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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1263**

Karen Marie Firman,
Appellant,

vs.

Town & Country Campground Inc., et al.,
Respondents.

**Filed April 7, 2025
Affirmed
Connolly, Judge**

Scott County District Court
File No. 70-CV-23-524

Matthew J. Barber, Kojo A. Addo, Hannah R. Mielke, Schwebel, Goetz & Sieben, P.A.,
Minneapolis, Minnesota (for appellant)

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Considered and decided by Connolly, Presiding Judge; Worke, Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the summary-judgment dismissal of her premises-liability negligence claim stemming from personal injuries suffered when she fell on stairs at a campground owned by respondents. Appellant argues that summary judgment was erroneously granted because there are material facts in dispute regarding whether

respondents breached their duty of care, and whether respondents' breach of their duty of care was the proximate cause of appellant's injuries. We affirm.

FACTS

This appeal arises from injuries sustained by appellant Karen Marie Firman when she fell at respondent Town & County Campground Inc. (the "campground"), a roughly five-acre property owned, at the time, by respondents Jill E. Olmstead and David Olmstead.¹ The campground was originally a farm. Jill's parents purchased the farm in the 1960s and converted it to a campground in 1968. Jill and David later purchased the campground in 1996.

The campground has a main office building that was present on the property when Jill's parents purchased it. The main office building has a public entrance with a set of wooden stairs with three treads and a top landing leading to the entrance. The stairs have rubber mats affixed to the middle portion of each tread and at the front of the top landing, but most of each tread is uncovered. There is also a wooden railing on each side of the stairs. As far as Jill recalls, these stairs were present when the farm was converted into a campground, if not longer.

The campground offers a "work campers" program under which campers can work for the campground for a certain number of hours in exchange for discounted or free camping. Appellant and her husband had been visiting the campground since about 2003, and had been part of the work campers program since about 2005. As a worker and camper,

¹ For ease of reference the Olmsteads will be referred to individually by their first names.

appellant had used the stairs to the main office countless times without incident and was aware of their condition.

On May 25, 2021, appellant went to the main office to take a break from some work she was performing at the campground as part of the work campers program. As appellant began to ascend the steps to the main office, she, without using the handrailing, stepped on the first tread with one foot, and when attempting to raise her other foot to the second tread, caught her toe on the “edge” of the second tread and lost her balance. Although appellant acknowledged that she does not remember exactly what happened next, she recalls attempting to regain her balance, by “plant[ing]” her foot and catching herself. But appellant’s attempt to regain her balance was unsuccessful, and she fell backwards onto the cement walkway at the base of the stairs. Appellant fractured her wrist and femur as a result of her fall, and both injuries required surgical repair.

Appellant brought this action against respondents alleging that respondents were negligent in maintaining the stairs to the main office and that the deteriorated condition of the stairs caused her to fall and sustain substantial injuries. In deposition testimony, the campground’s former office manager testified that she believed that the stairs were dangerous because they were old, the wood was rotting, the railing was loose, and the depth of the step was “very narrow.” According to the office manager, she often told people to be “careful” on the steps because she routinely observed people tripping on the stairs. Although the office manager acknowledged that people “didn’t always fall” when they tripped on the stairs, she recalled one individual falling on the steps and breaking her wrist.

Another campground worker testified in his deposition that he believed that the “stair tread, which you step on, was not deep enough to handle . . . the average-size foot.” He also testified that he measured the steps before and after appellant fell and claimed that they were “not in code” because “they were either too high or too low.” According to the campground worker, he shared his concerns about the stairs with David “at least” twice and at one point attempted to “reinforce” the handrails when they became “wobbly.” But the campground worker acknowledged that he could not recall “what the specifications [of the stairs] should have been according” to the proper code. And the campground worker admitted that he has no professional experience in residential construction and that he did not know when the stairs were built or if they were built according to the applicable code.

Respondents moved for summary judgment, claiming that “there is no evidence or expert testimony indicating that some dangerous condition of the stairs caused [appellant] to trip.” The district court agreed, determining that there was insufficient evidence to “establish a material fact in dispute, including . . . the standard of care, i.e., the required depth of the stairs under the applicable building code, or an expert opinion on the appropriate depth of the stair tread.” The district court also determined that there was insufficient evidence showing a breach of the standard of care, “i.e., that the wooden stairs at issue were indeed NOT in compliance with the applicable building code or were not deep enough per expert testimony.” The district court, therefore, granted respondents’ motion for summary judgment. This appeal follows.

DECISION

Appellant challenges the district court's grant of summary judgment in favor of respondents. A motion for summary judgment should be granted "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if, considering the record as a whole, a rational trier of fact could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). "[M]ere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quotation omitted). "[T]he nonmoving party must do more than rest on averments." *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 61 (Minn. 2014). We apply a de novo standard of review to a district court's legal conclusions and view the evidence in the light most favorable to the nonmoving party. *Staub v. Mrytle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021).

To succeed on her negligence claim, appellant must show "(1) [the] existence of a duty of care; (2) breach of that duty; (3) proximate causation; and (4) injury." *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). "Summary judgment is appropriate when the record lacks proof of any of the four elements." *Kellogg v. Finnegan*, 823 N.W.2d 454, 458 (Minn. App. 2012).

"It is well established . . . that a landowner has a duty to use reasonable care for the safety of all entrants upon the premises." *Olmanson v. LeSueur County*, 693 N.W.2d 876, 880 (Minn. 2005). This non-delegable duty requires an owner and possessor of land to

maintain his property in a reasonably safe condition for visitors on the premises. *Niemann v. Northwestern College*, 389 N.W.2d 260, 261-62 (Minn. App. 1986), *rev. denied* (Minn. Aug. 27, 1986).

Here, as the district court stated, “there is no dispute that [respondents] generally owed a duty of care to their guests to maintain their property in a reasonably safe condition.” But appellant contends that summary judgment was erroneously granted because there are material facts in dispute regarding whether respondents breached their duty of care, and whether respondents’ breach of their duty of care was the proximate cause of appellant’s injuries.

Breach of a duty is typically a question of fact for the jury. *See Domagala v. Rolland*, 805 N.W.2d 14, 28-29 (Minn. 2011) (stating that whether a defendant’s action satisfies a duty of care is a jury question). But there is no fact issue for the jury when the plaintiff fails to present any evidence of breach and the jury would be forced to speculate. *See Sandvik v. Jammes*, 160 N.W.2d 700, 704 (Minn. 1968) (stating that proof of negligence must furnish more than a basis for speculation); *Harvet v. Unity Med. Ctr., Inc.*, 428 N.W.2d 574, 579 (Minn. App. 1988) (acknowledging that allegations based on speculation fail to create a jury question).

The district court here stated that the crux of appellant’s claim is that “the tread depth of the stairs was too narrow and not up to ‘code.’” But the district court determined that appellant “produced no competent evidence for a jury to rely on in ascertaining [respondents’] duty with respect to the depth of the stairs, and whether that duty was breached.” Specifically, the district court noted that appellant failed to identify “the depth

required for these stairs by the applicable building code, which code applied to the building built in the 1960s, and whether [respondents] were required to upgrade their stairs if the building code changed.” The district court also determined that appellant failed to produce “the measurements of the stairs to demonstrate that the stairs did not comply with the applicable building code,” nor did she produce “an expert that has otherwise explained that these stair treads were unsafe.” Although the district court noted that appellant makes “general references to the poor conditions of the stairs,” the district court stated that “[t]his is a red herring” because appellant’s “entire case rises or falls on the depth of the stairs.” Thus, the district court determined that there were no material facts in dispute for trial on the standard of care.

Appellant argues that the district court erred in determining that she failed to present sufficient evidence to create a genuine issue of material fact as to whether respondents “breached their landowner duties by failing to maintain the deteriorated, or narrow, or both dangerous conditions of their stairs.” To support her position, appellant relies heavily upon *Staub*. In that case, a woman died after falling down a flight of stairs at a resort. *Staub*, 964 N.W.2d at 616. The woman’s trustee sued the resort and its owner, arguing that they proximately caused her death by negligently failing to keep the stairs in a safe condition. *Id.* In depositions and affidavits, multiple witnesses described seeing the woman rolling to the ground at the bottom of the stairs, and one witness described warning the owner repeatedly that the steps were dangerous. *Id.* at 617-18. The resort and its owner moved for summary judgment, arguing the trustee’s causation theory was speculative. *Id.* at 619.

The district court agreed, reasoning that, although the stairs were “cracked, chipped, leaning, and weathered,” no one observed what caused the woman to fall. *Id.*

On appeal, the supreme court reversed, concluding that “a jury could reasonably infer that the poor and degraded condition of the stair was a substantial factor in causing [the woman’s] death.” *Id.* at 625-26. The supreme court relied on the fact that the record showed that the woman “was on the landing before she fell and that she, in fact, fell,” and that the stairs were degraded and unsafe. *Id.* at 625. The supreme court concluded that “[l]ife experience and common sense,” would allow a jury to decide “that a degraded, cracked, and chipped stair, leaning away from a building, is a dangerous condition that may cause a person using the stair to fall.” *Id.*

Unlike in *Staub*, in which there was an issue of material fact related to proximate cause, this case involves whether there is an issue of material fact related to the standard of care and a breach of that standard of care.² But in determining that there was an issue of material fact related to proximate cause, the supreme court recognized that the evidence, “including deposition testimony, expert reports, and photographs,” established that “[t]he stair was degraded and in poor condition; the landing was rough and rocky and the steps themselves were cracked, chipped, inconsistently spaced, leaning, and unsafe to use.” *Id.* Although the supreme court noted that the resort disputed the claim that the stair was dangerous, the court stated that “[w]hether the stair was in fact dangerous—in other words, whether [the defendants] were actually negligent in maintaining the stair and breached

² We also note that, unlike *Staub*, here the victim testified as to how she fell.

some duty of care to [the woman]—is an issue that may be addressed on remand.” *Id.* at 625 n.11. The supreme court added that, “[g]iven the procedural posture here, . . . we assume that the stair had deteriorated to the point where it was dangerous because [the plaintiff] introduced evidence supporting such a conclusion: the photographs, the [expert] report . . ., and witness testimony and affidavits discussing the dangerous condition of the stair.” *Id.*

Appellant argues that, under *Staub*, the evidence in the record is sufficient to establish an issue of material fact as to whether the narrowness of the stairs was dangerous or hazardous. But *Staub* is distinguishable from the circumstances presented in this case. As respondents point out, “[i]n *Staub*, the plaintiff had presented expert testimony to support a claim that the staircase at issue was dangerous,” whereas “[a]ppellant here has no expert to offer any opinion that the stairs were . . . dangerous.”

Appellant argues that expert testimony was unnecessary because “*Staub* does not say expert reports are required to create a genuine issue of material fact on breach where there is testimony and photographs showing the deteriorated condition of the stairs.” Indeed, we acknowledge *Staub* does not say that expert testimony was *necessary* in that case. And “expert testimony is not necessary in cases where the nature of the alleged negligent conduct is such that inferences to be drawn from the facts are within the range of common experience of [people] and where jurors are equally capable of drawing inferences as are experts.” *Schulz v. Feigal*, 142 N.W.2d 84, 88 (Minn. 1966).

However, expert testimony was a factor that the supreme court listed in “assum[ing]” that the stair had deteriorated to the point where it was dangerous. *See Staub*,

964 N.W.2d at 625 n.11. Moreover, the supreme court has stated that “if it would be speculative for the factfinder to decide the issue of negligence without having the benefit of expert testimony on the standard of care, the expert testimony is necessary.” *Atwater Creamery Co. v. W. Nat. Mut. Ins. Co.*, 366 N.W.2d 271, 279 (Minn. 1985).

Here, as the district court determined, “[t]he average person has no idea what the safe dimensions are for a set of stairs. If they encounter a borderline set of stairs in their own life they might think, like [appellant’s] witnesses, that the dimensions are questionable, but they would have no idea whether their suspicions are correct.” Moreover, appellant failed to present any evidence indicating that the stairs were not up to code. Without any evidence that the stairs were in violation of the applicable code, or without any expert testimony stating that the tread of the stairs was dangerous due to a failure to comply with the applicable code, a jury would be left to speculate as to whether the stairs were unsafe. *See Sandvik*, 160 N.W.2d at 704 (stating that proof of negligence must furnish more than a basis for speculation); *see also Harvet*, 428 N.W.2d at 579 (acknowledging that allegations based on speculation fail to create a jury question).

Appellant argues further that, under *Rowe v. Goldberg*, 435 N.W.2d 605 (Minn. App. 1989), *rev. denied* (Minn. Apr. 24, 1989), she has “presented sufficient evidence that [r]espondents’ stairs were dangerously narrow, and the jury will be capable of considering the evidence and determining whether the stairs were dangerous or hazardous without reference to the building code.” In *Rowe*, the plaintiff was injured when she fell down the stairs at her employer’s home. 435 N.W.2d at 606. After the jury found that the plaintiff was 90% negligent, the plaintiff moved for a new trial, arguing that the district court erred

in limiting the scope of expert testimony. *Id.* On appeal from the denial of her motion, this court affirmed, concluding that it was appropriate to limit testimony regarding nonconformity with a building code when no showing had been made that the structure in question was required to comply with the code. *Id.* at 607.

Appellant's reliance on *Rowe* is unavailing. Here, unlike in *Rowe*, there is no indication that respondents were not required to comply with the applicable building code. In fact, as the district court determined, there is no evidence in the record related to the "depth required for these stairs by the applicable building code, which code applied to the building built in the 1960s, and whether [respondents] were required to upgrade their stairs if the building code changed."

Moreover, in *Rowe*, there was an expert who "was allowed to show the jury photographs of the steps with measurements," "play a video tape of the steps while he walked up and down the steps," and testify "regarding what changes could be made to modify the pattern of ingress and egress." *Id.* In contrast, appellant here offered no expert testimony related to the alleged dangerousness of the stairs. Although appellant repeatedly points out that the stairs were warped, rotten, had frayed rubber mats, and a loose railing, and offered photographs and layperson testimony to support her position, tellingly, she does not claim that these conditions were the cause of her fall. Instead, she claims that the narrow tread of the stairs was the cause of her fall. Specifically, appellant's answers to interrogatories state that when she tripped on the stairs, she attempted "to regain her balance" by stepping "backwards onto the stair below her," but the "stairs were too narrow, causing [her] to fall down the stairs onto the ground." And appellant acknowledges on

appeal that “after [r]espondents’ stairs tripped her, . . . she could not regain her balance because the stairs were too narrow.” But without any evidence demonstrating the proper depth of the tread, through expert testimony and/or the applicable building code, the jury would be left to speculate as to whether respondents breached their duty because there is insufficient evidence demonstrating the proper standard to be applied to the depth of stairs. Accordingly, we conclude that the district court did not err when it granted summary judgment in favor of respondents.³

Affirmed.

³ Because we conclude that the district court did not err when it granted summary judgment in favor of respondents on the standard of care and the breach of that standard of care, we need not address appellant’s argument that summary judgment was inappropriate on the issue of proximate cause. *See Kellogg*, 823 N.W.2d at 458 (“Summary judgment is appropriate when the record lacks proof of any of the four elements.”).