

IN THE DISTRICT COURT OF THE CHOCTAW NATION

TAMIE MCCULLEY)
Plaintiff,)
)
v.) Case No. CJ-20-18
)
THE CHOCTAW NATION d/b/a)
THE CHOCTAW CASINO,)
Defendant.)

FILED
CHOCTAW NATION OF OKLAHOMA
DISTRICT COURT CLERK

MAR 10 2023

BY: S. Lozano SUSAN LOZANO
COURT CLERK DEPUTY

JOURNAL ENTRY

On this 9th day of March, 2023 there came before this Court Defendant The Choctaw Nation d/b/a The Choctaw Casino's ("Defendant") Motion for Summary Judgment ("Motion") filed on January 28, 2023. The Court has reviewed the Motion, Plaintiff Tamie McCulley's ("Plaintiff") Response and Defendant's Reply thereto. Additionally, on March 9th, 2022, the Court conducted a hearing on this matter and heard arguments of counsel. For the reasons set forth herein, the Court **GRANTS** Defendant's Motion for Summary Judgment.

In his Response to Defendant's Motion, Plaintiff admitted all Defendant's undisputed facts, except Nos. 14, 15, 20, 25 and 33. Therefore, pursuant to District Court Rule 13 (B), Choctaw Nation Code of Civil Procedure, the following facts are undisputed:

1. Plaintiff alleges that she fell in the CNO Casino on August 4, 2019. *See* Defendant's Motion, Undisputed Material No. 1 (hereinafter referred to as "UMF No. 1").
2. Plaintiff's Complaint alleges that she fell when her shoe "stuck to an unknown substance on the tile flooring." *See* UMF No. 10; Complaint, ¶ 1.
3. Plaintiff did not observe any residue or substance on the floor, either before or after the fall. *See* UMF No. 13.

4. Defendant's UMF No. 14 provides that Plaintiff cannot provide any photograph showing the alleged "danger on the scene." *See* Defendant's Motion. Plaintiff's only response to this statement of fact is that she denies it because there is "video surveillance showing her feet sticking to the floor." *See* Response, pg. 2. The Court has reviewed the video at Exhibit "3" to Defendant's Motion, and the video does not show any substance on the floor and does not establish that Plaintiff's foot "sticks" to the floor due to any substance or sticky surface of the floor.
5. Neither Plaintiff nor her companions looked for residue or any substance on the floor, and there is therefore no eyewitness to testify as to any "sticky" substance on the floor. *See* UMF No. 16.
6. Plaintiff's boyfriend was walking in front of her and had no issues with any residue or substance on the floor. *See* UMF Nos. 8-9.
7. Plaintiff admits she did not inspect the bottom of her shoes or her clothing for a sticky substance. *See* UMF No 18.
8. Plaintiff does not recall seeing anyone from CNO cleaning anything on the floor in the area where she alleged her foot became "stuck." *See* UMF No. 17.
9. Pursuant to District Court Rule 13, Choctaw Nation Code of Civil Procedure: "a party may move for either summary judgment or summary disposition of any issue on the merits on the ground that the evidentiary material filed with the motion or subsequently filed with leave of court show that there is "*no substantial controversy as to any material fact*" and where it appears to the Court that there is no substantial controversy as to material facts, the Court may render judgment for the movant. *Id.* at (A) and (E).

10. Plaintiff does not dispute the Defendant's contention that she was an invitee to the premises, and that Defendant therefore only owed a duty to keep its premises in a reasonably safe condition and to disclose to him the existence of dangerous defects known to the owner, but unlikely to be discovered by the licensee. *See* Defendant's Motion, p. 5; Response, p. 5; *Pickens v. Tulsa Metro. Ministry*, 1997 OK 152, ¶ 10, 951 P.2d 1079. This duty to keep the premises reasonably safe for invitees applies only to defects or conditions which are in the nature of hidden dangers, traps, snares, pitfalls and the like, in that they are not known to the invitee and would not be observed by him in the exercise of ordinary care. *Id.* at ¶ 10.¹
11. "It is axiomatic that the mere fact that an injury occurs carries with it no presumption of negligence." *Gillham v. Lake Country Raceway*, 2001 OK 41, ¶ 7, 24 P.3d 858, 860.
12. Plaintiff has come forward in this case with nothing but her own allegation that her foot stuck and has not presented any direct evidence of a condition at Defendant's premises that caused her to trip and fall. There is no evidence, other than Plaintiff's own statement, of any substance on the floor. The video evidence before the Court also does not establish any evidence of the cause of her fall.
13. Plaintiff points to an incident report attached to her Response at Exhibit "A" from Security Corporal Jason Allen as a disputed fact that precludes summary judgment. This report states that Mr. Allen watched the video of her fall and he wrote in his report: "I watched the footage of the fall. Mrs. McCulley was walking on the west side coming up across from Bamboo Noodle Bar when her right foot stuck to the marble and caused

¹ Oklahoma law on premises liability is not binding in this Court, but is instructive on the matters raised herein.

her to stumble." *See* Plaintiff's Response, Ex. A. However, Mr. Allen does not say he observed any residue or substance on the floor and therefore does not attribute the "sticking" to the floor as to any fault on the part of CNO. Personal beliefs are not factual evidence of the existence of the cause of a fall and would instead require speculation and conjecture. *See Gilliam v. Lake Country Raceway*, 2001 OK 41, 24 P.3d 858.

14. Without the ability to identify what object caused her to fall, how long the object had been present, or why the object was present, the jury would be required to speculate as to the cause of Plaintiff's injuries, and Plaintiff's evidence is insufficient to survive summary judgment. *See Prescott v. Cracker Barrel Old Country Store, Inc.*, 2019 WL 11339792 (W.D. Okla., March 11, 2019) citing *Ritch v. Carrabbas Italian Grill L.L.C.*, 719 F. App'x 838, 841 (10th Cir. 2018) (unpublished) ("Under Oklahoma law, ... an inference of negligence must be based upon something other than mere conjecture or speculation, and it is not sufficient to introduce evidence of a state of facts simply consistent with or indicating a mere possibility of negligence.")
15. "Where one conclusion would be as sound as another, the evidence may then be said to leave the matter wholly within the realm of mere conjecture, and any conclusion would be the result of a common speculation. A prima facie case of negligence is not established in such circumstances." *Ritch*, 719 F.App'x at 841 (citing *Gillham*, 2001 OK 41, ¶ 8, 24 P.3d at 860).
16. The same is true here. The circumstantial evidence presented by Plaintiff might allow a jury to speculate as to the cause of her fall, but it does not provide "sufficient probative force to constitute the basis of a legal inference, rather than mere speculation." *Nelson*, 2011 WL 3299039, at *4 (quotation marks and citation omitted).

17. The Court reviewed the case cited by Plaintiff, *White v. Wynn*, 1985 OK 89, 708 P.2d 1126 and this case does not defeat summary judgment. See Plaintiff's Response at p. 5. In *Wynn*, the Plaintiff alleged a pink sticky substance was on the floor as a result of thawing meat negligently handled by the store and this caused Plaintiff's fall, while the Defendant alleged the substance on the floor that caused the fall was coffee. In *Wynn*, there was no dispute *something* was on the floor and this was enough to preclude summary judgment. Here, however, there is simply no evidence of *anything* being on the floor or any evidence of what caused Plaintiff to fall.

18. In the instant matter, summary judgment in favor of Defendant is appropriate. WHEREFORE Defendant's Motion for Summary Judgment is GRANTED for the reasons set forth herein.

IT IS SO ORDERED THIS 23 DAY OF MARCH, 2023.



Amy J. Pierce
CHOCTAW NATION DISTRICT
COURT JUDGE

CERTIFICATE OF DELIVERY

I hereby certify that on the on this the 13th day of March, 2023, I mailed by first class U.S mail with appropriate postage affixed the Journal Entry to:

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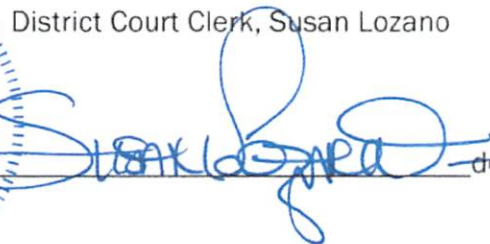
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District Court Clerk, Susan Lozano

By

 deputy