

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

June 18, 2012

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RE: *Arline B. Nichols v. Gaming Entertainment (Delaware), LLC, et al.*
C.A. No. S11C-03-031 ESB

Date Submitted: March 19, 2012

Dear Counsel:

This is my decision on the Motion for Summary Judgment filed by Defendants Gaming Entertainment (Delaware), LLC, Harrington Raceway, Inc., and Delaware State Fair, Inc., in this slip and fall case. The Plaintiff, Arline B. Nichols, was injured when she slipped and fell on the women's bathroom floor at the Harrington Raceway. Nichols alleges that water on the toilet stall floor or somewhere else on the bathroom floor caused her to fall as she walked towards the sinks. Nichols is unsure if there was water on the floor at the exact spot where she slipped and fell. She was also unable to identify what, if anything, she slipped on. Nichols did not see any warning signs indicating that the floor may have been wet or slippery. She alleges further that the Defendants were negligent in failing to warn her of the wet floor and in failing to maintain their premises. Several employees of the Harrington Raceway examined the area after Nichols fell and found no evidence of water on the floor.

STANDARD OF REVIEW

This Court will grant summary judgment only when no material issues of fact exist, and the moving party bears the burden of establishing the non-existence of material issues of fact.¹ Once the moving party meets its burden, the burden shifts to the non-moving party to establish the existence of material issues of fact.² The Court views the evidence in a light most favorable to the nonmoving party.³ Where the moving party produces an affidavit or other evidence sufficient under *Superior Court Civil Rule 56* in support of its motion and the burden shifts, the non-moving party may not rest on its own pleadings, but must provide evidence showing a genuine issue of material fact for trial.⁴ If, after discovery, the non-moving party cannot make a sufficient showing of the existence of an essential element of the case, then summary judgment must be granted.⁵ If, however, material issues of fact exist or if the Court determines that it does not have sufficient facts to enable it to apply the law to the facts before it, then summary judgment is not appropriate.⁶

DISCUSSION

Nichols must establish that there was a dangerous or defective condition that caused her to fall and that the Defendants, in the exercise of reasonable care, should have known about the

¹ *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

² *Id.* at 681.

³ *Id.* at 680.

⁴ *Super. Ct. Civ. R. 56(e); Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

⁵ *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991), *cert. den.*, 112 S.Ct. 1946 (1992); *Celotex Corp.*, 477 U.S. 317 (1986).

⁶ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

condition and corrected it.⁷ Negligence is never presumed from the mere fact that a plaintiff has suffered an injury.⁸ However, generally speaking, issues of negligence are not susceptible of summary adjudication.⁹ It is only when the moving party establishes the absence of a genuine issue of any material fact respecting negligence that summary judgment may be entered.¹⁰

The Defendants argue that summary judgment in their favor is appropriate because Nichols has failed to identify the dangerous condition that caused her to fall. Therefore, the Defendants assert that Nichols has not shown that the Defendants' negligence was the proximate cause of her injuries as a matter of law. The Defendants have supported their motion for summary judgment with sworn affidavits from several of their employees. In response, Nichols has submitted an affidavit stating that she "slipped as a result of water on the floor" and she believes that the "water on the toilet stall floor or somewhere else on the floor on [her] way to the sinks caused [her] fall." This conflicts directly with the Defendants' affidavits which state that there was an absence of water or a dangerous condition where Nichols fell. This creates a genuine issue of material fact. Nichols has alleged enough facts, if viewed in a light most favorable to her, to establish that a dangerous condition may have existed on the women's bathroom floor. This is sufficient to prevent the entry of summary judgment in favor of the Defendants.

⁷ *Howard v. Food Fair Stores*, 201 A.2d 638, 640 (Del. 1964).

⁸ *Wilson v. Derrickson*, 175 A.2d 400, 401 (Del. 1961).

⁹ *Ebersole*, 180 A.2d at 468.

¹⁰ *Id.*

CONCLUSION

The Defendants' Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

/s/ E. Scott Bradley

cc: Prothonotary