PEGGY BALL, Plaintiff/Appellant, v. G. W. HUBBARD HOSPITAL of MEHARRY MEDICAL COLLEGE, Defendant/Appellee.	)	Appeal No. 01-A-01-9508-CV-00384 Davidson Circuit No. 94C-1601

FILED

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Cecil W. Crowson
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CIRCUIT COURT FOR DAVIDSON COUNTY

AT NASHVILLE, TENNESSEE

THE HONORABLE THOMAS W. BROTHERS, JUDGE

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AFFIRMED AND REMANDED

SAMUEL L. LEWIS, JUDGE

OPINION

This is an appeal by plaintiff, Peggy Ball, from the trial court's order granting the motion for summary judgment of defendant, G. W. Hubbard Hospital of Meharry Medical College, and dismissing plaintiff's complaint.

This suit commenced on 20 May 1994 when plaintiff filed her complaint in the Circuit Court for Davidson County. The complaint alleged that defendant constructed and maintained, in a negligent manner, a parking lot/sidewalk area on which plaintiff fell when she exited from the lower level of defendant's parking garage to the sidewalk. Plaintiff's complaint also alleged that defendant's negligence included but was not limited to 1) failure to mark the elevation change from the parking garage to the parking lot/sidewalk with yellow paint; 2) failure to place a sign, which was visible when exiting the parking garage, to warn pedestrians of the elevation change; 3) failure to maintain a safe surface at the elevation change; and 4) failure to repair cracks, chips, and broken spaces in the surface of the parking garage at or near the point of the elevation change. Plaintiff further alleged the defendant's negligence was the proximate cause of her fall and her resulting injuries and damages. Defendant subsequently answered and denied all material allegations contained in the complaint.

Defendant filed a motion for summary judgment, and plaintiff responded. After hearing oral argument and reviewing the record and all documents filed in support of and in opposition to the motion, the trial court granted defendant's motion for summary judgment and dismissed plaintiff's complaint. Plaintiff filed a timely notice of appeal to this court.

Following our review of the record, the briefs of the

parties, and oral argument, we have determined that the trial court correctly granted summary judgment. Therefore, we affirm the judgment of the trial court.

The facts out of which this case arose are as follows. On 22 May 1993, plaintiff, along with her daughter and son-in-law, Tanya and Larry Sanford, and Jessica Roberts, drove from Friendship, Tennessee to visit Shawn Sanford, a patient in defendant's hospital. When plaintiff and her family arrived at defendant's premises, they parked in the "Lot 4 - Permit Only" parking garage that was closest to the Lloyd Elam Building on the Meharry campus. "Lot 4 - Permit Only" parking is reserved for faculty and staff of defendant's campus and is not open to the general public.

When plaintiff and her family initially arrived at the hospital and parked in the Lot 4 garage, plaintiff did not get out of the automobile. Tanya Sanford, mother of Shawn Sanford, got out of the vehicle and proceeded to pick up Shawn for his two hour pass. The garage exit contained a small step down from the level of the garage to the sidewalk. The sidewalk leads around to the Lloyd Elam Building which is located less than one hundred yards from the garage exit.

At the time Tanya Sanford went through the garage exit to pick up her son, she experienced no incident at all in exiting the garage. When Tanya Sanford returned to the car with Shawn, they entered through the garage exit without any incident. When Tanya Sanford and Shawn reached the car in which the family was waiting, Larry Sanford drove out of the garage and the parties took Shawn for breakfast and a haircut.

When plaintiff and her family returned to defendant's campus

to check Shawn back into the treatment center, they again parked in the "Lot 4 - Permit Only" garage. After parking the automobile, each of the passengers exited and proceeded to go through the garage exit. Shawn Sanford and his girlfriend, Jessica Roberts, were in front, and Tanya Sanford was behind them. Plaintiff followed Tanya, and Larry Sanford followed plaintiff.

It is without dispute that there were no wet substances or other physical objects that inhibited plaintiff's ability to go through the garage exit without incident. When Shawn Sanford exited the garage onto the sidewalk he did so without any incident, as did Jessica Roberts and Tanya Sanford. As for what happened when plaintiff exited the garage, Larry Sanford testified as follows: "Q. And when your mother-in-law attempted to exit the garage, what happened? A. There was a little step-down, and she apparently didn't notice it, and she fell." Regarding the physical condition of the step down, plaintiff testified as follows:

> Q. Do you remember whether there was any liquid substance on the area where you fell?
> A. No. My clothes wasn't wet, or anything like that. The only thing was my blood. That was the only dampness.
> Q. Do you remember seeing any physical objects like a banana, or anything, any object which would have made you fall?
> A. No.
> Q. Do you believe your heel on your shoe might have gotten caught in anything as you were leaving the garage?
> A. I don't believe so.
> Q. Is it possible that you could have slipped as you were leaving the garage?
> A. I don't think so.
> Q. Have you ever slipped naturally?
> A. No, I've never fallen before.
> Q. Have you ever lost your balance before?
> A. No.
> Q. Is it your position that you just didn't see the step-down.
> A. All I know is I was walking, and all of a sudden, I was down. I remember walking and all of a sudden I was down, and half of me was on the -- laying down on the sidewalk and the other half up here on -- best I can remember.
> Q. Let me rephrase the question. Did you see the step-down?

A. No.
Q. Was there anything that prevented you from seeing the step-down?
A. I don’t know. I mean, no.
Q. Was there a physical -- was there any physical object that prevented you from seeing the step down?
A. No.

Shawn Sanford testified as follows:

Q. Okay. What was the condition of the concrete as you exited the garage, as best you recall?
A. Parking lot’s one level, and step-down onto the sidewalk.
Q. Do you recall seeing anything on the higher portion of the concrete, like anything wet?
A No, ma’am.
Q. Was there any other physical object on the ground in front of the place where one would exit the garage?
A. No, ma’am.
Q. You said that you and your girlfriend were in front. Did you notice the step as you were leaving the garage?
A. I guess I did. I didn’t pay much attention, I just walked on.
Q. Did you stumble?
A. No.
Q. Did your girlfriend stumble?
A. Not that I recall.
Q. Was there any incident with respect to either you or your girlfriend as you exited the garage?
A. No, ma’am.
Q. When your mom exited the garage, was there any incident with her leaving the garage?
A. No, ma’am, not that I recall.

As to her attentiveness, plaintiff, in her deposition, testified as follows:

Q. When the people who were with you went before you, and exited the garage without any incident, did that not indicate to you that there -- that they had made a step?
A. I wasn’t watching their step. I mean it indicated to me that they were walking out of there and I should do the same thing.
Q. Okay.
A. You know, I mean --
Q. Do you believe anything was wrong with the sidewalk?
A. Wrong with the sidewalk?
Q. That’s correct. The physical -- the sidewalk that is the lower level from the – where the change in elevation took place.
A. I wouldn’t know, because I didn’t examine the sidewalk. I know when I looked out it looked like you was going up hill. It looked like you would be stepping, walking up.

Instead, I fell down.

There was testimony without objection that there had not been any other falls that occurred at the location where plaintiff fell during the twenty years the garage had been in use by defendant, at least not to defendant's knowledge. Lieutenant Cantrell also testified that during his eight years of employment by defendant he was unaware of any falls at the location of the accident other than plaintiff's fall.

The sole issue in this appeal is whether the trial court properly granted defendant's motion for summary judgment.

"Summary judgments are an efficient means to conclude cases that can be disposed of on legal issues alone." ***Foley v. St. Thomas Hosp.,*** 906 S.W.2d 448, 452 (Tenn. App. 1995). Summary judgments are not substitutes for trials. ***Jones v. Home Indemnity Ins. Co.,*** 651 S.W.2d 213, 214 (Tenn. 1983). They go to the merits of the complaint and opponents should not take them lightly. ***Fowler v. Happy Goodman Family***, 575 S.W.2d 496, 498 (Tenn. 1978).

No presumption of correctness attaches to decisions granting summary judgment because they involve only questions of law. Thus, on appeal we must make a fresh determination concerning whether the moving party met the requirements of Rule 56 of the Tennessee Rules of Civil Procedure. ***Hill v. City of Chattanooga***, 533 S.W.2d 311, 312 (Tenn. App. 1975). In doing so, we must consider the pleadings and the evidentiary materials in the light most favorable to the opponent, and we must draw all reasonable inferences in the opponent's favor. ***Blocker v. Regional Medical Ctr.***, 722 S.W.2d 660, 660 (Tenn. 1987)(citing ***Price v. Mercury Supply Co.,*** 682 S.W.2d 924, 929 (Tenn. App. 1984)). If there is then any dispute as to any material evidence or any doubt as to the conclusion to be

drawn from the whole evidence, the motion must be denied. ***Gonzales v. Alman Constr. Co.,*** 857 S.W.2d 42, 45 (Tenn. App. 1993).

In plaintiff's complaint she alleged that the "inherently dangerous condition of the elevation change was a nuisance." On appeal, plaintiff did not rely on the nuisance theory. Nevertheless, we have considered the issue of whether or not the defendant was maintaining a nuisance. After our consideration of this record, we are of the opinion that defendant did not maintain a nuisance.

In ***Dean v. Bays Mountain Park Association***, 551 S.W.2d 702, 705 (Tenn. App. 1977), we held that the condition of the property must be fraught with danger in order to constitute a nuisance. In the instant case, plaintiff's family and traveling companion rebutted the suggestion that defendant's premises constituted a nuisance. Plaintiff and her traveling companions each confirmed there were no physical objects that obstructed or inhibited plaintiff's ability to exit the garage without incident. The facts here establish that each of plaintiff's traveling companions, who preceded her in exiting the garage, did so safely and without any problems whatsoever.

Dean explains that a "'nuisance is a condition, and not an act or failure to act of the person responsible for the condition; it does not necessarily depend on the degree of care used, but rather on the danger, indecency, or offensiveness existing or resulting even with the best of care.'" ***Dean,*** 551 S.W.2d at 705 (quoting ***Sewell v. City of Knoxville,*** 60 Tenn. App. 86, 89, 444 S.W.2d 177, 179 (1969)). While plaintiff contends that defendant could have marked the step down to warn of the "inherently dangerous" elevation change, defendant's failure to mark, sign, or maintain

the premises does not constitute a nuisance because, by definition, a nuisance does not exist simply because of a lack of care. Moreover, we find nothing in this record to show that the premises were unreasonably dangerous or defective. Therefore, defendant did not have a duty to protect plaintiff against an unreasonably dangerous or defective condition.

Plaintiff further alleged that the defendant was negligent in the way it constructed and maintained the parking lot/sidewalk area. In order to raise a negligence claim, plaintiff must show that "defendant owed a legally recognized duty to the injured plaintiff, that the defendant breached the duty, and that plaintiff's injuries were the proximate and foreseeable result of defendant's breach of duty." ***Fly v. Cannon***, 813 S.W.2d 458, 461 (Tenn. App. 1991).

Under the law in this state the duty of the landowner is "one of reasonable care under all of the attendant circumstances, foreseeability of the presence of the visitor and the likelihood of harm to him being one of the principle factors in assessing liability." ***Hudson v. Gaitan***, 675 S.W.2d 699, 703 (Tenn. 1984). Here, defendant satisfied its duty of reasonable care to plaintiff. The garage exit contained no physical impediment to plaintiff's safe passage. Plaintiff's undisputed testimony on this issue is that there were no liquid substances on the area where she fell. She did not see any physical objects that would have caused her to fall. From plaintiff's deposition testimony, it is clear that she fell simply because she was not looking where she was going.

In order for this court to find that plaintiff successfully rebuted defendant's motion for summary judgment, it would be necessary for us to hold that, as a matter of law, any unmarked

step down from one level to another is a "negligent act." This is not the law in Tennessee and should not be. Because defendant satisfied its duty of care, plaintiff can not establish negligence. Summary judgment was appropriate.

The trial court properly granted defendant's motion for summary judgment and dismissed plaintiff's complaint. It, therefore, results that the judgment of the trial court is affirmed, and the cause is remanded to the trial court for further necessary proceedings. Costs on appeal are taxed to plaintiff/appellant, Peggy Ball.

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SAMUEL L. LEWIS, JUDGE

CONCUR:

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HENRY F. TODD, P.J., M.S.

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WILLIAM C. KOCH, JR., J.