

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

SUSAN WOOD,

Plaintiff,

vs.

NORTHEAST ILLINOIS REGIONAL
COMMUTER RAILROAD CORP.
a/k/a METRA,

Defendant.

NO. 09 L 2981

Lynn M. Egan, Judge Presiding
General Calendar "J"

ORDER

This matter coming to be heard pursuant to defendant's (Northeast Illinois Regional Commuter Railroad Corporation ("Metra")), motion for summary judgment, due notice having been given, the motion having been fully briefed, and the court being duly advised in the premises, **IT IS HEREBY ORDERED THAT** said motion is granted, as more fully set forth below.

FACTS

Plaintiff filed suit against defendant, alleging negligence as a result of a fall she sustained on a train platform owned by defendant at the Millennium Park/Randolph Street Station ("Millennium Station") in Chicago. Specifically, plaintiff alleges defendant owed her the highest duty of care in maintaining its premises and violated this duty by failing to repair a defect on a platform in the station.

On December 20, 2008, plaintiff traveled from Hammond, Indiana to Chicago on the South Shore Line with her daughter and granddaughter. The South Shore Line is operated by the Northern Indiana Commuter Transportation District ("NICTD"), which is a separate entity, unaffiliated with Metra. Upon the train's arrival at Millennium Station, plaintiff exited the train car. After walking approximately 5 or 6 steps on the platform, plaintiff fell and injured her wrist. An injury report completed by a NICTD ticket collector notes that plaintiff cited uneven concrete on the platform as the cause of her fall. This individual inspected the area, but did not notice any such condition. Plaintiff and her daughter both testified during their depositions that plaintiff tripped over a hole or area of crumbled and broken concrete.

Defendant now moves for summary judgment on the basis that the heightened degree of care applicable to common carriers does not apply and that it had no actual or constructive notice of the alleged defect on the platform.

ANALYSIS

Resolution of defendant's motion begins with the well-established principle that summary judgment can only be granted where there is no genuine issue of material fact and the right of the movant is free and clear of doubt. Pence v. Northeast Illinois Regional Commuter Railroad Corp., 398 Ill. App. 3d 13, 17 (1st Dist., 2010). In making this determination, the pleadings, depositions, and other evidentiary materials must be viewed in the light most favorable to the non-moving party. O'Connell v. Turner Construction Co., 409 Ill. App. 3d 819, 822 (1st Dist., 2011).

In a negligence action, the plaintiff must establish defendant owed plaintiff a duty; defendant breached that duty, and an injury proximately caused by the breach resulted. Alaadi v. Standard Parking, Inc., 405 Ill. App. 3d 14, 16 (6th Dist., 2010). In the context of a negligence claim against a common carrier, it is well-established the common carrier must exercise the highest degree of care to its passengers. Eskew v. Burlington Northern & Santa Fe Railway Co., No. 1-09-3450 (1st Dist., September 30, 2011), 2011 Ill.App.LEXIS 1064. This may be true even where the passenger does not possess a ticket, has not paid a fare or is not on the carrier's vehicle at the time of injury. Skelton v. Chicago Transit Authority, 214 Ill.App.3d 554, 572 (1st Dist., 1991). "The passenger to whom the carrier owes the duty to exercise the highest degree of care is one who is in the act of boarding, is upon, or is in the act of alighting from, the carrier's vehicle." Del Real v. Northeast Illinois Regional Commuter Railroad Corp., 404 Ill.App.3d 65, 72 (1st Dist., 2010), quoting Katamay v. Chicago Transit Authority, 53 Ill.2d 27, 29 (1972). These principles were recently reaffirmed by the Illinois Supreme Court in Krywin v. Chicago Transit Authority, 238 Ill.2d 215, 226 (2010). In fact, the Supreme Court noted the heightened degree of care is not limited to the time a passenger is on the carrier's conveyance or when the passenger is boarding or exiting the conveyance. Instead, "the carrier is bound to furnish the passenger an opportunity to safely alight from the conveyance and reach a place of safety." Id. at 237. As a result, common carriers also have a duty "to provide reasonably safe depots, platforms, and approaches for the use of passengers..." Eskew, supra at 37.

Neither party disputes any of these general principles of law. Rather, there is a dispute about whether any of these principles apply in the present case due to the nature of the relationship between plaintiff and defendant. Although plaintiff insists she is entitled to the heightened duty standard, defendant denies there was ever a carrier-passenger relationship between itself and plaintiff. Instead, defendant argues the only carrier-passenger relationship was between NICTD, as operator of the South Shore Line, and plaintiff. Significantly, this dispute raises

a question of law for the court to determine. Eskew, *supra* at 33. Thus, some threshold principles are worth noting.

A contractual relationship between passenger and carrier begins when the passenger presents at the proper place with the intention of becoming a passenger and is either expressly or impliedly accepted by the carrier for transportation. *Id.* While it is not necessary for the person to possess a train ticket (Skelton, *supra*), "the circumstances must be such that the [carrier] will understand that such person is a passenger in its care and entitled to its protection." Fence, *supra* at 18, citing Chicago & Eastern Illinois Railroad Co. v. Jennings, 190 Ill. 478, 486 (1901). Importantly, the carrier-passenger relationship does not end until the passenger leaves the place where passengers are deposited by the carrier. Katamay v. Chicago Transit Authority, *supra*. The rationale for this rule is based in part on the fact passengers generally have no control over where carriers choose to stop a train, plane or bus. Thus, they must disembark at the site chosen by the carrier.

Based on the above principles, it is clear plaintiff was a passenger of a common carrier at the time of her fall. Although she safely exited the train, she had taken only a few steps from the train car before she fell (Plaintiff's Deposition, pp. 52-55), a situation similar to that described in Filipot v. Midway Airlines, 261 Ill.App.3d 237 (4th Dist., 1994), where the plaintiff was still on the tarmac after exiting a plane. Despite being off the plane, the Court concluded plaintiff's status as a passenger had not ended. *Id.* at 243. The same is true in the present case. Plaintiff exited the train at the location chosen by the carrier. Thus, the common carrier owed plaintiff the highest degree of care. Significantly, however, the only entity which operated as a common carrier in relation to plaintiff was NICTD, which operated the South Shore Line. Plaintiff presented herself for transport in Hammond, Indiana and bought her ticket on the South Shore Line train, which was operated by NICTD, not defendant. (Plaintiff's Deposition, pp. 38, 45-46). Thus, NICTD, not defendant, accepted her for transport. Although defendant owned Millennium Station, there is nothing in the record to suggest it accepted plaintiff as a passenger or operated as a common carrier in relation to the South Shore Line. Instead, it operated solely as the premises owner of the station, which means it owed plaintiff a duty of ordinary care. Skelton v. Chicago Transit Authority, *supra* at 573. Just as importantly, plaintiff's claim for recovery is based upon allegations of negligence in connection with maintenance of the premises, not operation of a train. This is dispositive because the ordinary care standard is applicable "when the claim for recovery is predicated on a theory of premises liability, and the issue is the safety of the premises themselves, such as where injury resulted from a defect or other dangerous condition in the station or platform." Eskew, *supra* at 37. Review of plaintiff's First Amended Complaint reveals the only allegations against defendant are related solely to its failure to properly maintain the station platform. (Plaintiff's First Amended Complaint, ¶ 8(a)-(d) & 25). Thus, defendant is correct in asserting that an ordinary care standard applies to its conduct in this case.

Of course, this conclusion is not dispositive of defendant's entire motion as the issue of notice must still be resolved. In a negligence action, "knowledge of the facts out of which the duty to act arises is essential." Adams v. Northern Illinois Gas Co., 211 Ill. 2d 32, 48 (2004). More specifically, when a plaintiff relies on a theory of constructive notice, there must be proof that the dangerous condition "existed for a sufficient amount of time or that, through the exercise of reasonable care, the defendant should have discovered the dangerous condition." Hornacek v. 5th Ave. Prop. Maint.; No. 1-10-3502 (1st Dist., September 30, 2011), corrected October 5, 2011, 2011 Ill. App. LEXIS 1052.

In this case, there is no suggestion defendant had actual notice of the alleged defect. Instead, plaintiff's sole argument about notice is that defendant was on constructive notice of the defective condition because it "undertook the duty to inspect the platforms" on a regular basis. (Plaintiff's Response, pp. 5-6). However, this argument misses the mark. No witnesses other than plaintiff and her daughter testified about any defect; and plaintiff and her daughter were unable to offer any specific information beyond stating they noticed the presence of crumbled concrete and, possibly, a hole. Neither woman offered any testimony about the size, depth or age of the condition. While plaintiff answered a request to admit by stating the defective condition "looked like it had been there for some time" (Defendant's Motion, Exhibit M, ¶ 3), such conclusory language is without meaning and insufficient to establish constructive notice of the condition. As a result, the only specific, factual statements about the condition of the platform are found in the affidavits of employees who observed the premises on a daily basis. (Defendant's Motion, Exhibits G - J). Significantly, none of these employees saw any trip hazards, defects, or broken or crumbled areas of concrete on the platform on December 20, 2008. *Id.* at ¶ 5. Additionally, no other passenger made a complaint about the platform. (O'Dea Deposition, pg. 42). Therefore, the record fails to support the conclusion that defendant had constructive notice of a defect, thereby making summary judgment appropriate.

CONCLUSION

Defendant's motion for summary judgment is granted and the ruling date of November 2, 2011 is stricken. Similarly, the trial date of November 14, 2011 is also stricken.

JUDGE LYNN M. EGAN

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ENTERED: _____

Circuit Court-1683

Lynn M. Egan, Circuit Court Judge