Fifth Circuit Court of Appeal
State of Louisiana

No. 26-C-13

CHRISTINE VEGAS

versus

FEIL ORGANIZATION, LLC, D/B/A LAKESIDE MALL, AND XYZ INSURANCE COMPANY

IN RE FEIL ORGANIZATION, L.L.C., D/B/A LAKESIDE MALL, AND XYZ INSURANCE COMPANY
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE STEPHEN D. ENRIGHT, JR., DIVISION "N", No. 841-019

TRUE COPY

LINDA TRAN
DEPUTY CLERK

February 04, 2026

Panel composed of Judges Susan M. Chehardy,
John J. Molaison, Jr., and Timothy S. Marcel

WRIT DENIED

In this writ application, relator/defendant, Feil Organization, LLC, d/b/a Lakeside Mall ("Lakeside"), seeks this Court's supervisory review of the trial court's December 23, 2025 judgment, which denied its motion for summary judgment. For the following reasons, on the showing made, we conclude the trial court did not err in denying Lakeside's motion for summary judgment at this time.

On June 11, 2022, Ms. Vegas was walking with her son, Casey Orgeron, through a tiled common area of Lakeside Mall, when her left shoe got stuck and/or caught on the floor on or near a brass utility cover, causing her to lose her balance and fall. Ms. Vegas contends that she did not slip or trip; her left shoe got stuck

and/or caught due to a condition of the flooring, including a combination of raised tile, mixed flooring textures, defective brass utility cover, and unevenness of the surrounding tiles. As a result of the fall, Ms. Vegas fractured her left knee and sprained her right leg. Ms. Vegas filed a personal injury lawsuit against Lakeside alleging its negligence and/or strict liability caused her accident and resulting injuries.

After conducting discovery and retaining an expert, Lakeside filed a motion for summary judgment, arguing, among other things, that Ms. Vegas cannot prove causation, an essential element of her claim against Lakeside under La. C.C. art. 2317.1, and that, as a matter of law, the 3/8-inch deviation in the brass utility cover did not create an unreasonably dangerous condition. In support of its motion, Lakeside included plaintiff's petition for damages, deposition transcript of Ms. Vegas; deposition transcript of Casey Orgeron, affidavit and expert report of Kevin Vanderbrook, the affidavit of Liz Manzella, and the incident report.

In opposition to Lakeside's motion, Ms. Vegas argued that there remain genuine issues of material fact precluding summary judgment, including whether the visually inconspicuous, uneven and varying flooring textures in the common area of the mall where she was traversing created an unreasonably hazardous condition; whether the warped, damaged, and/or depressed utility cover caused her to fall; and whether the danger presented by the hazardous area was open and obvious. Attached to her opposition was the affidavit and report of her expert, Claudia Ziegler Acemyan, opining that there existed an unreasonably dangerous condition in the premises that caused Ms. Vegas to fall and sustain injury.

Lakeside's motion came for hearing on December 10, 2025. The trial court denied Lakeside's motion in a judgment signed on December 23, 2025, allegedly on the basis that the competing experts' opinions created a genuine issue of material fact as to the issues of causation and unreasonably hazardous condition.

Because Lakeside did not include a copy of the motion hearing transcript in its writ application or the minute entry from that date, any oral reasons the trial court might have given for its denial of Lakeside's motion are not available. The trial court did not issue written reasons for judgment.

In its writ application, Lakeside argues that, by her own admission, Ms. Vegas has no evidence of what caused her to lose her balance and fall. She and her son noticed the brass utility cover only after she fell, and simply guessed that it had to be the reason why she lost her balance. Lakeside avers that because Ms. Vegas is unable to establish what caused her fall or any defective condition, much less one that presents an unreasonable risk of harm, she will not be able to carry her burden of proof at trial and, thus, the trial court erred in failing to grant its motion for summary judgment.

Appellate courts review the granting of a summary judgment *de novo*, using the same criteria governing the trial court's consideration of whether summary judgment is appropriate. *Varrechio v. Lemoine Co., L.L.C.*, 23-603 (La. App. 5 Cir. 1/31/24), 381 So.3d 210, 214; *Kliebert v. Breaud*, 13-655 (La. App. 5 Cir. 1/31/14), 134 So.3d 23, 27. "After an opportunity for adequate discovery, a motion for summary judgment shall be granted it the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law." La. C.C.P. art 966(A)(3).

Questions of causation are generally issues for the trier of fact's determination. *Cemo v. State Farm Mutual Automobile Insurance Company*, 22-226 (La. App. 5 Cir. 2/1/23), 358 So.3d 913, 918. Similarly, the determination of whether a defect is unreasonably dangerous necessarily involves a myriad of factual considerations, varying from case to case, and by conducting a risk-utility balancing test, wherein the trier of fact must balance the gravity and risk of harm

against individual societal rights and obligations, the social utility of the thing, and the cost and feasibility of repair. *Tramuta v. Lakeside Plaza, L.L.C.*, 14-410 (La. App. 5 Cir. 2/25/15), 168 So.3d 775, 782.

According to Ms. Vegas' expert, Claudia Ziegler Acemyan, a human factors and safety consultant, in the area where Ms. Vegas reported her shoe sticking to the floor causing her to lose her balance and fall, there were "[h]azardous environmental circumstances present" in that the floor contained "visually inconspicuous, uneven, and varying floor surfaces," that were not open and obvious, and the floor contained

> unsafe, abrupt elevation changes reported to be ¼ to ½ inch difference(s)... across tile edges. The floor appears to be generally concave and/or sloped in the subject area in addition to the depressed center of the metal floor plate itself reported to measure about 3/8 [inches] from its circular edge. These uneven floor elements and change of walking surface materials are not visually salient compared to surrounding stimuli. Walking surfaces that are uneven, present changes of materials, and/or on which people's footwear can stick, are hazardous and unsafe.

Additionally, Ms. Acemyan opined that contributing to the hazardous situation were factors such as "a lack of guards and effective warning communication." Ms. Acemyan further opined that the "hazardous walking surface was not open and obvious" and the condition could and should have been addressed, as "effective hazard control methods would have prevented the incident from occurring."

Lakeside's expert, Kevin Vanderbrook, a civil engineer, inspected the area where Ms. Vegas fell on December 10, 2024, and found that there was a slight depression in the center of the brass utility cover, measuring 3/8 inches, but that it sealed perfectly into the flange. Mr. Vanderbrook opined that the utility cover did not create a lip or tripping hazard, did not violate any provisions of any building code, and did not present an unreasonable risk of harm. He concluded that "it was

possible that the cover plate deflected from years of persons walking on it but the maximum vertical offset was less than 3/8 inches" that could "easily be navigated by persons paying a reasonable amount of care and attention."

Generally, competing expert opinions regarding causation or unreasonably dangerous conditions precludes summary judgment because courts cannot make credibility determinations or weigh evidence at the summary judgment stage. Thus, when qualified experts offer conflicting opinions on material facts, genuine issues of material fact exist that must be resolved by the fact finder and not on summary judgment. *See Independent Fire Ins. Co. v. Sunbeam Corp.*, 99-2181 (La. 2/29/00), 755 So.2d 226, 236. *See also Brown v. LSU Health Sciences Center–Shreveport Through Board of Supervisors of Louisiana State University Agricultural and Mechanical College*, 56,195 (La. App. 2 Cir. 4/9/25), 409 So.3d 471, 478-79 (where the court held that "when valid summary-judgment testimony of one witness contradicts that of another, there is a 'genuine issue;' to choose between them is to make a credibility determination, which is the function of a trial, not summary judgment." The court emphasized that if expert opinion testimony meets admissibility criteria, "the prohibition on making credibility determinations on summary judgment extends to the expert's opinions"); and *Islam v. Walmart, Inc.*, 21-629 (La. App. 5 Cir. 6/8/22), 343 So.3d 883, 887, 889, *writ denied*, 22-1053 (La. 10/12/22), 348 So.3d 70 (where this Court stated that at the summary judgment stage, a trial court cannot make credibility determinations, consider the merits, evaluate testimony, or weigh evidence, and "must focus solely on the principles and methodology, not on the conclusions they generate").

In its writ application, Lakeside relies on *Reagan v. Recreation & Park Com'n for Parish of East Baton Rouge*, 15-1662 (La. 12/4/15), 184 So.3d 668, *Jenkins v. Doucet*, 14-879 (La. 6/30/14), 145 So.3d 349 (*per curiam*), *Chambers v. Village of Moreauville*, 11-898 (La. 1/24/12), 85 So.3d 593, *Reed v. Wal-Mart*

Stores, Inc., 97-1174 (La. 3/4/98), 708 So.2d 362, *Boyd v. Bd. of Sup'rs., Louisiana State University*, 96-1158 (La. 1/14/97), 685 So.2d 1080, *Shipp v. City of Alexandria*, 395 So.2d 721 (La. 1981), and *White v. City of Alexandria*, 43 So.2d 618 (La. 1949) for the proposition that, as a matter of law, deviations less than 1/2 inch do not create an unreasonable risk of harm or unreasonably dangerous condition. Consequently, because the deviation of the brass utility plate upon or near which Ms. Vegas' foot got stuck causing her to lose her balance and fall was only a 3/8-inch deviation, Lakeside maintains that it did not create an unreasonable risk of harm as a matter of law, and, thus, it is entitled to summary judgment. We find Lakeside's reliance is misplaced.

Lakeside argues that "[f]or 70 years, the Louisiana Supreme Court has ruled, as a matter of law, that deviations which are 1 and 1/2 inches or less on walking surfaces do not present an 'unreasonable risk of harm,'" however, each of the cases cited by Lakeside involve cracks in concrete sidewalks or expansion joints. Lakeside avers that "Louisiana courts apply the considerations inherent in sidewalk cases . . . to common areas of travel inside commercial premises," but it only cites to one unreported federal court case involving a broken tile leaving a 1/8-inch deviation, which is not controlling here. Lakeside cited no other case involving deviations in flooring or the use of various flooring materials in a common area of travel inside a commercial premises. Thus, we do not find these cases dispositive of the issue of whether the 3/8-inch deviation in the instant case created an unreasonable risk of harm. Moreover, we note that several of the cases cited by Lakeside, were determinations made after a full trial on the merits and where the Supreme Court made it clear that such a determination was to be made on a case-by-case basis.

Louisiana courts have consistently applied a risk-utility balancing test—wherein the *trier of fact* balances the gravity and the risk of harm against the

individual and societal utility and the cost and feasibility of repair—to determine whether conditions present unreasonable risks of harm, and have emphasized that size alone does not determine liability. *See Chambers v. Village of Moreauville*, (/12), 85 So.3d 593. Instead, it is merely one factor to be considered; visibility and the cost of repair are also considerations.

The "context" of an incident matters significantly when determining whether relatively small deviations create unreasonably dangerous conditions. *See Sistler v. Liberty Mutual Ins. Co.*, 550 So.2d 1106 (La. 1990). In *Sistler*, the court emphasized factors beyond mere size, including the unexpected nature of the elevation change, the transition between different surface materials, and the reasonable expectations of business invitees. These circumstances distinguish the typical flooring deviation cases wherein size of the deviation is the determinative factor. *See also Brown v. City of Shreveport*, (/16), 188 So.3d 341, (where a two-inch deviation was found sufficient to "catch the toe of [plaintiff's] shoe and cause her fall," a deviation that would warrant repair. The court's analysis focused on the functional impact of the deviation rather than its absolute measurement.) Thus, while size alone may not create liability, combinations of small deviations with surface material changes could create unreasonable risks. Here, Ms. Vegas' expert opined just that and suggests that the 3/8-inch deviation, coupled with the unanticipated changes in surface materials, created a sufficient catching point for footwear, such as what happened to Ms. Vegas.

As to being able to prove causation, in her deposition, when shown pictures of the brass utility cover, Ms. Vegas circled two spots identifying where she fell, which circles touched at a common border and include the edge of the tile holding the utility cover and the utility cover itself. According to Ms. Vegas, the condition of the flooring, including a combination of raised tile, mixed flooring textures, deformed utility cover, the fact that the utility cover was not flush with the flooring

on all sides, and the unevenness of the surrounding tiles depicted in the photographs, is what caused her shoe to get stuck, and caused her to lose her balance and fall. Ms. Vegas' contention is supported by the affidavit and report of her expert, Ms. Acemyan, who opined that the combination of texture, the varying flooring pattern, deformity in the utility cover, and visual inconspicuousness of the area, among other human factors, caused Ms. Vegas to fall.

While counsel for Lakeside attempted to challenge the methodology employed by Ms. Acemyan in reaching her conclusions in order to discredit them, the trial court obviously disagreed. The decision to admit or exclude expert testimony is within the sound discretion of the trial court, and its judgment will not be disturbed absent an abuse of that discretion. *Rhodes v. AMKO Fence and Steel Company, LLC*, 21-19 (La. App. 5 Cir. 10/28/21), 329 So.3d 1112, 1121. When a party submits an affidavit or report of an expert in support of or opposition to a motion for summary judgment, the trial court is not required to hold a *Daubert* hearing;[1] rather the trial court is required to make a threshold determination of whether the expert's affidavit or report is admissible. *Walker v. City of Independence Police Dept.*, 18-1739 (La. App. 1 Cir. 2/7/20), 296 So.3d 25, 34. Notably, when the party opposing the summary judgment submits expert opinion evidence that would be admissible and is sufficient to allow a reasonable fact finder to conclude the expert's opinion on a material fact more likely than not is true, the court should deny the summary judgment motion. *Willis v. Medders*, 00-2507 (La. 12/8/00), 775 So.2d 1049.

Although the record contains neither a transcript of the hearing on the motion for summary judgment or written reasons so as to know what consideration the trial court gave to Ms. Acemyan's affidavit and report, we find a genuine issue

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[1] *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993).

of material fact was created by the inference reasonably drawn from her report, which sufficiently addresses both causation and unreasonable risk of harm. It was her expert opinion that the combination of texture, the varying flooring pattern, deformity, and visual inconspicuousness of the area, among other human factors, as well as the 3/8-inch deviation in the utility cover, which caused Ms. Vegas to fall, created an unreasonable risk of harm.

Moreover, as to causation, while it is accurate that during her deposition Ms. Vegas expressed uncertainty as to the *exact* mechanism of her fall, she also expressed her belief that her foot became stuck on or right next to the brass utility cover, which supports her theory of how she fell. This was corroborated by her son's deposition testimony. It is not the function of this Court on *de novo* review of a summary judgment to judge the credibility of the witnesses' statements and accept one version of the events over another. Rather, it is our function to determine whether sufficient contradictory facts are put forth such that a genuine issue of material fact remains. After *de novo* review, we find that a rational trier of fact could accept the testimony of Ms. Vegas and Mr. Orgeron, that Ms. Vegas' foot became stuck, causing her to lose her balance and fall, on or near the depressed utility plate, thus potentially establishing the cause of her fall.

Regarding whether the depressed utility plate presented an unreasonable risk of harm, Lakeside's expert, Mr. Vanderbrook, opined that the brass plate, although there was a 3/8-inch vertical offset, did not present an unreasonable risk of harm to those exercising reasonable care. In contrast, Ms. Vegas' expert, Ms. Acemyan, opined that the condition of the flooring, including a combination of textures, the varying flooring pattern, the deformed utility cover, and the visual inconspicuousness of the area created an unreasonably dangerous condition. Again, it is not the function of this Court on *de novo* review to evaluate the relative merits of the opinions of experts and to accept one expert's opinion over another.

Rather, it is our function to determine whether sufficient contradictory facts are put forth such that a genuine issue of material fact remains. We find that sufficient facts are put forth in Ms. Acemyan's report from which a reasonable trier of fact could determine that an unreasonably dangerous condition existed in the premises.

The issue on summary judgment is whether there remains a genuine issue of material fact, not whether the mover will prevail at trial. The mere belief that the litigant will not prevail on the merits is not sufficient to warrant a summary judgment and thus deprive the party of a trial on the merits. *Boye v. Daiquiris & Creams No. 3, Inc.*, 11-118 (La. App. 5 Cir. 11/15/11), 80 So.3d 505, 507. As the Louisiana Supreme Court discussed in *Smith v. Our Lady of the Lake Hospital, Inc.*, 639 So.2d 730, 751 (La. 1994), summary judgment principles focus on whether reasonable persons could disagree about factual issues, emphasizing the existence of factual disputes rather than predicting trial outcomes. Louisiana courts are expressly prohibited from weighing evidence, making credibility determinations, or considering the merits when ruling on summary judgment motions. *Cemo v. State Farm Mutual Automobile Insurance Company*, 22-226 (La. App. 5 Cir. 2/1/23), 358 So.3d 913. The rule that questions of credibility are for the trier of fact applies to the evaluation of expert testimony. *Independent Fire Ins. Co. v. Sunbeam Corp.*, 99-2181 (La. 2/29/00), 755 So.2d 226, 236. In deciding a motion for summary judgment, the court must assume that all affiants are credible. *Hutchison v. Knights of Columbus, Council No. 5747*, 03-1533 (La. 2/20/04), 866 So.2d 228, 234. These restrictions ensure that the summary judgment inquiry remains focused on whether factual disputes exist that require resolution by a trier of fact, rather than allowing judges to predict which party will prevail at trial based on the strength of the evidence. Even though summary judgments are now favored, any doubt as to a dispute regarding a material issue of fact must be resolved against granting the motion and in favor of a trial on the

merits. *Asi Federal Credit Union v. Certain Underwriters at Lloyd's of London Syndicate 1414 Subscribing to Policy FINFR15003374*, 18-164, 18-306 (La. App. 5 Cir. 11/7/18), 259 So.3d 552, 559.

After considering Ms. Vegas' deposition testimony and the competing expert opinions rendered by Ms. Acemyan and Mr. Vanderbrook, we find that genuine issues of material fact remain and reasonable minds could differ as to what caused Ms. Vegas to fall and as to whether a defect existed in the premises that presented an unreasonable risk of harm.

For the foregoing reasons, on the showing made, we find no reason to disturb the trial court's ruling denying Lakeside's motion for summary judgment at this time. Accordingly, this writ application is denied.

Gretna, Louisiana, this 4th day of February, 2026.

SMC
JJM
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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **02/04/2026** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

26-C-13

E-NOTIFIED

24th Judicial District Court (Clerk)
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Troy G. Taylor (Relator)

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