IN THE SUPERIOR COURT OF DELAWARE IN AND FOR NEW CASTLE COUNTY

WINIFRED T. GRANT,)	
Plaintiff,)	
)	
V.)	C.A. No. N11C-07-012WCC
)	
ST. FRANCIS HOSPITAL, INC.,)	
a Delaware corporation,)	
)	
Defendant.)	

Submitted: January 10, 2014 Decided: February 4, 2014

Defendant's Second Motion for Summary Judgment - GRANTED

MEMORANDUM OPINION

Kester I.H. Crosse, Esquire, Williams & Crosse, 1214 King Street, Wilmington, DE 19801. Attorney for Plaintiff.

Dennis D. Ferri, Esquire and Courtney R. Hamilton, Esquire, Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, DE 19899-2306. Attorneys for Defendant.

Before the Court is Defendant's Second Motion for Summary

Judgment alleging that, with discovery completed, Plaintiff has failed to
uncover or present any evidence of an unsafe condition on Defendant's
premises or, assuming arguendo an unsafe condition can be established
through Plaintiff's testimony alone, Defendant's notice of such condition.

Plaintiff, recognizing the absence of direct evidence, requested that this
Court consider the application of res ipsa loquitur to the facts at hand.

However, as discussed more fully below, the Court finds that this is not an
instance where res ipsa loquitur should apply. Therefore, as Plaintiff has
failed to demonstrate through expert testimony an essential element of her
claim—namely a defect in the MRI table—the Court will grant Defendant's
Second Motion for Summary Judgment.

FACTUAL BACKGROUND

This litigation relates to an incident that occurred on May 14, 2009 where Plaintiff alleges she suffered an injury after an MRI table on which she was lying shimmied or shook causing her to fall to the floor. On May 13, 2011, Plaintiff filed the Complaint in the Court of Common Pleas.

Thereafter, Defendant demanded a jury trial and, as a result, Plaintiff's complaint was moved to this Court. On September 9, 2011, Defendant filed a Motion to Dismiss for failure to file an affidavit of merit. Finding the

failure detrimental to Plaintiff's case, on November 21, 2011, this Court dismissed all negligence claims from the complaint but allowed Plaintiff to continue to pursue her products-liability allegations.

On October 19, 2012, Defendant filed its first Motion for Summary
Judgment due to Plaintiff's failure to engage in the discovery process in a
timely manner, as well as a Motion for Protective Order, due to Plaintiff's
dilatory discovery request. The Court entered an Order on December 18,
2012 denying the motions but ordering Plaintiff's counsel to pay Defendant
for the costs and reasonable attorneys' fees associated with filing the
motions and warning that "[t]he Court's gentle handling" of the discovery
failures would not continue. The Court also entered a Revised Trial
Scheduling Order providing in relevant part that discovery must be
completed by November 8, 2013.

Discovery is now completed and Defendant has timely moved for summary judgment. In investigating the products-liability claims, Plaintiff took the deposition of Lori Culnane, the MRI Supervisor who was working when Plaintiff fell off the table. During the deposition, Ms. Culnane revealed that she inspected the MRI machine at issue each morning by turning on the machine and running a scan with a "phantom." Ms. Culnane further stated that the MRI machine was inspected every three months as part of a

"preventative maintenance plan rotation." Ms. Culnane testified that through all of these tests and her extensive experience with MRI machines, she never had an experience where the table of an MRI shimmied or shook. Further, Defendant provided records to Plaintiff showing that from the day prior to and several days after Plaintiff's fall, there were no issues with the machine. Plaintiff failed to uncover or disclose any information supporting Plaintiff's claim of the table shaking or shimmying nor did Plaintiff uncover any information of Defendant's knowledge that the MRI was unsafe or defective. In addition, Plaintiff has failed to designate an expert who would testify as to the deficiency in this particular table of which Defendant should have been aware.

STANDARD OF REVIEW

This is not an everyday motion for summary judgment where the Court is charged with determining whether there are any issues of material fact which preclude judgment for the moving party as a matter of law.

Instead, this is a case where "[t]he moving party is 'entitled to judgment as a matter of law' because the nonmoving party has failed to make a sufficient

showing on an essential element of her case with respect to which she has the burden of proof."¹

[T]he plain language of Rule 56(c) mandates the entry of summary judgment after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.²

DISCUSSION

Defendant argues that Plaintiff has failed to uncover or present evidence of an essential element of Plaintiff's claims; namely, that there was a defect in the MRI table. In response, Plaintiff argues that the doctrine of res ipsa loquitur should apply, thus allowing Plaintiff to use the injury and Plaintiff's testimony to infer a defect. In spite of the Court's caution at the hearing on Defendant's first Motion for Summary Judgment and the Court providing additional time for Plaintiff to find and disclose an expert, Plaintiff has not produced an expert to testify that the MRI machine was defective. Counsel for Plaintiff has been candid with the Court and indicated that Plaintiff is financially unable to engage an expert and, thus, his only means to support Plaintiff's claim is to rely on res ipsa loquitur.

5

¹ Burkhart v. Davies, 602 A.2d 56, 59 (Del. 1991) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)), cert. denied 504 U.S. 912 (1992). ² *Id*.

Delaware Rule of Evidence 304(b) is the controlling rule of evidence for the application of res ipsa loquitur. "Res ipsa loquitur is 'a rule of circumstantial evidence, not affecting the burden of proof, which permits, but does not require, the trier of facts to draw an inference of negligence from the happening of an accident." "It is a fundamental rule that negligence of a defendant is never presumed from the mere fact of an injury." Rather, "[i]n all cases the plaintiff must affirmatively prove negligence on the part of the defendant." In order to invoke res ipsa loquitur, "[i]t is necessary that the conclusion of negligence be the only inference possible from the admitted circumstances."6 "If, therefore, the proven circumstances are as consistent with the absence of negligence as with the existence of negligence, neither conclusion can be said to have been established by legitimate proof." A res ipsa loquitur claim may not be submitted to the jury unless the evidence is clear no other logical reasonable explanation for the event can be established.⁸ Although it would seem res ipsa loquitur would only apply in negligence actions. Delaware courts have

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³ Austin v. Happy Harry's, Inc., 2006 WL 3844076, at *3 (Del. Super. Nov. 27, 2006) (quoting D.R.E. 304).

⁴ Ciociola v. Del. Coca-Cola Bottling Co., 172 A.2d 252, 257 (Del. 1961).

⁵ *Id*.

⁶ *Id.* at 257, 259.

Id.

⁸ See Wilson v. Derrickson, 175 A.2d 400, 402 (Del. 1961). See, e.g., Drejka v. Hitchens Tire Serv. Inc., 15 A.3d 1221, 1225 (Del. 2010) (granting summary judgment in favor of defendants where "[t]he only evidence is that [defendant] inspected the wheels properly," and remarking that "[a] jury is not free to find a party negligent without evidence that the party failed to act with reasonable care.").

allowed plaintiffs to invoke *res ipsa loquitur* in products-liability actions involving personal injury.⁹ In those instances, the same general rules apply allowing an inference not of negligence but of a defective product.¹⁰

At oral argument, Plaintiff directed this Court's attention to two cases in support of her *res ipsa loquitur* argument: *General Motors Corp. v.*Dillon¹¹ and Moore v. Anesthesia Services. ¹² The Court finds these two cases distinguishable. In Dillon, the court was asked to invoke the doctrine of res ipsa loquitur where a steering column collapsed but Plaintiff was unable to uncover any direct evidence of negligence. The court found:

Dillon's evidence indicated that shortly after he turned a corner and proceeded up a residential street at a relatively slow speed at about 8:00 a.m. on a Sunday morning, and with no other traffic around, he sensed a 'popping' noise, the steering wheel seemed to move in his grasp, the car veered 90 degrees to the left and, as he learned upon coming to his senses after the impact, struck two parked cars on the far side of the street. He had no recollection of having shifted his foot from the accelerator to the brake. We feel that this sudden sequence of events occurring in the operation of a new automobile delivered only four days earlier is sufficient to lead reasonable persons to conclude that the injury to Dillon would not have occurred had there not been some operational defect in the vehicle and thus negligence on the part of the [defendants]. 13

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⁹ See, e.g., Gen. Motors Corp. v. Dillon, 367 A.2d 1020 (Del. 1976); Moore v. Anesthesia Servs., 966 A.2d 830 (Del. Super. 2008).

 $^{^{10}}$ Id

¹¹ 367 A.2d 1020 (Del. 1976).

¹² 966 A.2d 830 (Del. Super. 2008).

¹³ *Dillon*, 367 A.2d at 1023-24.

Stated another way, in *Dillon*,

a jury that accepted the plaintiff's factual evidence could reach a reasonable conclusion, based upon lay knowledge and common sense, that the litigated accident resulted from a relatively specific problem or defect (i.e., the collapse of the steering column...) which would not have arisen in the absence of the defendants' negligence, and to which the plaintiff could not have contributed. 14

The court in State Farm Fire & Casualty Co. v. The Middlebury Corp. 15 where allegedly defective deep fryers were at issue, distinguished Dillon stating "[h]ere, by contrast, expert testimony would be necessary for lay jurors to conclude that the fires occurred because the fryers were defective or improperly installed." ¹⁶ The court further stated that while Dillon

illustrates situations where res ipsa loquitur can assist a plaintiff who is unable for reasons beyond his or her control to articulate precisely how a defendant was negligent, they are inapposite where the plaintiff cannot show that circumstances warrant an inference that the defendant was negligent in the first instance.¹⁷

Plaintiff's claim is more akin to *State Farm* than *Dillon*. Like *State Farm*, the alleged malfunction of a MRI machine, a complicated technology, is not something that a jury could reasonably conclude from a lay person's

¹⁴ 2011 WL 1632341, at *7 (Del. Super. Apr. 12, 2011).

¹⁶ *Id*. ¹⁷ *Id*.

testimony. Unlike *Dillon*, this is not a case where negligence can be inferred from a lay person and common knowledge.

The second case cited by Plaintiff, *Moore*, ¹⁸ is also distinguishable. In *Moore*, the Plaintiff brought a products-liability action against the manufacturer of an allegedly defective suture and a negligence action against the doctor who used the suture. ¹⁹ The court in *Moore* allowed the doctrine of *res ipsa loquitur* to be invoked in the products-liability action only if the other reasonable alternative for the injury (medical negligence by the doctor) was first discounted and found lacking by the jury. ²⁰ The court reasoned that the injury in *Moore* was not the type of event that normally happened without negligence and that the Plaintiff "plead a reasonable scenario in which there might have been a defect in [Defendant's] suture and ha[d] sufficiently shown th[e] Court he may, during the course of trial, be able to meet all the elements of the D.R.E. 304(b)."²¹

Here, Plaintiff has not convinced the Court that she could meet the requirements of *res ipsa loquitur* at trial. Pursuant to D.R.E. 304(b), the inference must be the *only* reasonable conclusion from the incident that occurred. In the present case, Defendant has presented other reasonable

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¹⁸ 966 A.2d 830.

¹⁹ *Id.* at 830.

²⁰ *Id.* at 841-42.

²¹ *Id.* at 842.

explanations for the incident—Plaintiff could have shifted her weight to find

comfort or she could have lost her balance. Further, there is uncontroverted

evidence that Defendant often inspected the machine and had no knowledge

of any defect with the operation of the machine. The Court concludes that

allowing the mere fact of Plaintiff's fall to support the conclusion that the

MRI table was defective would improperly relieve Plaintiff of the burden of

establishing an essential element of her claim. Res ipsa loquitur is not

appropriate in a case such as this where there are other reasonable and just-

as-likely explanations for the incident that occurred.

CONCLUSION

For the aforementioned reasons, Defendant's Second Motion for

Summary Judgment is **GRANTED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.

10