VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 15th day of April 2021.

Present: All the Justices.

Julia Barbour, Appellant,

against Record No. 200136
Circuit Court No. CL17-642

Carilion Medical Center, d/b/a
Carilion Roanoke Memorial Hospital Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Roanoke.

Julia Barbour brought a personal injury claim against Carilion Medical Center ("Carilion"), alleging she was injured when she slipped on a wet floor in a Carilion facility. Barbour appeals from a judgment of the Circuit Court of the City of Roanoke granting Carilion's motion to strike. Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court.

I.

At trial, Barbour testified that on July 15, 2015, she and her niece, Fay Bullock, visited Bullock's daughter, a patient at Roanoke Memorial Hospital.[*] When a janitor entered the patient's room, Barbour and Bullock left the patient's room and spoke with a nurse in the hallway. A short time after the janitor left the patient's room, Barbour followed Bullock back into the room. Upon reentering, Barbour testified that she "went down" and "hit the floor."

[*] Roanoke Memorial Hospital is owned and operated by Carilion.

When she attempted to stand, Barbour noticed a puddle of water on the floor, and she used a bedsheet to soak up the water.

When Barbour left the patient's room, the floor was dry. Upon reentry, she did not observe a cone or warning device indicating that the floor could be wet. As a result, she looked ahead as she walked into the room. After Barbour's fall, a nurse said to the janitor, "Didn't you know to put a cone on the floor?" The janitor did not respond.

Andrea Murray, a nurse at the hospital, testified that it is standard practice for a janitor at the hospital to put out a cone or warning device "when they mop or put water or anything on the surface of the floor." Murray also testified that janitors at the hospital were no longer using mops and buckets at the time of Barbour's fall. Instead, they used a heavy-duty "pad on a stick," comparable to a Swiffer device, to mop and clean the floors.

Carilion moved to strike Barbour's evidence, contending that she failed to prove a prima facie case of negligence against Carilion and that she was contributorily negligent because the water she slipped on was an open and obvious danger. The circuit court granted Carilion's motion. In granting the motion to strike, the circuit court found that Carilion did not have actual or constructive notice of the water on the floor. The circuit court alternately ruled that Barbour "was contributorily negligent as a matter of law."

II.

On appeal, Barbour contends that she proved a prima facie case of negligence against Carilion, and that the circuit court erroneously granted Carilion's motion to strike. We agree.

"'When ruling on a motion to strike a plaintiff's evidence, a trial court is required to accept as true all evidence favorable to a plaintiff and any reasonable inferences that may be drawn from such evidence.'" *Volpe v. City of Lexington*, 281 Va. 630, 639 (2011) (quoting *TB Venture, LLC v. Arlington Cnty.*, 280 Va. 558, 562 (2010)). "The trial court is not to judge the weight and credibility of the evidence, and may not reject any inference from the evidence favorable to the plaintiff unless it would defy logic and common sense." *Id.* "On appeal, when this Court reviews a trial court's decision to strike a plaintiff's evidence, we likewise view the evidence in the light most favorable to the plaintiff." *Id.*

In order to survive a motion to strike in a premises liability case, "the plaintiff must introduce evidence of the responsible [party's] actual or constructive knowledge of a defective condition on the premises to establish a prima facie case of negligence." *AlBritton v.*

Commonwealth, ___ Va. ___, ___, 853 S.E.2d 512, 520 (Feb. 4, 2021) (quoting *Grim v. Rahe, Inc.*, 246 Va. 239, 242 (1993)). Additionally, the plaintiff must "establish causation, an essential element of all negligence claims." *Id.* (internal citation omitted).

A premises owner such as Carilion owes a common law duty of care to its invitees, including visitors like Barbour. That duty of care includes a duty

> "(1) to use ordinary care to have the premises in a reasonably safe condition for the invitee's use consistent with the invitation, and (2) to use ordinary care to warn its invitee of any unsafe condition that was known, or by the use of ordinary care should have been known, to the owner; except that the owner has no duty to warn its invitee of an unsafe condition which is open and obvious to a reasonable person exercising ordinary care for his own safety."

Id. (quoting *Fobbs v. Webb Bldg. Ltd. P'ship*, 232 Va. 227, 229 (1986)).

A premises owner need not receive actual notice of a dangerous condition; constructive notice is sufficient. *See Memco Stores, Inc. v. Yeatman*, 232 Va. 50, 55 (1986). "[C]onstructive knowledge or notice of a defective condition of a premise . . . may be shown by evidence that the defect was noticeable and had existed for a sufficient length of time to charge its possessor with notice of its defective condition." *Rahe*, 246 Va. at 242. "Hence, if the evidence fails to show when a defect occurred on the premises, the plaintiff has not made out a prima facie case." *Id.*

Viewed in the light most favorable to Barbour, the evidence was sufficient to establish that Carilion had constructive notice of the defect that caused Barbour's injury. While Barbour testified that she did not know how the water came to be on the floor, she testified that the floor was dry when the janitor arrived. Barbour slipped on water shortly after the janitor cleaned the room. After Barbour fell, a nurse said to the janitor, "Didn't you know to put a cone on the floor?" The evidence, therefore, was sufficient for a reasonable factfinder to conclude that the janitor either caused the water to be on the floor when she was cleaning the patient's room or should have recognized the puddle of water and removed it or warned Carilion's invitees of the dangerous condition. Because the janitor is an agent of Carilion, it would be reasonable to conclude that Carilion had constructive notice of the dangerous condition. *See Love v. Schmidt*, 239 Va. 357, 361 (1990) (knowledge and negligence of the agent are imputed to the principal). Accordingly, Barbour proved a prima facie case of negligence against Carilion, and the circuit court erroneously granted Carilion's motion to strike.

III.

Barbour also challenges the circuit court's alternate ruling that she was contributorily negligent as a matter of law. Carilion argues on appeal, as it did in its motion to strike, that the water on the floor was an open and obvious dangerous condition, and that it was Barbour's burden to explain her failure to recognize the hazard. *See Fultz v. Delhaize Am. Inc.*, 278 Va. 84, 89 (2009).

The Court has explained that "'[c]ontributory negligence is an affirmative defense that must be proved according to an objective standard.'" *RGR, LLC v. Settle*, 288 Va. 260, 283 (2014) (quoting *Jenkins v. Pyles*, 269 Va. 383, 388 (2005)).

> Just as a plaintiff is required to establish a prima facie case of negligence, a defendant who relies upon the defense of contributory negligence must establish a prima facie case of the plaintiff's contributory negligence. To do so, a defendant must show that the plaintiff was negligent and that such negligence was a proximate cause of the accident.

Id. at 284 (citations and internal quotations marks omitted). Contributory negligence and proximate causation "are questions of fact to be decided by the factfinder unless 'reasonable minds could not differ about what conclusion could be drawn from the evidence.'" *Id.* (quoting *Jenkins*, 269 Va. at 388-89). "In resolving the question of proximate causation, 'each case necessarily must be decided upon its own facts and circumstances.'" *Id.* at 293 (quoting *Banks v. City of Richmond*, 232 Va. 130, 135 (1986)).

"An invitee has the right to assume that premises are reasonably safe 'unless a dangerous condition is open and obvious.'" *Volpe*, 281 Va. at 637 (quoting *Roll 'R' Way Rinks, Inc. v. Smith*, 218 Va. 321, 327 (1977)). Further, "we have specifically declined to hold that, as a matter of law, a pedestrian's failure to look down while stepping forward necessarily constitutes contributory negligence in every case." *Fultz*, 278 Va. at 90.

It was incumbent upon Carilion to prove that the puddle of water constituted an open and obvious danger and that Barbour was either aware of the water on the floor, or should have been aware of it in the exercise of ordinary care for her own safety, before she fell. As the motion to strike was granted before Carilion presented evidence in this case, Carilion did not meet its burden of proof. Consequently, the circuit court erred when it determined that Barbour was contributorily negligent.

IV.

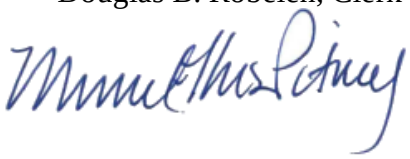
For the reasons stated, we hold that the circuit court erroneously granted Carilion's motion to strike Barbour's evidence, and we reverse the circuit court's October 24, 2019, order and remand the case to the circuit court for further consideration in light of this order.

This order shall be certified to the Circuit Court of the City of Roanoke.

A Copy,

Teste:

Douglas B. Robelen, Clerk



By:

Deputy Clerk