 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 required to be "set forth in a separate, numbered paragraph" and "supported by a specific citation to the record." *Id.*

When a party makes a motion for summary judgment that complies with the requirements of Tenn. R. Civ. P. 56, the nonmoving party "may not rest upon the mere allegations or denials of the [nonmoving] party's pleading, but his or her response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06; *see also Rye v. Women's Care Ctr. of Memphis, MPLLC, 477 S.W.3d 235, 265 (Tenn. 2015)* ("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."). The nonmoving party may satisfy this burden by:

> (1) pointing to evidence establishing material factual disputes that were overlooked or ignored by the moving party; (2) rehabilitating the evidence attacked by the moving party; (3) producing additional evidence establishing the existence of a genuine issue for trial; or (4) submitting an affidavit explaining the necessity for further discovery pursuant to Tenn. R. Civ. P., Rule 56.06.

Martin v. Norfolk S. Ry. Co., 271 S.W.3d 76, 84 (Tenn. 2008) (quoting *McCarley v. W. Quality Food Serv.*, 960 S.W.2d 585, 588 (Tenn. 1998)).

In determining whether there is a genuine issue of material fact, "the evidence must be viewed in a light most favorable to the claims of the non-moving party, with all reasonable inferences drawn in favor of those claims." *Rye*, 477 S.W.3d at 286. However, 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. *Id.* at 265. Therefore, summary judgment should be granted if the nonmoving party's evidence is insufficient to establish a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04, 56.06; *Rye*, 477 S.W.3d at 265; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) ("Where

the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'").

DISCUSSION

A. Findings of Fact

On April 12, 2008, Ms. Shacklett was scheduled to work a catering event at the Steele home. Ms. Shacklett arrived to the residence during the day light in order to set up for the event that evening. While Ms. Shacklett had never been to the Steele home before the day of the incident, Ms. Shacklett's employer, Kristen Winston Catering, had previously catered several events at the Steele home. Ms. Winston, who was familiar with the Steele home, knew the location of the kitchen and where to park the catering vehicles. Ms. Winston was present on the day of the incident to meet and coordinate the event with the Steeles.

Upon arrival that afternoon, Ms. Shacklett's responsibilities, as a member of the kitchen staff, included carrying food and equipment to and from the kitchen and the parking area. To that end, Ms. Shacklett was required her to make several trips up and down the stairs outside of the kitchen. The steps consisted of multiple levels and several turns with landings connecting the different sections of steps. While the majority of the stairway contained railing, the extended landing in between the top sections of stairs and the bottom of the stairs was relatively flat. Along this portion of the stairwell, there was landscaping, instead of railing, to frame the pathway of the stairs. Ms. Shacklett used the stairway several times during the day light, and thus, was familiar with the general layout of the stairs.

At the conclusion of the event, Ms. Shacklett exited the kitchen. It was night time and very dark outside; the exterior lights were not on.[2] Ms. Shacklett was unaware of the location of the light switch and did not ask anyone for help finding the light switch. Notwithstanding the obvious lack of light, Ms. Shacklett chose to descend the stairs.[3] Ms. Shacklett held onto the railing with her right hand for guidance as she carefully proceeded down the steps in the dark. As Ms. Shacklett turned to go down the second set of steps, she fell down the steps through a break in the railing and sustained personal injuries. Ms. Shacklett was subsequently taken to St. Thomas Hospital Emergency Room and treated for facial injuries.

B. Conclusions of Law

1. Whether the Steeles owed Ms. Shacklett a duty?

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[2] It is undisputed the outside lights were working on the night of April 12, 2008. The lights were typically set on a timer; however, the Steeles overrode the timer by placing the lights "all on" for the party. (Defs.' Resp. Pl.'s Req. Admis. 27.)

[3]
Q: When did you notice that there were no lights on outside?

A: Well, when I went out. When I went out.

Q: When you opened the door to go out?

A: After I got outside.

Q: And so when you -- when you chose to go down the stairs, you knew there was no light?

A: Yes.

Q: Why didn't you turn on the lights?

A: I didn't know where there were lights. I was careful, holding onto the rail.

Q: Did you ask anyone to turn on the lights?

A: No.

Q: Did you make any attempt to try to figure out how to get the lights on?

A: No.

(Shacklett Dep. 17:5-20.)

"In order to establish a prima facie claim of negligence, basically defined as the failure to exercise reasonable care, a plaintiff must establish the following essential elements: (1) a duty of care owed by defendant to plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) an injury or loss; (4) cause in fact; and (5) proximate, or legal cause." *Giggers v. Memphis Hous. Auth.*, 277 S.W.3d 359, 364 (Tenn. 2009). The first element, duty, is "the legal obligation of a defendant to conform to a reasonable person's standard of care in order to protect against unreasonable risk of harm." *Id.* The issue of whether a defendant owed a duty of care to a particular plaintiff is a question of law to be determined by the court. *Downs ex rel. Downs v. Bush*, 263 S.W.3d 812, 820-21 (Tenn. 2008).

It is well settled under Tennessee law that classifications distinguishing invitees and licensees, such as social guests, have been abandoned and that irrespective of one's classification, premise owners owe a duty of reasonable care under all circumstances. *Eaton v. McLain*, 891 S.W.2d 587, 593 (Tenn. 1994) (*citing Hudson v. Gaitan,* 675 S.W.2d 699, 703 (Tenn. 1984)). Therefore, the Steeles owed Ms. Shacklett a duty to maintain the premises in a reasonably safe and suitable condition. In the case at hand, we must examine this duty in light of the facts presented to determine whether the Steeles had a specific duty to act in order to prevent Ms. Shacklett's injuries.

In *Doe v. Linder Constr. Co.,* the Tennessee Supreme Court discussed the concept of duty in depth, enunciating the proper analysis as follows:

> The term reasonable care must be given meaning in relation to the circumstances. Ordinary, or reasonable, care is to be estimated by the risk entailed through probable dangers attending the particular situation and is to be commensurate with the risk of injury. The risk involved is that which is foreseeable; a risk is foreseeable if a reasonable person could foresee the probability of its occurrence or if the person was on notice that the likelihood of danger to the party to whom is owed a duty is probable. Foreseeability is the test of negligence. If the injury which occurred could not have been reasonably foreseen, the duty of care does

> not arise, and even though the act of the defendant in fact caused the injury, there is no negligence and no liability. 'The plaintiff must show that the injury was a reasonably foreseeable probability, not just a remote possibility, and that some action within the [defendant's] power more probably than not would have prevented the injury.'
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> . . . . .
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> The pertinent question is whether there was any showing from which it can be said that the defendants reasonably knew or should have known of the probability of an occurrence such as the one which caused the plaintiff's injuries.

845 S.W.2d 173, 178 (Tenn. 1992) (internal citations omitted).

The Steeles cite *Eaton v. McClain*, in support of their contention that, under the present circumstances, they did not owe Ms. Shacklett a duty. 891 S.W.2d 587. The plaintiff in *Eaton* was a social guest at her daughter and son-in-law's home. *Id.* at 588. During the middle of the night, she woke up to use the restroom. *Id.* at 589. At the time, the hallway leading to the restroom was not lit. *Id.* Plaintiff did not turn on any lights, mistook the basement door for the bathroom door, and fell into the dark basement stairway, sustaining various personal injuries. *Id.* Subsequently, she filed a premise liability action against her daughter and son-in-law, alleging they were negligent in turning the hallway and bathroom lights off, in failing to provide a working lock on the basement door, and in failing to warn her of the location of the stairs. *Id.* At trial, Ms. Eaton testified she did not turn on any lights before proceeding in the dark because she was afraid of awakening her grandson, who was asleep in another bedroom down the hall. *Id.*

In reviewing the case, the Supreme Court held the premise owners did not owe Ms. Eaton a duty, reasoning:

> In order for the McLains to be charged with the duty to leave on the light in the hall and to lock the basement door, they must have been able to reasonably foresee that Ms. Eaton would get out of bed in total darkness, walk across the hall, and step into the basement stairwell, all without turning on any lighting whatsoever. While our holding would likely be different if no lighting had been provided or if it had been inoperative, **Ms. Eaton's failure to turn on any lights,**

> **coupled with her willingness to open the door and step into an unfamiliar area, is such a radical departure from reasonable conduct under the circumstances that the McLains could not have reasonably foreseen that conduct and its consequences.** To hold otherwise would necessarily cast the premises owner in the role of an absolute insurer of the social guest's safety, which is not contemplated by our negligence law. *See McCormick v. Waters*, 594 S.W.2d 385, 387 (Tenn. 1980); *Roberts v. Roberts*, 845 S.W.2d 225, 227 (Tenn. Ct. App. 1992). *See also Bohenko v. Grzyb*, 21 Mass. App. 961, 488 N.E.2d 804, 805 (1986) (premises owner not negligent as a matter of law for failing to leave light on for friend attempting to enter home late at night).

Eaton, 891 S.W.2d at 594–95 (Emphasis Added).

Ms. Shacklett argues *Eaton* is not controlling due to key factual distinctions – primarily the fact that the plaintiff in *Eaton* knew the layout of her daughter's home. Ms. Shacklett concedes, because of this familiarity, it was unforeseeable the mother's injuries would occur. In contrast to *Eaton*, Ms. Shacklett submits she was not familiar with the Steele home, was unaware of the location of the light switch, and had no opportunity to ask the homeowners where the light switch was located. Ms. Shacklett contends the Steeles were aware the catering staff would be exiting the home at night and "could easily have prevented [her] accident and injury by simply making sure the steps were lighted, that the outside lights illuminated both the steps and the gaps in the railing, so that [she] could see to descend safely, without incident." (Pl.'s Resp. Opp'n, 7.)

The Court disagrees with Ms. Shacklett's analysis. Both the law and facts set forth in *Eaton* support the conclusion that the Steeles did not owe Ms. Shacklett a duty of care. The Supreme Court stated its holding in *Eaton* "would likely be different if no lighting had been provided or if it had been inoperative." *Id.* In the present case it is undisputed that the Steeles provided operative lights that were capable of illuminating the stairway. While it was foreseeable Ms. Shacklett would leave the catering event at the conclusion of the evening, it was not foreseeable that she would abdicate all common sense and voluntarily descend an unlit stairwell without first exercising her own due diligence. Ms. Shacklett submits she did not think it was

appropriate to wander through the house looking for someone to ask and did not know what the Steeles looked like. This excuse, which is similar to the excuse rejected by the Supreme Court in *Eaton*, does not justify Ms. Shacklett's actions. Ms. Shacklett has even acknowledged it would have been prudent to try and get the lights turned on before descending the stairwell.[4] The fact that Ms. Shacklett did not know the location of the light switch is of no consequence. There is nothing in the record to suggest that Ms. Shacklett made an attempt to locate the switch or seek assistance from her boss, who was more familiar with the residence, prior to descending the stairwell. In order for the Steeles to be charged with a duty in the present matter, they would have had to reasonably foresee not only that Ms. Shacklett would descend the stairwell in darkness, but also that she would forget the layout of the stairs, which she had previously traversed during the day time, and fall through a break in the railing. It is unreasonable to conclude this attenuated chain of events was even considered a remote possibility prior to actually occurring. For this reason, the Court finds Ms. Shacklett's injuries were not a foreseeable probability.

Moreover, the Court is uncertain as to what reasonable action the Steeles could have taken to prevent Ms. Shacklett's injury. It is undisputed that sometime in advance of the catered event, the Steeles overrode the lights' automatic timer, thus enabling manual control of the lights. When the event began, it was day light outside, at which time, the lights were not

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[4] Q: Do you agree that it would have been prudent to turn on the lights before you went out and down the stairs?

A: I wouldn't typically ask homeowner that we went to for anything.

Q: Do you agree that it would have been prudent to try and get the lights on before you started down the stairs?

A: Well, now that I think about it, it probably would have been.

(Shacklett Dep. 17: 21-18:5.)

necessary. The Steeles, as hosts of the party, were not required to be the absolute insurer of Ms. Shacklett's safety at all times while she was on their premises. Therefore, the Court finds the Steeles' general duty of care did not encompass the duty to guard against the acts set forth in the Complaint. Because no duty existed, Ms. Shacklett's negligence action cannot succeed.

2. **Whether the danger was open and obvious?**

While a premise owner owes a duty to warn of latent or hidden dangers, no duty arises if the danger is open and obvious. *Eaton*, 891 S.W.2d at 594 (*citing Odum v. Haynes*, 494 S.W.2d 795, 800 (Tenn. Ct. App. 1972)). Ms. Shacklett used the stairway multiple times on the day of the incident and was familiar with the layout of the stairs; thus, the absence of the railing on portions of the stairway should have been open and obvious to her. Ms. Shacklett has offered no proof that the railing was negligently designed or in a poor condition. Accordingly, Ms. Shacklett's claims with regard to the premise owner's duty to safely maintain the stairwell must also fail.

3. **Whether Ms. Shacklett was fifty percent or more at fault for the incident and her resulting injuries?**

The foregoing conclusions, which are dispositive of Ms. Shacklett's claim for negligence, pretermit an analysis weighing the parties' degrees of fault.

CONCLUSION

Because an essential element of Ms. Shacklett's prima facie case for negligence has been negated, the Steeles are entitled to judgment as a matter of law. Therefore, the Steeles' Motion for Summary Judgment is hereby **GRANTED.**

It is so ORDERED, ADJUDGED, and DECREED.

ENTERED THIS 18 DAY OF JULY, 2017.

JOSEPH A. WOODRUFF, Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Memorandum and Order was mailed, postage prepaid, and/or emailed, and/or faxed, to:

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