[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13719
Non-Argument Calendar

D.C. Docket No. 1:18-cv-01332-MHC

STEVEN E. WILLIAMS,

Plaintiff-Appellant,

versus

QUIKTRIP CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(June 2, 2020)

Before WILSON, JORDAN, and NEWSOM, Circuit Judges.

PER CURIAM:

After he slipped and fell while pumping gas, Steven Williams filed suit against QuikTrip Corporation, alleging that his injuries were the result of QuikTrip's failure to exercise ordinary care. The district court granted QuikTrip's motion for summary judgment, holding that Williams failed to present enough evidence to create a disputed issue of material fact over whether a hazardous condition caused his injures. Williams now appeals. Because guesses and speculations about what caused his fall are not enough to create a disputed issue of material fact, we affirm.

I.

We assume the parties' familiarity with the facts and will thus dive into the merits. We review a district court's grant of summary judgment de novo, viewing all evidence and factual inferences reasonably drawn from the evidence in the light most favorable to the non-moving party. *Burton v. Tampa Hous. Auth.*, 271 F.3d 1274, 1276–77 (11th Cir. 2001). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986).

Under Georgia law, when "an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe."[1] O.C.G.A. § 51-3-1. To prevail, plaintiffs in premises-liability actions must show "(i) the existence of a defective or hazardous condition on the premises; (ii) that the defendant had either actual or constructive knowledge of this condition; and (iii) that the plaintiff had no knowledge of the condition, despite the exercise of ordinary care." *Warner v. Hobby Lobby Stores, Inc.*, 741 S.E.2d 270, 273 (Ga. Ct. App. 2013).

When a "plaintiff cannot show the existence of a hazardous condition, []he cannot prove the cause of h[is] injuries and there can be no recovery because an essential element of negligence cannot be proven." *Glynn-Brunswick Mem. Hosp. Auth. v. Benton*, 693 S.E.2d 566, 568 (Ga. Ct. App. 2010) (internal quotation mark omitted). "[P]roof of a fall, without more, does not give rise to liability on the part of a proprietor." *Sunlink Health Sys., Inc. v. Pettigrew*, 649 S.E.2d 532, 534 (Ga. Ct. App. 2007). A plaintiff must at least offer some evidence that the condition of the location where the incident occurred "constituted an unreasonable risk of harm." *Flagstar Enters., Inc. v. Burch*, 600 S.E.2d 834, 836 (Ga. Ct. App. 2004).

[1] The district court had jurisdiction in this case under 28 U.S.C. § 1332. Georgia's law applies.

And he must do such without using "[g]uesses or speculation" that "raise merely a conjecture or possibility," as they "are not sufficient to create even an inference of fact for consideration on summary judgment." *Brown v. Amerson*, 469 S.E.2d 723, 725 (Ga. Ct. App. 1996).

Here, none of the evidence to which Williams points is sufficient to create a question of fact over the existence of a hazardous condition. We consider the purported evidence separately. First, in his deposition, Williams testified that, though he was undistracted and concentrating on his surroundings, he did not notice any substance on the ground before his fall. Specifically, Williams averred that the area "was slippery," but when probed on this point, he testified that he *thought* there was a substance that caused him to slip but could not identify the substance and did not notice any substance on his clothing after his fall. At one point in his deposition, Williams admitted that he could not name any reason for why he fell aside from "gravity." This deposition testimony shows that Williams is relying on impermissible "guesses or speculation," as his statements raise only the possibility of a hazard or unsafe condition. *See Burch*, 600 S.E.2d at 836; *Benton*, 693 S.E.2d at 569 (holding that plaintiff—who testified that the floor on which she slipped and fell was slick, but who could not say why she slipped and fell, did not see any hazardous substance on the floor, and did not feel anything wet on her clothing after her fall—could not defeat summary judgment because her

"testimony was insufficient to create an inference that a hazardous condition, in fact, existed").

Second, Williams contends that a photograph, taken at the scene but after his fall, clearly depicts discoloring of the concrete surface and shows faint footprints. Even if we agreed that the photograph depicts a hazardous condition, the photograph was taken some time after Williams's fall, and Williams provides no evidence about how soon after the fall the photograph was taken. The photograph, standing alone, cannot create a genuine dispute of material fact. *See City of Macon v. Brown*, 807 S.E.2d 34, 36 (Ga. App. Ct. 2017) (holding that photographs taken "at one point in time" after an accident could not, without "additional evidence," create a genuine issue of material fact).

Finally, Williams also argues that a report written by a QuikTrip employee on the day of his fall, proves the existence of a hazardous condition. The employee wrote:

> Customer came inside and told me that a[nother] customer had fallen at the pump. I went outside and asked the gentleman [Williams] what exactly happened. He said he had been pumping his gas and was going to get back into the car when he fell. He doesn't know what exactly caused him to fall. I noticed there was some water on the ground and I asked him about that. He said the water wasn't there before he fell but it was there now.

We fail to see how this report establishes a hazardous condition. If water was present after Williams's fall, that is not proof that it was there before or even

that it was the cause of his injury. Moreover, consistent with his later deposition testimony, Williams told the QuikTrip employee that he did not know what caused him to slip and fall and said that the water was not on the ground before his fall. This report, then, like the photograph and Williams's deposition testimony, is pure conjecture and cannot be "sufficient to create even an inference of fact for consideration on summary judgment." *Brown*, 469 S.E.2d at 725.

II.

Williams offers three other reasons to reverse the district court's grant of summary judgment. First, he argues that the district court erred in finding that his motion for leave to take the deposition of a QuikTrip store manager was moot. The manager, Reuben Harrison, attested through affidavit to the authenticity of certain business records which purported to establish routine inspection of the area where Williams slipped and fell. QuikTrip presented these business records to support its argument that it did not have constructive knowledge of a hazardous condition. The district court, recognizing that actual or constructive knowledge is the second prong of a premises-liability claim under Georgia law, reasoned that it need not consider Williams's motion as he failed to meet the threshold prong—sufficient evidence of a hazardous condition.

That was the right decision. "[A] district court's decision to rule on a summary-judgment motion before all discovery disputes have been resolved" is

reviewed "for abuse of discretion." *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015). When a "plaintiff cannot show the existence of a hazardous condition, []he cannot prove the cause of h[is] injuries and there can be no recovery because an essential element of negligence cannot be proven." *Benton*, 693 S.E.2d at 568 (internal quotation mark omitted). Since the evidence here was insufficient to create a question of fact over the threshold existence of a hazardous condition, the district court did not need to address the latter prongs, and thus did not abuse its discretion in granting summary judgment for QuikTrip and deeming Williams's motion for leave moot.

Second, Williams claims the district court abused its discretion when it denied his request to delay, postpone, or defer its decision to grant summary judgment. *See* Fed. R. Civ. P. 56(d). We affirm on this issue too because Williams's request to defer was part of his motion for leave to take Harrison's deposition. In fact, his request to delay was to "allow the parties to resolve any unresolved discovery issues" related to Harrison's deposition. Since the business records were inconsequential, and the issue of whether to depose Harrison was moot, the court need not have considered whether to defer its decision on summary judgment.

Finally, Williams argues that the district court erred in denying his motion for reconsideration.[2] We review the denial of a motion for reconsideration for abuse of discretion. *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 805–06 (11th Cir. 1993). "The only grounds for granting [a motion for reconsideration] are newly-discovered evidence or manifest errors of law or fact." *In re Kellogg*, 197 F.3d 1116, 1119 (11th Cir. 1999). Parties "cannot use a . . . motion [for reconsideration] to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005). Here, the district court did not abuse its discretion, as Williams merely sought to relitigate matters already addressed by the district court and the district court did not commit errors of law or fact. *See id.*

* * *

For the reasons stated above, the district court committed no reversible error. Its decision to grant summary judgment for QuikTrip is therefore **AFFIRMED.**

[2] We treat Williams's motion for reconsideration as a motion to alter or amend the judgment under Federal Rule of Civil Procedure 59(e), which he cited in his motion. *See, e.g.*, *Inglese v. Warden*, 687 F.2d 362, 363 n.1 (11th Cir. 1982).