IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Iwona Boczarski	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 L 13394
	)	
Vrinda Kulkarni,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment should be granted if the record shows that there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. In this very close case, the record presents issues of material fact as to whether the defendant owed the plaintiff a duty, and whether the defendant's conduct proximately caused the plaintiff's injury. For that reason, the defendant's summary judgment motion must be denied.

Facts

On December 6, 2017, Iwona Boczarski attended a party at an apartment located at 535 North Michigan Avenue in Chicago. Vrinda Kulkarni owned the apartment, although she did not live there, and the apartment was unoccupied at the time. Boczarski's friends, Olita Soblinskas and Regina Pavlicic, had invited Boczarski to the party. After Boczarski arrived at the party, Soblinskas introduced Boczarski to Kulkarni, who instructed her and the other guests to remove their shoes. During the party, someone played music through a speaker and attendees, including Boczarski and Soblinskas, danced in a small area off the living room that had hardwood floors. At some point, Boczarski fell and suffered a dislocated shoulder.

On December 5, 2019, Boczarski filed a one-count complaint claiming that Kulkarni was negligent. Kulkarni filed her answer on November 4, 2020, and the case proceeded to discovery. On June 6, 2021, Kulkarni filed the instant summary judgment motion, which the parties have fully briefed. The record contains deposition testimony from several witnesses, photographs of the dancing area and floor of Kulkarni's unit, and Boczarski's discharge instructions from Northwestern Memorial Hospital's emergency department.

Pavlicic testified that Kulkarni's floors were "shiny" and "very slippery" and that she slipped on the floor when she walked in, but did not inform Kulkarni that she had done so. While several deponents testified that they did not observe any liquid or other substances on the floor before or after Boczarski's fall, Kulkarni testified that the dancing of Boczarski and her friends was "unnerving" to the point that she feared losing her balance and felt the need to leave the room. Relevant portions of Kulkarni's deposition testimony are provided below:

Q: Sounds like—did you observe Iwona dancing prior to the fall?
A: Yes, I did.
Q: And she was dancing, what? Do you recall, was she dancing with anyone else?
A: Yes. She was—she was dancing with Olite, with Regina. They were kind of all dancing. . . . But for the most part, there were five or six people in the middle of that little room dancing. I don't recall Jeff dancing; but, yes, Iwona with Olite. Also, I danced with Olite for a moment. So I do recall—
Q: That was going to be my next question, if you engaged in any dancing. And it sounds like you did? You danced a little bit with Olite?
A: Yes.

* * *

Q: Now, were there any indications to you when you were observing Iwona at your apartment of alcohol intoxication?
A: In the way that her and Olite were dancing, yes.
Q: Okay. So the—
A: It wasn't normal dancing.
Q: Can you describe what you mean by it was not normal dancing?
A: Yeah. Because before—before I left the room, I was dancing with Olite. And the dancing she was doing was kind of jumping up and throwing her body weight kind of on you, and it was very weird and it made you feel off balance, when someone's kind of throwing themselves on you.
And that's what they were doing together after—because I was in the room a few minutes after. I had to get away from that, and then I—that's how they were dancing, as well, together.
Q: So you observed Olite and Iwona dancing in the manner you have just described?
A: Yes.

* * *

Q: My next question is, this style of dancing that you observed, to you that was an indication of alcohol intoxication?
A: Yeah. Yes, definitely.

* * *

Q: What did you do when that happened?

A: I don't—I probably just—you know, I moved away. They were feeling kind of, again—their body movements were very unnerving. I'm small, and anyone throwing their body weight on me doesn't feel good if I lose my balance. And losing my balance, that doesn't feel good, so I just wanted to get away from them.

Boczarski does not dispute that she was intoxicated at the time. She also does not dispute that she and others were dancing in an unnerving manner. It is also undisputed that Boczarski was wearing pantyhose.

Analysis

The Code of Civil Procedure authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002). If the movant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

In a claim for negligence, the plaintiff must show (1) that the defendant owed her a duty, (2) that the defendant breached that duty, and (3) that the defendant's breach proximately caused injury to the plaintiff. *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 22. Kulkarni's first argument in support of her summary judgment motion is that she owed no duty to protect Boczarski from

falling while dancing. A legal duty arises when a defendant and plaintiff stand in such a relationship to one another that the law obliges the defendant to act reasonably for the plaintiff's benefit. *Id.* Whether a duty exists under a particular set of circumstances is a question of law for the court to decide. *Id.*

When determining whether a defendant owed a duty to a plaintiff, courts analyze four factors: (1) the reasonable foreseeability of injury; (2) the reasonable likelihood of injury; (3) the magnitude of the burden that guarding against injury places on the defendant; and (4) the consequences of placing that burden on the defendant. *See Bucheleres v. Chicago Pk. Dist.*, 171 Ill. 2d 435, 456 (1996). Kulkarni's own testimony establishes that it was foreseeable to her that someone on the dance floor could lose their balance. Kulkarni removed herself from the room for that very reason. It was also reasonably likely that such a fall would cause an injury. Requiring Kulkarni to guard against this sort of injury would not be overly burdensome, because she could have easily asked her guests to stop playing music or stop dancing in a dangerous manner. The record suggests that Kulkarni's guests would have heeded such a request because they had previously complied with her request to remove their shoes. Lastly, the consequences of placing this burden on Kulkarni were effectively nil, because it is the same burden placed on all homeowners—to act reasonably for the safety of their guests. *See Rosett v. Schatzman*, 157 Ill. App. 3d 939, 942 (1st Dist. 1987) (landowner owes duty of reasonable care for safety of invitees); *see also Doe v. Coe*, 2019 IL 123521, ¶ 38 (consequence of placing burden on defendant is low when burden is the same as ordinarily imposed on defendant).

Kulkarni next argues that Boczarski cannot prove that her fall and injuries were proximately caused by Kulkarni's negligence. A proximate cause is one that produces an injury through a natural and continuous sequence of events unbroken by any effective intervening cause. *Crumpton v. Walgreen Co.*, 375 Ill. App. 3d 73, 79 (1st Dist. 2007). Proximate cause consists of two elements: cause in fact and legal cause. *Id.* A defendant's conduct is the cause in fact of a plaintiff's injury "if it was a material element and a substantial factor in bringing the event about." *Nolan v. Weil-McLain*, 233 Ill. 2d 416, 431 (2009) (quoting *Thacker v. UNR Industries, Inc.*, 151 Ill. 2d 343, 354 (1992)) (internal quotations omitted). Legal cause is established if the injury was of the type that a reasonable person would foresee as a likely result of his or her conduct. *See Crumpton*, 375 Ill. App. 3d at 79. Proximate cause is generally a question of fact to be decided by the trier of fact. *Fenton v. City of Chicago*, 2013 IL App (1st) 111596, ¶ 27.

In this case, a jury could reasonably find that the condition of Kulkarni's floors and her failure to warn guests about the potential danger of their dancing were material elements and substantial factors leading to Boczarski's injury. *See Thacker*, 233 Ill. 2d at 431. Additionally, that injury was a foreseeable result of

allowing guests to continue dancing in a manner that Kulkarni found unnerving and endangering. *See Crumpton*, 375 Ill. App. 3d at 79.

To be sure, the record suggests several potential intervening causes for Boczarski's fall, including the manner in which she and others were dancing, her intoxication, and her wearing pantyhose while dancing. A jury could reasonably conclude that one or more of these factors, rather than Kulkarni's conduct, caused the fall. A jury could also reasonably conclude that Kulkarni's conduct was consistent with her standard of care to keep her floors in a reasonably safe condition, because several witnesses testified that they did not observe any liquids or other potentially hazardous substances on the floor. A jury could, however, also reasonably conclude that Kulkarni's floors were in an unsafe condition, because Pavlicic testified that the floors were "very slippery," and that she had also slipped on them while entering the apartment. Given this various testimony, the record does not permit summary judgment on the issue of proximate causation.

Lastly, Kulkarni argues that Boczarski cannot prove that Kulkarni had actual or constructive notice of the floor's allegedly defective condition. Yet again, this argument runs aground on Kulkarni's own testimony, which establishes that she was concerned that someone might lose their balance on the dance floor. From this fact—particularly when coupled with the fact that the floors were "very slippery," according to Pavlicic—a jury could reasonably conclude that Kulkarni should have known that the floor was not safe given the type of dancing.

Conclusion

Based on the foregoing, it is ordered that:

The defendant's summary judgment motion is denied.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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