2025 IL App (4th) 4240721-U

NO. 4-24-0721

FILED
March 5, 2025
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

STEPHANIE HARRIS, Plaintiff-Appellant, v. THOMAS ROSSI and THE PEORIA SURGICAL GROUP, LTD., Defendants-Appellees.	)	Appeal from the Circuit Court of Peoria County No. 20L191 Honorable Stewart J. Umholtz, Judge Presiding.

JUSTICE VANCIL delivered the judgment of the court.
Justices Zenoff and Grischow concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's grant of summary judgment, finding that defendant, Thomas Rossi, did not owe a duty to plaintiff.

¶ 2 This case arises from a shoulder injury sustained by plaintiff, Stephanie Harris, while assisting defendant, Thomas Rossi, during a procedure in the operating room. In the trial court, Harris filed a complaint against defendants, Rossi and the Peoria Surgical Group, Ltd., alleging Rossi was negligent when he moved a monitor that she also had her hands on, failed to follow appropriate safety protocols and policies, and carelessly and improperly, directly or indirectly, touched Harris, which resulted in her shoulder being injured. The court granted summary judgment in favor of defendants. On appeal, she argues that the court erred by finding

Rossi did not owe her a duty of care. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In March 2019, Harris worked as a surgical nurse employed by OSF Saint Francis Medical Center (OSF). When the incident occurred, Harris had approximately 20 years of experience in the OSF surgical department. Her duties included assisting the surgical team during surgical procedures and repositioning equipment, such as laparoscopic video monitors, around the surgical suite. Rossi is now a retired general surgeon. On the date of the incident, Rossi was a surgeon employed by the Peoria Surgical Group, Ltd.

¶ 5 On March 13, 2019, Harris worked alongside Rossi in an operating room during a surgical procedure. In her deposition, Harris admitted she had experience in moving laparoscopic monitors and knew surgeons would move the monitors on occasion. Harris recalled that, after the patient was prepared for surgery and the other medical staff were "scrubbed in," Rossi asked Harris to move the laparoscopic monitor. The monitor was described as hanging from the ceiling with handles on each side, like a bicycle. Harris gripped the handles, and after that, she recalled Rossi reaching over her from behind and pulling the monitors back toward the two of them. Harris felt severe pain, let go of the handles, and walked away, but she did not inform Rossi of an injury. In her deposition, Harris stated she sought immediate care at OSF Occupational Health. As a result of the injury, she required surgery for a right rotator cuff repair and missed 40 weeks and one day of work. In his deposition, Rossi stated he did not recall the events of March 13, 2019, nor did he recall ever working with Harris, although he admitted he may have worked with her.

¶ 6 In August 2020, Harris filed her complaint, alleging Rossi's act in moving the monitors was negligent and caused her injury. Rossi's employer was also named as a defendant

under the theory of *respondeat superior*. In January 2021, defendants filed a motion to dismiss, which the trial court denied. After defendants filed an answer and the parties took depositions, the defendants filed a motion for summary judgment. The court scheduled a hearing for oral argument in April 2024. The court granted summary judgment in favor of defendants, finding there was no duty because the injury was not reasonably foreseeable.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 In her complaint, Harris alleges she was injured when Rossi negligently grabbed and pulled a ceiling-mounted monitor toward the pair while her hands were also on the monitor and that this caused her to suffer an injury to her right shoulder. To state a claim for negligence, "a plaintiff must allege that (1) the defendant owed plaintiff a duty, (2) the defendant breached this duty, and (3) that this breach was the proximate cause of plaintiff's resulting injuries." *Hutson v. Pate*, 2022 IL App (4th) 210696, ¶ 39. The trial court granted defendants' motion for summary judgment on the first element, finding that Rossi did not owe Harris a duty. "Whether a duty exists under a particular set of circumstances is a question of law for the court to decide." *Id.* Therefore, our review is limited to the question of whether Rossi owed Harris a duty.

¶ 10 The trial court's order granted summary judgment in favor of defendants. Summary judgment is appropriate only where "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(c) (West 2022). "When ruling on a motion for summary judgment, courts consider all of the evidence in the light most favorable to the nonmoving party." *Hutson*, 2022 IL App (4th) 210696, ¶ 37. If a plaintiff fails to establish any element of the cause of action, summary

judgment for the defendant is proper. *Id*. We review a grant of summary judgment *de novo*. *Id.*

¶ 11 Illinois courts have long struggled with the concept of "duty," which has been described as " 'very involved, complex and indeed nebulous.' " *Stearns v. Ridge Ambulance Service, Inc.*, 2015 IL App (2d) 140908, ¶ 9 (citing *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 430 (2006)); see *Mieher v. Brown*, 54 Ill. 2d 539, 545 (1973). The touchstone of the duty analysis is "to ask whether a plaintiff and a defendant stood in such a *relationship* to one another that the law imposed upon the defendant an obligation of reasonable conduct for the benefit of the plaintiff." (Emphasis in original.) *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 18.

> "[E]very person owes a duty of ordinary care to all others to guard against injuries which naturally flow as a reasonably probable and foreseeable consequence of an act, and such a duty does not depend upon contract, privity of interest or the proximity of relationship, but extends to remote and unknown persons." (Internal quotation marks omitted.) *Bogenberger v. Pi Kappa Alpha Corp.*, 2018 IL 120951, ¶ 22 .

Whether a relationship exists that creates a duty between a plaintiff and defendant depends on four factors: "(1) the reasonable foreseeability of the injury, (2) the likelihood of the injury, (3) the magnitude of the burden of guarding against the injury, and (4) the consequences of placing that burden on the defendant." *Simpkins*, 2012 IL 110662, ¶ 18. This determination "requires considerations of policy inherent in the consideration of these four factors and the weight accorded each of these factors in any given analysis depends on the circumstances of the case at hand." *Id.*

¶ 12 Before considering the duty factors, the threshold question is whether the

defendant, by his act or omission, contributed to a risk of harm to this particular plaintiff, and if so, then we weigh the four factors to determine whether a duty ran from the defendant to the plaintiff. *Id.* ¶ 21. If the answer to the threshold question is no, however, we address whether there were any recognized special relationships that establish a duty. *Id.* In this case, the parties are not disputing the threshold question that Rossi's actions contributed to a risk of harm to Harris. It is apparent for purposes of the duty analysis that Rossi's action of grabbing the monitor occurred, and then Harris's shoulder was injured. Therefore, we undertake an analysis of the existence of a duty.

¶ 13 We first address three factors of the duty test that we find clearly weigh against imposing a duty in this case. First, we address the likelihood of injury. Again, keeping in mind that the crux of the duty analysis is the *relationship* between the parties, we find that there is not a high likelihood of injury here. Most employees work together day after day without injuries occurring in vast numbers, although they do occur from time to time. Here, Harris and Rossi were working together in an operating room before the injury occurred. Harris worked as a surgical nurse, and Rossi was a general surgeon. The record is ambiguous as to their employment relationship to one another. It is undisputed that the two were employed by different entities. However, the record does not provide any facts indicating the contractual relationship between Rossi and OSF, nor any facts regarding the employee relationship between Harris and Rossi. Specifically relating to these parties, those working in an operating room are highly trained individuals. In his deposition, Rossi testified that the surgical technicians and assistants are "specifically trained in the ways and means of how an operating room functions." He further explained that they are trained on where to stand, what to do, and the commands they are required or expected to follow. The parties are both educated and highly trained individuals,

which lowers the risk of injuries.

¶ 14 Next, we address the public policy factors: the magnitude of the burden of guarding against the injury and the consequences of placing that burden on the defendant. We find that these factors strongly weigh against imposing a duty in this case. Defendants cite *O'Hara v. Holy Cross Hospital*, 137 Ill. 2d 332 (1990), in support of their arguments. In *O'Hara*, the complaint alleged that the plaintiff brought her son to the emergency room for treatment of a facial laceration. *Id.* at 335. It also alleged that the nurse invited plaintiff to accompany her son into the emergency room, and during the treatment, someone requested plaintiff wipe Novocain from her son's mouth, which she did. *Id.* Soon thereafter, plaintiff fainted, hit her head, and subsequently suffered necrosis of brain cells. *Id.*

¶ 15 The Illinois Supreme Court addressed "whether defendants owed a duty to plaintiff, a nonpatient bystander, to protect her from fainting." *Id.* The court found that the injury was foreseeable, stating, "Although we agree with plaintiff that it is reasonably foreseeable a nonpatient bystander could faint, none of the remaining factors support the imposition of a duty to protect a mere bystander from fainting." *Id.* However, the court denied there was a duty based on considerations of the magnitude of the burden and public policy. *Id.* at 341-42. Our supreme court explained:

> "More importantly, the burden of guarding against such an occurrence and the consequences of placing that burden on an emergency room are enormous. Once a nonpatient is allowed to enter the emergency room, the emergency room personnel would then have to take steps to protect that person from becoming ill. This task would be difficult, if not impossible, to achieve because there is no way to eliminate the gruesome sights and sounds inherent in an emergency room

> setting. Even if the emergency room attempts to protect a nonpatient from fainting, a portion of its attention would shift from the patient to the nonpatient, which would diminish the care provided to the patient. Furthermore, even if the emergency room takes precautions to protect the nonpatient, that person could still faint if susceptible to doing so. Therefore, the only practical way of protecting nonpatients would be to bar them from emergency rooms entirely. This result would be undesirable because nonpatients oftentimes can help reduce a patient's anxiety, offer the patient comfort, consolation and support, and reduce their own anxiety by becoming aware of the condition and treatment of the patient. The primary function of the emergency room is to treat patients. Placing a duty on the emergency room to protect nonpatient bystanders from fainting would erode its primary function." *Id.* at 341.

¶ 16 We find this reasoning to be compelling in the case before us. The primary function of the operating room is to treat the patient. Mandating any duty other than to the patient on the operating table would disrupt the surgery and harm the patient and, by extension, the public. Those who work in the medical field are aware of the risks associated with their jobs, but as noted, they are highly trained individuals. To hold otherwise would burden the medical field with alternate considerations other than that of its primary function.

¶ 17 Harris also relies on *O'Hara* for her argument. She argues that because Rossi asked Harris to first move the monitor, this was an invitation similar to the way the plaintiff in *O'Hara* was asked to assist. We fail to understand Harris's argument. While the plaintiff in *O'Hara*, a nonpatient bystander, argued that she was asked to assist in the emergency room and that this invitation created a duty, in this case, Harris was an employed nurse working in the

room. More to the point, that issue was not directly addressed by the court in *O'Hara* but identified as a genuine issue of material fact for the trial court to resolve.

¶ 18 We now turn to the foreseeability factor. "In deciding reasonable foreseeability, we note that an injury is not reasonably foreseeable where it results from freakish, bizarre, or fantastic circumstances." *Doe-3 v. McLean County Unit District No. 5 Board of Directors*, 2012 IL 112479, ¶ 31. "To be foreseeable, the injury must be objectively reasonable to expect, given the circumstances apparent to defendant at the time of his injurious conduct." *Hutson*, 2022 IL App (4th) 210696, ¶ 66. However, we must keep in mind that the duty is based on the *relationship* between the plaintiff and defendant and not the type of injury that resulted. *Colonial Inn Motor Lodge, Inc. v. Gay*, 288 Ill. App. 3d 32, 40 (1997).

¶ 19 The concept of foreseeability is limited to what is objectively reasonable to expect. *Jarosz v. Buona Companies, LLC*, 2022 IL App (1st) 210181, ¶ 37 (citing *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 33). The fact "[t]hat something might conceivably occur, does not make it foreseeable." (Internal quotations omitted.) *Id.* Thus, while it may be foreseeable that two people working in the same environment could injure one another, our foreseeability analysis is limited to those injuries that are objectively reasonable to expect. Here, there are various instruments and tools in an operating room, some of which are dangerous when handled improperly. However, the only facts we have before us are that Harris gripped the monitor and moved it, and before she let go, Rossi also gripped the monitor and moved it, and then Harris felt pain in her shoulder. There is nothing in the record that shows Rossi shoved, pushed, jerked, or moved the monitor suddenly, and Harris does not recall any such uncommon behavior herself. There was also no evidence that an injury had previously occurred from repositioning a monitor during a surgical procedure. Appellant's counsel conceded, and we agree, there is nothing

inherently dangerous about the ceiling-mounted laparoscopic monitor.

¶ 20 Ultimately, we do not find foreseeability so strongly supports a duty here that it overrides the other three factors. As stated, we hold the other three factors weigh heavily against imposing a duty.

> "In determining whether the law imposes a duty, foreseeability of possible harm alone is not the test, for in retrospect almost every occurrence may appear to be foreseeable. The likelihood of injury from the existence of a condition, the magnitude of guarding against it, and the consequences of placing the burden upon the defendant must be taken into account." *Rabel v. Illinois Wesleyan University*, 161 Ill. App. 3d 348, 356 (1987) (citing *Barnes v. Washington*, 56 Ill. 2d 22, 29 (1973)).

Even if we were to find that the injury was foreseeable, the other factors strongly persuade us to find there was not a duty in this case. For, even if a course of action creates a foreseeable risk of injury, any duty is limited by the remaining duty factors. *Simpkins*, 2012 IL 110662, ¶ 19. Moreover, as we find the trial court's grant of summary judgment proper against Rossi, her *respondeat superior* claim against the Peoria Surgical Group, Ltd., must also fail. Therefore, we affirm the trial court's holding.

¶ 21 Finally, we note that Harris argues that defendants cannot avoid liability based on the eggshell plaintiff doctrine. Harris did not raise this argument in the trial court, and as such, this argument is forfeited. See *Vantage Hospitality Group, Inc. v. Q Ill Development, LLC*, 2016 IL App (4th) 160271, ¶ 49 ("It has long been the law of the State of Illinois that a party who fails to make an argument in the trial court forfeits the opportunity to do so on appeal.").

¶ 22 III. CONCLUSION

¶ 23 For the reasons stated, we hold that Rossi did not owe Harris a duty. As she fails in proving the first element of her negligence claim, the trial court correctly granted summary judgment in favor of defendants.

¶ 24 Affirmed.