Circuit Court for Prince George's County
Case No. CAL20-11583

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1571

September Term, 2022

CATHY BENNETT

v.

WASHINGTON EDUCATION ZONE, LLC

Reed,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 29, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Cathy Bennett, appellant, appeals from the granting, by the Circuit Court for Prince George's County, of a motion for judgment in favor of Washington Education Zone, LLC ("WEZ"), appellee. For the reasons that follow, we shall affirm the judgment of the circuit court.

On April 13, 2020, Ms. Bennett filed in the circuit court a complaint in which she stated:

> [WEZ] is a Maryland company with its principal place of business located at 6511 Princess Garden Parkway, Lanham, MD 20706. At all times relevant herein, [WEZ] owned, operated, managed, and/or maintained the property . . . .
>
> * * *
>
> On May 14, 2018, [Ms. Bennett] was a resident at 6511 Princess Garden Parkway . . . .
>
> On said date, [Ms. Bennett] was attempting to throw away her trash in the common area dumpster located on said premises when she slipped and fell on hazardous trash and/or debris surrounding the dumpster.
>
> Upon information and belief, [WEZ] was aware that trash and/or debris was accumulating in and around the dumpster.
>
> [Ms. Bennett] suffered severe and permanent injuries as a result of the fall, including multiple lacerations in her left hand.

(Paragraph numbering omitted.) Ms. Bennett contended that she suffered her injuries "[a]s a direct and proximate result of the negligence of" WEZ, and requested judgment "in an amount in excess of $75,000.00."

At trial, Ms. Bennett, who appeared *pro se*, testified:

> I do believe that the property manager was negligent on this day in accordance with the Maryland County Housing and the Commercial Building Safety and Hazard Codes. I do believe that they have violated

consistently the safety hazards with regards to how they are supposed to manage garbage, trash, litter, and the grounds in general.

What I do know and I was able to see after my incident when the grounds were clear, they did not immediately put any signs up as to what the potential risk could be [on] those grounds, assuming that the bag did cause my fall. The bag did not cause my fall. I do believe that the uneven ground. The ground is unsteady. The ground is broken. It was various crevices in it just because of the type of environment it is.

* * *

[WEZ employee Brian Paul] Smith notified myself, along with the other residen[ts], that there was a[n] unusual amount of trash accumulating and that he had advised that another part of the complex be used for trash.

* * *

On my way leaving the apartment, I grabbed my items and the trash bag. When I went to the trash, I saw [a] trash bag. I eluded the trash bag. Put the trash in the dumpster. And it was just at that point when I was leaving there that I fell. I didn't fall on the trash bag. I fell onto my hand. I tried to break my fall and what I realized was I could not break my fall because I could not get my hand – I could not get my hand unstable – I couldn't – I mean, from being unstable. So my entire body fell into the trash bag.

* * *

So I would like to say with regards to negligence, I do believe that there is a degree of negligence on behalf of [WEZ]. And I do believe that that's a continu[ous] lack of regard for the residents there with ongoing dumping or litter constantly. I have just two years of collecting photographs of just overwhelming trash. And skateboards in the hallway, ladders in the hallway, ropes, things that were in violation, according to the Maryland Housing Code.

* * *

The Maryland Code states that that – the property owner should maintain all of their litter with covers and free of litter. And that the ground that the – even in the parking lot, should be even. And I think that I'm going to suggest that the ground is not even, even now. And the overwhelming amount of trash continues as of yesterday when I took photographs. And that

> that day, May 14, 2018, was caused by the uneven ground – the unpredictable state of the ground, which was there before and it remains the same today. Nothing – it is just there.

During cross-examination, Ms. Bennett testified that her "overall challenge and trauma was caused by . . . glass in the bag" upon which she fell.

Following the close of Ms. Bennett's case, WEZ moved for judgment on the ground that Ms. Bennett "failed to prove negligence, duty, breach, causation and damages." Granting the motion, the court stated, in pertinent part:

> [T]he cause of Ms. Bennett's fall, I think, does call for speculation. In the light most favorable to the non-moving party, which is Ms. Bennett, I do believe that she has not even reached the level of a burden of a level of proof that I can submit this case to a jury at this time. I think it calls for speculation as to what caused the fall.
>
> * * *
>
> Notable to this [c]ourt is that . . . Ms. Bennett[] doesn't necessarily know what caused her to fall on that day. She indicated that there was . . . a bag in the area that just happened to contain glass. However, I did not hear from Ms. Bennett that she observed that there was glass in the bag prior to her fall and she did not know, or have reason to know, that that bag contained glass. She indicated that she put her trash into the dumpster on the day of the incident, and then turned, and then fell. And then her hand fell on broken glass that was inside the interior of the bag.
>
> The testimony did not indicate that she had seen this same particular bag in the premises for extended periods of time before her fall, that she had notified the landlord that this bag was present, and in fact, she is not contending that the bag is what actually caused her to fall on this day.
>
> * * *
>
> So in this instance, Ms. Bennett did indicate that she took photos or went back to the area of the incident some years after the fall and she supposed that because she saw uneven pavement in the area, that must have been why she fell on this date. The [c]ourt does not believe that that is sufficient evidence or testimony that can go to the jury in this case.

> Additionally, this [c]ourt does not find that the landlord had notice of any defect or unsafe condition at or near the area of the dumpster such that they would have had an opportunity to correct the defect or warn Ms. Bennett of the defect.

Ms. Bennett now contends that, for numerous reasons, the court erred in granting WEZ's motion. We disagree. Assuming, *arguendo*, that Ms. Bennett's fall was caused by "uneven ground," we have stated that "[i]n order to sustain a cause of action against [an] appellee[] for breaching" a "duty to exercise ordinary care for [an invitee's] safety in maintaining . . . common areas," an "appellant must prove not only that a dangerous condition existed[,] but also that the appellee[] had actual or constructive knowledge of the dangerous condition and that the knowledge was gained in sufficient time to give [the appellee] the opportunity to remove it or to warn the invitee." *Joseph v. Bozzuto*, 173 Md. App. 305, 314-15 (2007) (internal citation and quotations omitted). Here, Ms. Bennett did not produce any evidence that WEZ had actual or constructive knowledge of the unevenness of the ground in front of the dumpster. Hence, Ms. Bennett failed to meet her burden of proof.

Ms. Bennett further contends that the court erred in "not allowing [into] evidence" a text message allegedly sent by Mr. Smith "to all residents [on] approximately May 16th . . . and emails that there was a trash problem." But, Ms. Bennett has not included these documents in the record, and does not specify when at trial she asked the court to admit them into evidence. Also, if the alleged communications from Mr. Smith were sent on May 16, 2018, or thereafter, their admission into evidence would have been prohibited by Rule 5-407(a) ("[w]hen, after an event, measures are taken which, if in effect at the time

of the event, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event"). Hence, the court would not have erred in excluding the evidence.

Finally, Ms. Bennett contends that the "[j]ury was not allowed to hear any evidence of the occurrence or to [h]ave any knowledge of the injuries or incident sustained by" her, nor "any of the actions caused by [WEZ] when [Mr.] Smith [w]as being questioned about ramming his truck in the rear of [Ms. Bennett's] vehicle [i]n March of 2019." We disagree. Ms. Bennett testified extensively regarding her fall and subsequent injury, and elicited additional testimony from Mr. Smith regarding WEZ's property. Also, Ms. Bennett does not identify when at trial she asked the court to admit evidence regarding any alleged "ramming" by Mr. Smith, and does not cite any authority that would render such evidence relevant. Hence, the court did not err in granting WEZ's motion for judgment.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.