IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

WANDA L. PARKER,	:	
	:	**C.A. No: K13C-08-003 RBY**
_____Plaintiff,	:	
	:	
v.	:	
	:	
JERRY WHITMORE and	:	
BOB MOORE REALTY CO.,	:	
	:	
Defendants.	:	

Submitted: April 23, 2015
Decided: May 5, 2015

Upon Consideration of Defendants'
Motion for Summary Judgment
DENIED

ORDER

Kenneth J. Young, Esquire, Young Malmberg, P.A., Dover, Delaware for Plaintiff.

Arthur D. Kuhl, Esquire, Reger, Rizzo & Darnall, LLP, Wilmington, Delaware for Defendant Jerry Whitmore.

Kimberly A. Meany, Esquire, Marshall, Dennehey, Warner, Coleman & Goggi, Wilmington, Delaware for Defendant Bob Moore Realty Co.

Young, J.

DECISION

Wanda L. Parker ("Plaintiff") resided at 10 Wayne Drive, Dover, Delaware, a property owned by Jerry Whitmore, and managed by Bob Moore Realty, Co. (together, "Defendants"). According to Plaintiff, she notified Defendants on several occasions that certain portions of her kitchen floor were buckling, to no avail. Plaintiff points to two particular instances, one in January 2011, and the other in August 2011, when she alerted Defendants of the buckling condition in two separate segments of her kitchen floor. One of these buckling areas, located by her kitchen sink, allegedly developed following a substantial rain storm in August 2011. Shortly thereafter, Plaintiff claims she fell in the kitchen sink area of the buckling floor. Plaintiff filed suit on August 8, 2013, alleging Defendants' negligence in permitting the buckling condition to persist, caused Plaintiff's accident and injuries.

About a year and a half later, the Court is presented with Defendants' summary judgment motion, premised on Plaintiff's failure to comply with her expert discovery cut off deadline.[1] The original date by which expert discovery was to be completed, was February 27, 2015. Defendants aver that Plaintiff has provided neither a medical expert report, nor an expert report pertaining to liability. Asserting both types of expert opinions as required by negligence suits, Defendants move for summary judgment where Plaintiff has been non-compliant.

At this juncture, the Court addresses solely the contention with respect to

[1] The Summary Judgment Motion was filed by Defendant Jerry Whitmore on March 11, 2015. Defendant Bob Moore Realty Co. joined the Motion on the same date.

the lack of expert medical opinion. As Defendants correctly point out, suits sounding in negligence necessitate the opinion of a medical expert to sustain Plaintiff's claim: "with a claim for bodily injuries, the causal connection between the defendant's alleged negligent conduct and the plaintiff's alleged injury must be proven by testimony of a competent medical expert."[2] It follows that, without such testimony, Plaintiff's claim cannot be sustained.

Plaintiff responds to Defendants' argument by, in essence, accusing Defendants of the same failing. As if avoiding the contention regarding the lack of medical expert testimony all together, Plaintiff points a finger at Defendants for not having provided evidence of whether the buckling condition had ever been repaired. According to Plaintiff, the resolution of this issue is highly probative to the entire case. To wit, Plaintiff avers that the timing of the alleged repairs, determines whether there is any merit to the claim. Specifically, Plaintiff asserts, had the repairs been made prior to August 2011, the date of her fall, then the accident could not be said to have been any fault of Defendants.

This may be true, but the fact remains that Plaintiff's negligence claim cannot stand without the proper medical expert support. Plaintiff cannot evade this reality by arguing other issues in the case. "To prove negligence, [the plaintiff] is required to establish, by a preponderance of the evidence, that the defendants failed to meet their respective legal standard of care, and that defendants'

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[2] *Rayfield v. Power*, 2003 WL 22873037, at *1 (Del. Dec. 2, 2003).

misconduct proximately harmed her."[3] Medical expert testimony speaks directly to the "causal connection"[4] element, and is, thus, of paramount significance.

Plaintiff has indicated that, in the event the Court holds contrary to her position, Plaintiff has retained an expert, who can produce a report expediently. Although Plaintiff has clearly stretched the limits of the scheduling order, this Court will allow Plaintiff to remedy her tardiness. Plaintiff is to provide an expert medical report by May 26, 2015. In the absence of that, the Court will grant Defendants' motion for summary judgment due to a lack of such testimony.

With regard to any analysis concerning whether this case requires expert testimony detailing Defendants' liability, the Court withholds its decision at this time. If Plaintiff meets the new deadline for expert medical testimony, Defendants are invited to raise this issue again, by a second motion for summary judgment.

For the foregoing reasons, Defendants' motion is **DENIED** at this time. Plaintiff is to produce the requisite medical expert opinion, in accordance herewith.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Counsel
Opinion Distribution

[3] *Collis v. Topper's Salon and Health Spa, Inc.*, 2013 WL 4716237, at *2 (Del. Super. Ct. Aug. 29, 2013) (internal quotations omitted).

[4] *Rayfield*, 2013 WL 22873037 at *1.