


IN THE DISTRICT COURT OF THE CHOCTAW NATION

PAMELA ROBERTS )  
Plaintiff, )  
v. )  
THE CHOCTAW NATION d/b/a )  
THE CHOCTAW CASINO, )  
Defendant. )

Case No. CJ-20-12

FILED  
CHOCTAW NATION OF OKLAHOMA  
DISTRICT COURT CLERK  
DEC 08 2022  
SUSAN LOZANO  
COURT CLERK  
BY  DEPUTY

JOURNAL ENTRY

On this 8<sup>th</sup> day of December 2022 there came before this Court Defendant The Choctaw Nation d/b/a The Choctaw Casino's ("Defendant") Motion for Summary Judgment ("Motion") filed on October 6, 2022. The Court has reviewed the Motion, Plaintiff Pamela Roberts' ("Roberts") Response and Defendant's Reply thereto. Additionally, on December 8, 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. 12 and 13 regarding Plaintiff's report to an EMT and CNO Security. 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 May 3, 2019. *See* Defendant's Motion, Undisputed Material No. 1 (hereinafter referred to as "UMF No. 1").
2. Plaintiff alleges that her foot "stuck" to the floor and she fell. *See* UMF No. 11.
3. Plaintiff cannot identify what kind of substance was on the floor that would have made her foot stick. *See* UMF No. 15.

4. The Court reviewed the video attached as Exhibit 5 to Defendant's Motion for Summary Judgment and no foreign substance appears on the floor. *See also* UMF No. 19.
5. Plaintiff admits she never found any substance on the bottom of her shoe or clothing and she did not look in the area to see what could have caused her foot to stick. *See* UMF Nos. 16-17.
6. Pictures of Plaintiff's feet also do not show any substance on her shoe. *See* UMF No. 20.
7. Plaintiff does not recall seeing anyone attend the area for cleanup or place anything on the floor to identify the presence of a substance. *See* UMF No. 20.
8. The family members with Plaintiff that evening did not see her fall and there is no testimony in the record of an eyewitness to the fall. *See* UMF Nos. 21-22.
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. 7; 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. <sup>1</sup>

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. No one saw her fall or what caused her fall and Plaintiff herself did not see any object or circumstance that caused her to fall. The video evidence before the Court also does not establish any evidence of the cause of her fall.
13. 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.")

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

14. "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).
15. 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).
16. 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. 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.
17. 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 8<sup>th</sup> DAY OF DECEMBER, 2022.



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Amy J. Pierce  
CHOCTAW NATION DISTRICT  
COURT JUDGE

CERTIFICATE OF DELIVERY

I hereby certify that on the 8<sup>th</sup> day of December, 2022, I mailed by first class U.S mail with appropriate postage affixed, electronically mailed or faxed thereon the foregoing document to:

Jason Reynolds

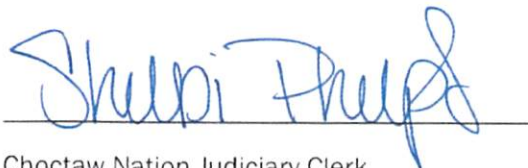
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Choctaw Nation Judiciary Clerk,

Shelbi Phelps