

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

Carolyn Davis,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 L 3887
	)	
Chicago Transit Authority, a municipal	)	
corporation, and Lee Catchings,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

Summary judgment may be granted if there exists no question of material fact and the moving party is deserving of judgment as a matter of law. In this case, the plaintiff's deposition testimony is inconsistent and presents questions of fact as to the cause or causes of her injury. For that reason, the defendants' summary judgment motion must be denied.

**Facts**

On the morning of June 22, 2018, Carolyn Davis boarded a Chicago Transit Authority bus near Washington and State Streets in Chicago. It had been raining for some time before Davis boarded the bus. After paying her fare, Davis proceeded down the aisle toward the back of the bus. Just before reaching the floor disk at the bus articulation, Davis fell and broke her ankle.

On April 11, 2019, Davis filed suit against the CTA and the bus operator, Lee Catchings. On February 19, 2021, Davis filed a two-count amended complaint. Count one is pleaded in negligence against the CTA, while count two is an identical count against Catchings. Davis alleges that Catchings quickly accelerated the bus from the bus stop before Davis took a seat and that she

slipped on the wet floor and then fell. She further alleges the CTA, as a common carrier, owed her the highest duty of care. Davis claims the defendants breached their duty by: (1) accelerating quickly from the bus stop while Davis was walking down the aisle; (2) accelerating quickly knowing the floor was wet and before Davis was seated; (3) moving the bus and accelerating before first ascertaining if it was safe to do so given the wet floor and Davis was walking down the aisle; (4) failing to warn Davis the bus would be accelerating and the floor was wet; and (5) failing to operate and control the bus safely given that Davis was walking down the aisle.

The case proceeded to discovery. The CTA produced video from cameras located inside the bus. They show the bus leaving the bus stop while Davis is still in the area next to the bus driver. Another camera shows Davis walking down the aisle without holding any grab handles, grab rails, or stanchions. That same camera shows Davis's left foot sliding on the floor and her fall.

Davis's deposition answers failed to provide a consistent presentation of the occurrence. The following colloquies occurred during her deposition:

Q. So walk me through from the time you got on the bus until the time you fall.

A. Okay. I stepped up on the bus. It was a little wet. And then I walked to get ready to sit down and the bus started to moving. And I couldn't grab up because I knew I would fall. And by the time I was walking to get a seat, he had just run it real fast, and that's when I took the fall.

\* \* \*

Q. Okay. As you were heading towards the back of the bus were you holding on to any of those poles with either hand?

A. No, the poles are not so close together, so when it took off, I found myself moving trying to get to the seat. And then when I got ready to sit down, took off

real fast. We started—he speeded up more. And that’s when my foot slipped and I fell.

\* \* \*

Q. All right. So I’m going to go back to the question that I had asked you then which was what caused you to fall?

A. The rain on the bus that was wet and the silver disc that moves, you know, because it’s a double bus, and so that moves.

Q. Was there anything else that caused your fall?

A. No.

Despite Davis’s testimony to the contrary, the CTA video makes plain that Davis’s left foot slipped on the floor before she reached the floor disk at the bus articulation.

### Analysis

The defendants seek to dismiss Davis’s amended complaint through summary judgment. The Code of Civil Procedure authorizes 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 Ed. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002).

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. N. Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the non-movant 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. *Espinoza v. Elgin, Joliet & Eastern Ry.*, 165 Ill. 2d 107, 114 (1995).

The defendants present four arguments supporting summary judgment. First, the defendants argue they owed Davis no duty to protect or warn her of the natural accumulation of water on the bus floor. Second, they argue they owed Davis no duty to avoid moving the bus until she was seated. Third, the defendants argue Davis cannot establish the bus acceleration contributed to her fall. Fourth, the defendants argue Davis is more than fifty percent at fault for causing her fall and injury.

The defendants' first three arguments are, ultimately, unavailing for a single reason: Davis's sworn deposition testimony is inconclusive of what caused her fall. The defendants correctly point to Davis's testimony that the floor of the bus was wet, and that nothing else caused her fall. Davis, however, responds by pointing to her testimony that the wet floor in combination with the bus quickly accelerating caused her fall. Such inconsistent testimony echoes the plaintiff's inconsistent testimony in *Schulenburg v. Rexnord, Inc.* 254 Ill. App. 3d 445 (1st Dist. 1993). There, the plaintiff testified inconsistently as to what caused his arm to get caught in machinery with which he was working. The court recognized the plaintiff's credibility and other evidence had to be weighed and that such determinations are generally improper at the summary judgment stage. *Id.* at 450. The court denied summary judgment but included a cautionary note: "Certainly plaintiff's statements may be used to impeach his testimony at trial and will no doubt weaken his credibility. However, the credibility of a witness is a question for the trier of fact to resolve, not a matter to be decided on a motion for summary judgment." *Id.* at 451. *See also Burns v. Grezeka*, 155 Ill. App. 3d 294 (2d Dist. 1987) (inconsistent expert testimony).

In this case, even if the defendants owed Davis no duty to warn of the wet floor or avoid moving the bus until she was

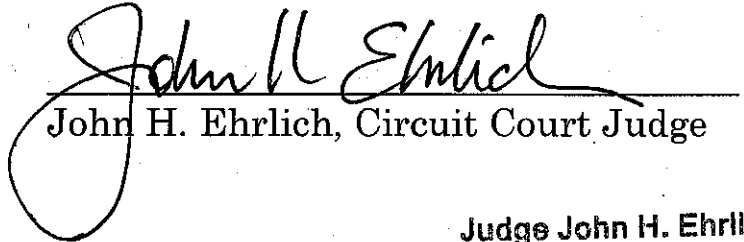
seated, her pleaded claims and deposition testimony reasonably infer a combination of events and conditions caused her fall and injury. Since this court must draw all inferences in favor of the non-moving party, the determination whether Davis's version of events is believable is up to a jury.

The defendants' fourth argument that Davis is more than fifty percent at fault is also unavailing. While a plaintiff may not recover if she is more than 50 percent at fault, 735 ILCS 5/2-1116, a trier of fact must determine fault allocation. *Id.* As noted above, the record reasonably suggests Davis shares some or more than fifty percent of fault for her injury, but that determination is for a jury.

### Conclusion

For the reasons presented above, it is ordered that:

The defendants' summary judgment motion is denied.

  
John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

MAY 10 2021

Circuit Court 2075