IN THE COURT OF APPEALS
OF THE STATE OF GEORGIA

JEFFERY MARTIN,

Appellant,

v.

VISWAS MOTEL, INC.,

Appellee.

Appeal Case No. A25A2006

BRIEF OF APPELLEE

Dated: August 12, 2025.

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Speculation is not sufficient to establish the existence of a hazardous condition, "[a]nd it is well established that proof of a fall, without more, does not create liability on the part of a [property owner]," *see First Communities Mgmt., Inc. v. Holmes*, 353 Ga. App. 409, 410 (2020), *cert. denied*, *Holmes v. First Communities Mgmt.*, 2020 Ga. LEXIS 615 (Ga., Aug. 10, 2020). These axiomatic rules, independently and collectively, prevented Appellant Jeffery Martin from carrying his summary judgment burden. *First*, the record evidence is insufficient to authorize a non-speculative determination that the complained-of hazard existed. *Second*, even if Martin's rank speculation were sufficient to show the supposed hazard upon which he relies, Appellee is entitled to summary judgment because Martin's testimony prevents him from carrying his burden to prove proximate causation. *Third*, Martin is barred from recovery because he had equal or superior knowledge of the alleged hazard. *Fourth*, Martin's failure to exercise ordinary care precludes relief. Each of these reasons independently supports the grant of summary judgment to Appellee Viswas Motel, Inc., as the trial court correctly held.

Unable to create a fact question on any of the grounds on which the trial court based its rulings, Martin sets up a strawman—namely, that the trial court erroneously "impos[ed] a duty on motel guests to wear shoes," (Appellant's Br. at 1)—and devotes the bulk of his brief to knocking it down, (*see, e.g., id*. at 1, 4, 5, 11, 14, 15, 16 (presenting arguments about Martin being barefoot and/or not wearing shoes).

Because the trial court did not impose any such duty, Martin's misdirected arguments fail to show any error below. The trial court's order is therefore due to be affirmed for any single one of—and all of—the independent grounds set forth in the trial court's order.

PART ONE

MATERIAL FACTS

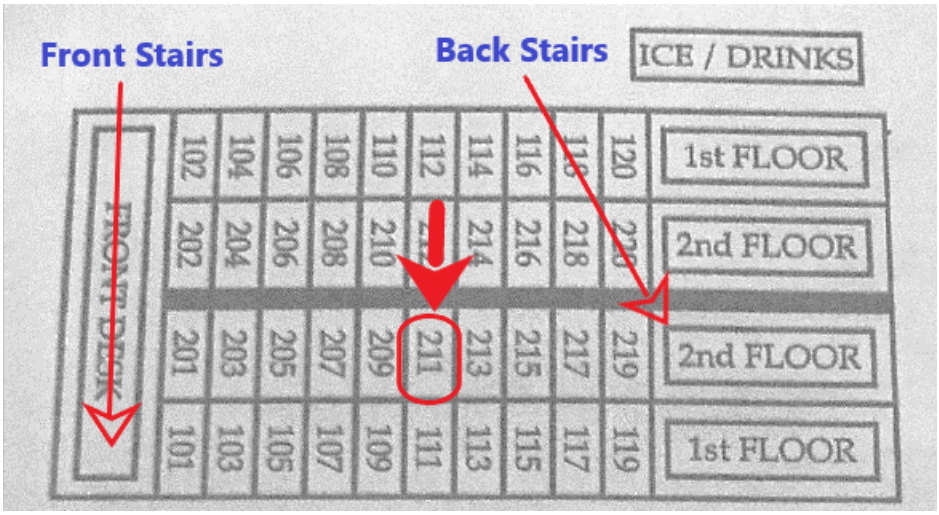
At approximately 3:00 pm on August 9, 2018, Martin checked in as a guest in Room 211 on the second floor of a hotel that Viswas operated under the tradename Econo Lodge in Tifton Georgia (the "Hotel"). (V2.R3-4 ¶¶ 2, 9, 10; V2.R73 at 38:23-39:15, 40:5-7; V2.R94; V2.R182; *see also* V2.R131 at 36:4-15 (authenticating receipt); V2.R135 40:20-31:1 (authenticating hotel map).) Just after checking in, Martin observed someone he believed to be a Hotel employee washing the exterior corridor and air conditioning units on the second floor balcony with a water hose. (V2.R74 at 42:18-43-3, 44:1-4.) This individual was spraying the walkway near the stairs that Martin used to get to his room from the front of the building where the office was located (the "Front Stairs"). (V2.R73-74 at 40:8-13, 43:4-13.) Despite witnessing the spraying in the hallway near those stairs, Martin did not recall that the spraying had caused those stairs to get wet. (V2.R74 at 42:6-8.)

After entering his room, Martin heard a water hose spraying HVAC units, but he did not see the individual with the hose again. (V2.R74 at 43:21-44:7.) The only time Martin saw the individual with the hose was when he saw him near the Front Stairs around 3:00 pm. (*Id*.)

Once in his room, Martin took off his shoes. (V2.R76 at 49:24-50:5.) In the handful of hours that followed, Martin watched television and did work in his room, occasionally taking breaks to smoke cigarettes on the Hotel's exterior balcony. (V2.R73-74 at 39:20-40:4, 44:8-11.) Because the Hotel has exterior corridors, Martin would take smoke breaks right outside his room where he had previously observed the individual washing the exterior with the hose. (V2.R74 at 44:8-16.) Since the exterior was wet when he had first checked in, he took off his socks so they wouldn't get wet before he took his first smoke break, and he continued to go out barefoot on smoke breaks thereafter. (V2.R76 at 49:24-50:5; 50:6-10.) The sidewalk area was wet during his first smoke break, but it was dry later on during subsequent breaks. (V2.R76 at 49:24-50:5.) It was sunny outside on this summer August day. (V2.R75 at 46:14-15.)

Approximately five hours after his arrival at the Hotel, Martin went to get ice from a machine that was located down the hall from his room and down a different set of stairs "further back and on the back side" of the building" (the "Back Stairs"). (V2.R182; V2.R73, R75-76 at 40:8-16, 45:23-46:4, 49:24-50:5.) The following

diagram depicts the layout of the property, including Martin's room (Room 211) and the Front and Back Stairs:



(V2.R182.)

As Martin was walking down the Back Stairs barefoot to the ice machine around 8:00 pm, he successfully navigated the first half to a landing, but then "lost [his] footing" while attempting to step from the landing down the second set of stairs. V2.R73, R75-76 at 40:8-16, 45:23-46:14, 47:7-15, 49:24-50:5.) Martin does not know if he would have fallen had he been wearing shoes. (V2.R76 at 51:8-12.)

Martin's only complaint about the condition of the Back Stairs is his contention that they were wet. (V2.R74 at 42:2-5.) His claims rise and fall on his affirmative position that the hazardous condition at issue was created because the Hotel was "washing the stairs and sidewalks" and that "the stairs were still wet" when he fell. (V2.R188; V2.R196 at No. 11.) He testified that "[t]here was like puddles of water on the steps" when he fell. (V2.R76 at 50:13-14.) He also testified,

however, that there was no standing water in the hallway from his room to the Back Stairs, on the first half of the Back Stairs, or on the landing. (V2.R76 at 50:15-51:4) Martin "[has] no idea" whether someone might have spilled a substance on the Back Stairs prior to his fall. (V2.R80 at 66:10-13.)

After he fell, Martin went to the front office, then returned to his room using the Front Stairs near where he had seen the employee spraying the hose five hours beforehand. (V2.R76-77 at 52:11-13, 53:5-7.) At that time, the Front Stairs were not wet. (V2.R77 at 53:8-10.) Martin had no knowledge that the Hotel had washed any stairs, including the Back Stairs, on the date of his fall and the only time he saw a Hotel employee using a hose near stairs was when he saw an employee near the Front Stairs at 3:00 pm when he checked in. (V2.R73-74 at 40:8-13, 43:4-13, 43:21-44:7; V2.R80 at 66:10-13.) Nonetheless, he maintains that the hazardous condition at issue was created by leftover water from the employee he saw many hours earlier washing the stairs and sidewalks on the other end of the property. (V2.R188; V2.R196 at No. 11.)

PART TWO

ARGUMENT AND CITATION OF AUTHORITY

I. Standard Of Review

The grant of summary judgment is subject to de novo review, with the evidence construed in favor of the non-movant. *See, e.g.*, *Smith v. Six Flags Over Georgia II, LP*, 370 Ga. App. 778, 778 (2024) (affirming summary judgment to

defendant where plaintiff's claim about the cause of her fall "fail[ed] to go beyond mere speculation, guess, or conjecture").

II. The Trial Court Correctly Held That There Is No Non-Speculative Evidence Of A Hazard.

"To impose liability on a slip and fall claim under OCGA § 51-3-1, the threshold requirement is proof of a hazard on the premises which created an unreasonable risk of harm—in the absence of such proof, the claim fails at the threshold." *See Diaz v. MARTA*, 341 Ga. App. 1, 4 (2017) (internal citation omitted). Because Martin cannot clear this hurdle, the grant of summary judgment to Viswas is due to be affirmed.

"[I]t is a well settled principle of negligence law that the occurrence of an unfortunate event is not sufficient to authorize an inference of negligence" *See Shadburn v. Whitlow*, 243 Ga. App. 555, 557 (2000). "And it is well established that proof of a fall, without more, does not create liability . . . because it is common knowledge that people fall on the best of sidewalks and floors." *See Holmes*, 353 Ga. App. at 410 (2020); *accord Flagstar*, 267 Ga. App. at 856-857. Accordingly, "[t]he threshold point of inquiry in a slip and fall case is the existence of a hazardous condition on the premises." *See Flagstar Enters., Inc. v. Burch*, 267 Ga. App. 856, 856 (2004). "Without first establishing that a dangerous condition existed, the plaintiff . . . cannot recover." *See Ford v. Bank of Am. Corp*., 277 Ga. App. 708, 709 (2006). On this threshold question, "[g]uesses or speculation which raise merely a

conjecture or possibility [of a hazardous condition] are not sufficient to create even an inference of fact for consideration on summary judgment," *see Glynn-Brunswick Mem. Hosp. Auth. v. Benton*, 303 Ga. App. 305, 307 (2010), and a plaintiff "cannot 'rely upon speculation and she must prove more than the existence of a slick or wet floor.'" *See Taylor v. Thunderbird Lanes, LLC,* 324 Ga. App. 167, 170 (2013) (internal citation omitted); *see also Kittles v. Wal-Mart Stores E.*, No. CV 220-069, 2021 U.S. Dist. LEXIS 248463, at *6-7 (S.D. Ga. Oct. 22, 2021) (same).

To carry his burden, "the plaintiff must produce evidence of 'what foreign substance, condition, or hazard caused her to slip and fall.'" *See Taylor*, 324 Ga. App. at 170 (internal citation omitted). "And when the plaintiff is unable to produce such evidence, 'it is appropriate for the court to grant summary judgment to the defendant.'" *See id*. (citing *Pinckney v. Covington Athletic Club & Fitness Ctr.*, 288 Ga. App. 891, 893-894 (2007)); *see also Holmes*, 353 Ga. App. at 410 ("[W]hen the plaintiff cannot show the existence of a hazardous condition, she cannot prove the cause of her injuries and there can be no recovery because an essential element of negligence cannot be proven." (internal citation omitted)).

Martin's sole claim in this case rises and falls on his contention that there was an allegedly hazardous condition on the external Back Stairs created by the Hotel "washing the stairs and sidewalks" and them "still" being wet around 8:00 pm when he allegedly fell. (V2.R188; V2.R196 at No. 11.) While Martin—tellingly without

record citation—tells this Court emphatically that "it is *undisputed* that Martin slipped on water on the step just after the landing," (Appellant's Br. at 8-9 (emphasis in original)), Martin ignores that his own inconsistent testimony itself creates a dispute. Specifically, Martin testified, on the one hand, that there was water on the steps when he fell that came from a hose he saw on the other side of the Hotel property many hours beforehand. (V2.R76 at 50:13-14; V2.R188; V2.R196 at No. 11.) He also testified, on the other, that he "[has] no idea" whether someone might have spilled a substance on the Back Stairs prior to his fall, (V2.R80 at 66:10-13). It follows that Martin does not know what any such substance might have been. And the only support Martin offers to show the existence of an allegedly hazardous condition is his testimony that he saw a Hotel employee washing the exterior hallways near the Front Stairs around 3:00 pm. (V2.R73-74 at 40:8-13, 42:18-43-13, 44:1-4.) At that time, this activity did not even cause the Front Stairs to get wet. (V2.R74 at 42:6-8.) Moreover, not only did Martin not see anyone washing the Back Stairs at 3:00 pm or at any other time, but also, he never saw anyone washing the stairs at the Hotel at all. (V2.R73-74 at 40:8-13, 43:4-13, 43:21-44:7; V2.R80 at 66:10-13.) Yet, Martin's claim depends on the reasonableness of his affirmative position that a Hotel employee washing a corridor at 3:00 near the Front Stairs caused a hazardous condition on the Back Stairs five hours later. (V2.R188; V2.R196 at No. 11.) Martin would have the jury draw this inference even though he

testified that, (1) spraying the hose in the corridor near the Front Stairs did not cause those stairs to get wet, (V2.R74 at 42:6-8), (2) just prior to his fall, there was no standing water in the hallway from his room to the Back Stairs, on the first half of the Back Stairs, or on the landing, (V2.R76 at 50:15-51:4); and (3) he "[has] no idea" whether someone might have spilled some (unknown) substance on the Back Stairs, much less evidence that a hazardous condition was created thereby, (V2.R80 at 66:10-13).

"[A] non-movant is entitled only to the benefit of reasonable inferences." *See Sharfuddin v. Drug Emporium*, 230 Ga. App. 679, 683 (1998). The inference-upon-inference that Martin asks the fact-finder to be authorized to draw are not reasonable, as Martin's own testimony confirms. It would be rank speculation for a jury to find that a Hotel employee washing an outside corridor at one end of the property at 3:00 pm on a sunny day caused water on stairs on the other side of the property a full five hours later, especially where Martin has "no idea" if some unknown alleged substance might have been placed there by someone else. (V2.R80 at 66:10-13.) Allowing a jury to engage in this sort of speculation is precisely what the law forbids. *See, e.g.*, *Sharfuddin*, 230 Ga. App. at 683 (affirming summary judgment to defendant where plaintiff's claim that defendant must have spilled the water on the floor was unsupported by any evidence and holding that plaintiff was not entitled to an inference that defendant must have caused the spill while cleaning the floor where

a jury would be left to speculate from the available evidence as to whether spill was caused by the defendant or some other source).

At bottom, the first step of the inquiry is whether the plaintiff has carried his burden to "prove that the condition of the floor constituted an unreasonable hazard." *See Flagstar Enters.*, 267 Ga. App. at 858. Martin did not and cannot clear this threshold hurdle. Because the evidence is insufficient to allow a jury to make a non-speculative determination that there was a hazardous condition in the first place, the analysis ends here. *See, e.g.*, *Kittles*, 2021 U.S. Dist. LEXIS 248463, at *14-15 (granting summary judgment where plaintiff focused on defendant's constructive knowledge, but "skipped over the 'threshold inquiry' of whether a hazard existed in the first place"). Viswas is entitled to judgment in its favor as a matter of law, as the trial court correctly held. *See, e.g.*, *Taylor*, 324 Ga. App. at 170; *Pinckney*, 288 Ga. App. at 893-894; *see also Kittles*, 2021 U.S. Dist. LEXIS 248463, at *6 (same) (granting summary judgment and rejecting argument that plaintiff's "testimony, combined with a lack of evidence showing defendant adhered to reasonable safety procedures, makes summary judgment inappropriate . . . [b]ecause there is no evidence to show a hazardous condition existed"); *H. J. Wings & Things v. Goodman*, 320 Ga. App. 54, 56 (2013) (holding that summary judgment was erroneously denied where plaintiff failed to carry her burden to establish a hazardous condition in the first instance); *Season All Flower Shop, Inc. v. Rorie*, 323 Ga. App.

529, 535 (2013) (holding that summary judgment was erroneously denied where plaintiff lacked knowledge of what the moisture was that allegedly caused her to fall, which meant that she could not carry her burden to establish a hazardous condition); *Mansell v. Starr Enters*., 256 Ga. App. 257, 259 (2002) (recognizing that "without any proof as to the specific nature of the hazard, there is no basis for claiming that one of the defendant owners or an employee was in a position to have easily seen and removed the alleged hazard" (internal citation omitted)).

III. The Trial Court Correctly Held That Martin's Admissions Prevent Him From Withstanding Summary Judgment For Lack Of Evidence Of Causation.

Even if Martin had non-speculative evidence to show a hazardous condition, he cannot recover unless there is evidence to prove, without speculation, that the condition caused his alleged injury. *See, e.g.*, *Richardson v. Mapoles*, 339 Ga. App. 870, 873-74 (2016) (affirming summary judgment where only evidence of causation was plaintiff's speculative testimony). Martin's claim fails for the independent reason that he cannot meet this burden.

Under Georgia law,

> [c]ausation is always an essential element in slip or trip and fall cases. Where the plaintiff does not know of a cause or cannot prove the cause, there can be no recovery because an essential element of negligence cannot be proven. A mere possibility of causation is not enough and when the matter remains one of pure speculation or conjecture and the probabilities are at best evenly balanced it is appropriate for the court to grant summary judgment to the defendant.

See Pennington v. Wjl, 263 Ga. App. 758, 760 (2003). In *Mapoles*, the Court of Appeals affirmed summary judgment to defendant where, construing the evidence in plaintiff's favor, it showed only that defendant's door was not operating properly and that the mat on which the plaintiff fell was damp, but there was no evidence to connect these conditions to her fall. *See Mapoles*, 339 Ga. App. at 873-74. In affirming summary judgment, the court noted that it had "consistently reversed trial courts that have refused to grant summary judgment to the defense in cases in which the plaintiffs were unable to point to more than mere speculation as to what caused their fall" and held that "[t]he record places this case squarely within our cases in which the plaintiff, unable to say for sure what caused his or her accident, cannot maintain a claim." *See id*. This case falls within this category, too.

The opinion in *Willingham Loan & Realty Co. v. Washington*, 311 Ga. App. 535 (2011), is also instructive. In that case, there was evidence of a hazard that could potentially cause a fall—ice on an exterior metal staircase—but the evidence showed no more than a possibility that the ice was what in fact caused the plaintiff to fall. *See id*. at 535-56. The same is true here. Specifically, when asked at deposition whether the condition caused him to fall, the plaintiff testified, "It's possible." *See id*. at 536. Because this possibility of causation was not enough, denial of summary judgment to the property owner was held to constitute reversible error. *See id*. at 536 (reversing denial of summary judgment because "the evidence of record raises a

mere possibility that a defect in the stairs caused [the plaintiff]'s fall"). For the very same reason that denial of summary judgment constituted reversible error in *Washington*, the grant of summary judgment in this case is due to be affirmed.

As a final example, in *Shadburn v. Whitlow*, 243 Ga. App. 555, 556 (2000), three women were climbing a flight of stairs to a restaurant when one of them, Whitlow, fell and injured one of the other women. Two of the women "believed that Whitlow's fall was caused by loose carpeting which they noticed at the top of the stairwell the evening after the fall; however, all three ladies testified that they were not actually certain what caused Whitlow to fall." *See id*. The trial court granted summary judgment to the defendant, which this Court affirmed on the ground that the plaintiff "failed to present any evidence that a condition on the stairs, the loose carpeting, caused Whitlow to fall." *See id*. This Court found that "[t]he speculation that Whitlow may have tripped on loose carpeting does not sufficiently establish causation." *See id*.

Much like the plaintiffs in *Mapoles*, *Washington*, and *Shadburn*, Martin in this case testified that he "lost [his] footing" on the steps. (V2.R75-76 at 45:23-46:14, 47:7-15, 49:24-50:5.) Martin's speculation that he lost his footing because of water or some other substance does not sufficiently establish causation. This is especially true considered alongside Martin's testimony that he does not know if he would have fallen had he been wearing shoes. (V2.R76 at 51:8-12.) This testimony prevents

Martin from withstanding summary judgment because he admits that the cause of his fall might have been that he was barefoot and that he may not have "lost his footing" had he simply been wearing shoes. (V2.R75-76 at 45:23-46:14, 47:7-15, 49:24-50:5.) Martin's admission means that any causal determination would be based on impermissible speculation and conjecture. But his burden was to show that it was more likely than not that the alleged hazard caused his injury, which he did not do. *See, e.g.*, *Shadburn*, 243 Ga. App. at 556 (defendant entitled to summary judgment where witnesses "believed" woman fell on loose carpeting at top of stairwell, but also admitted that they were not certain what caused fall). As a result, Viswas is entitled to entry of judgment in its favor, as the trial court correctly held. *See, e.g.*, *Mapoles*, 339 Ga. App. at 873-74; *Washington*, 311 Ga. App. at 534-36; *see also Canaan Land Props., Inc. v. Herrington*, 330 Ga. App. 17, 19-21 (2014) (plaintiff's testimony that a hole in defendant's parking lot "had to be" the cause of his shopping cart veering and tripping him shows "mere possibility" that the divot caused his fall and thus defense was entitled to summary judgment); *Greyhound Lines, Inc. v. Williams*, 290 Ga. App. 450, 451 (2008) (trial court erred in denying summary judgment where it would constitute impermissible speculation for a jury to find causation); *cf. Imperial Invs. Doraville, Inc. v. Childers*, 303 Ga. App. 490, 491 (2010) (defendant was entitled to a directed verdict where plaintiff assumed that

he had stumbled over a raised piece of carpet that he had observed was "wrinkly," but he never testified that he knew that he fell over the carpet).

IV. The Trial Court Correctly Held That Martin Had Equal Or Superior Knowledge Of The Hazard He Contends Caused Him To Fall.

If a plaintiff's knowledge of an allegedly hazardous condition is equal to or greater than that of a property owner, a plaintiff is barred from recovery. *See Lundy v. Publix Super Mkts., Inc*., No. 1:20-cv-3405-MLB, 2022 U.S. Dist. LEXIS 7096, at *11-12 (N.D. Ga. Jan. 13, 2022) (granting summary judgment to property owner where plaintiff had equal or superior knowledge of the alleged hazard). Here, were this Court to accept Martin's speculative theory that the washing of the exterior hallway near the Front Stairs created a hazardous condition near the Back Stairs hours later, this compels a conclusion that Martin's actions prove that he had at least equal knowledge of it. This independently supports the affirmance of the trial court's grant of summary judgment.

"In order to recover for a slip and fall resulting from a 'foreign substance,' . . . not only must the plaintiff show that the defendant had knowledge of the presence of the foreign substance, but the plaintiff must also show that he was without knowledge of its presence." *See Brownlow v. Six Flags Over Georgia, Inc*., 172 Ga. App. 242, 243-244 (1984) (internal citation omitted). This is true because "[t]he true basis of a proprietor's liability for personal injury to an invitee is the proprietor's superior knowledge of a condition that may expose the invitees to an *unreasonable*

risk of harm." *See Sunlink Health Sys. v. Pettigrew*, 286 Ga. App. 339, 341 (2007) (emphasis in original) (internal citation omitted); *see also Williams*, 291 Ga. at 399 (same). Accordingly, "[r]ecovery is allowed only when the proprietor had knowledge and the invitee did not." *See Smith*, 260 Ga. App. at 901. Where, as here, a patron of a hotel sees an allegedly hazardous condition and chooses to negotiate it in the face of such knowledge, a negligence claim against the hotel based on an injury caused by that condition fails as a matter of law. *See, e.g.*, *Williams Inv. Co. v. Girardot*, 354 Ga. App. 762, 764-765 (2020) ("Because Girardot's deposition testimony plainly and indisputably shows that she had at least equal knowledge of the wet, slick hazard before she voluntarily proceeded to traverse the sidewalk, the hotel was entitled to summary judgment in its favor."). This is true *even if* a property owner is deemed to have constructive knowledge of the alleged hazard. *See, e.g., Courter v. Pilot Travel Ctrs., LLC*, 317 Ga. App. 229, 231 (2012) (holding that "even assuming that Pilot had constructive knowledge of the condition of the ground, the trial court correctly concluded that the record lacks evidence showing Pilot's superior knowledge of the hazard causing Courter's fall").

Here, Martin saw a Hotel employee using a hose in exterior and the very reason he had taken off his socks was because he did not want them to get wet. (V2.R73 at 39:20-40:4; V2.R74 at 44:8-16; V2.R76 at 49:24-50:5.) Critically, Martin was still barefoot at the time that he fell, meaning that he knew or at least

suspected that the allegedly hazardous condition was still present. (V2.R75-76 at 45:23-46:14, 47:7-15, 49:24-50:5.) He told medical providers that "the stairs were ***still*** wet" when he traversed them. (V2.R222.) "[Martin] had at least equal knowledge of the hazard that caused [his] injuries as [Viswas] and thus []he cannot recover." *See Lundy*, 2022 U.S. Dist. LEXIS 7096, at *13; *see also Girardot*, 354 Ga. App. at 764-765 (holding that hotel was entitled to summary judgment where plaintiff's testimony establishes her knowledge of the allegedly dangerous condition of water on the ground where she fell).

V. The Trial Court Correctly Held That Martin's Failure To Exercise Ordinary Care Prevents His Recovery.

It is beyond cavil that failure to exercise ordinary care precludes a negligence claim. *See, e.g.*, *Ridley v. Dolgencorp, LLC*, 353 Ga. App. 561, 564 (2020). This age-old rule prevents recovery here, too.

Ordinary care requires that a plaintiff "make use of all his senses in a reasonable measure amounting to ordinary care in discovering and avoiding those things that might cause hurt to him." *See Wilkes v. Kroger Co*., 221 Ga. App. 113, 114 (1996) (internal citation omitted). A defendant is entitled to judgment in its favor if the evidence establishes that "the plaintiff intentionally and unreasonably expose[d] [her]self to a hazard of which the plaintiff [knows] or, in the exercise of ordinary care, should have known." *Robinson v. Kroger Co.,* 268 Ga. 735, 748-749 (1997).

As discussed above, Martin was walking around the exterior of Viswas's Hotel barefoot and he admits that, had he been wearing shoes, he doesn't know if he would have fallen. (V2.R76 at 51:8-12.) His failure to wear shoes when navigating the exterior of a commercial property is not consistent with the exercise of ordinary care. Further, he was barefoot because he knew that there was water on the ground, yet he failed to observe what he described as "puddles" of water on the steps. (V2.R76 at 50:15-51:4.) His failure to observe these puddles, viewed alongside his knowledge of the alleged hazard, can only be explained by a failure to make use of his senses in a reasonable manner. For either reason, Martin failed to exercise the requisite degree of care that the law requires, which independently prevents him from establishing Viswas's liability for negligence.

Rather than addressing this argument, Martin sets up a strawman that he proceeds to knock down. Specifically, Martin proposes that the trial court blanketly held that walking barefoot is negligence per se that bars recovery. No so. Rather, in the context of the undisputed record, only one piece of which was that Martin was barefoot and admitted that he may not have fallen if he had been wearing shoes while traversing the exterior of a commercial property, the trial court held that Martin failed to exercise reasonable care. Undeterred, seeking to overcome this precedent and the undisputed record, Martin points this Court to two opinions, *Aaron v. Coca-Cola Bottling Co*., 143 Ga. 153 (1915), and *Lamb v. Redemptorist Fathers of Ga.,*

Inc., 111 Ga. App. 491 (1965), in which—according to Martin—Georgia appellate courts "upheld" claims brought by plaintiffs who were injured when barefoot, one of which involves a plaintiff who sustained injuries while understandably barefoot at a swimming pool. (*See* Appellant's Br. at 15-16.) What Martin neglects to mention, however, is that both of these cases were demurrers, challenging only the sufficiency of the allegations in the plaintiffs' respective complaints. Here, of course, the trial court's decision was based on the undisputed factual record after years of protracted discovery. The trial court did not hold, and Viswas does not argue, that whether a plaintiff is barefoot is outcome determinative in every case. Context matters. And the trial court correctly held that the undisputed facts, taken together, demonstrated an absence of ordinary care.

VI. Viswas's Inspection Procedures Are Irrelevant.

As he did below, Martin ignores the arguments that Viswas has actually made and focuses myopically on the absence of inspection procedures and the burden-shifting standard established by the Georgia Supreme Court in *Robinson v. Kroger Co*., 268 Ga. 735 (1997). Martin's aim is misdirected, however, because the issues Viswas raises assume the absence of such procedures and "[are not] affected by [the *Robinson*] decision." *See Sharfuddin*, 230 Ga. App. at 679.

In *Robinson*, the Georgia Supreme Court "reaffirm[ed] that, in order to recover for injuries sustained in a slip-and-fall action, an invitee must prove (1) that

the defendant had actual or constructive knowledge of the hazard; and (2) that the plaintiff lacked knowledge of the hazard despite the exercise of ordinary care due to actions or conditions within the control of the owner/occupier." *See Robinson*, 268 Ga. at 748-49. The court clarified that "the plaintiff's evidentiary proof concerning the second prong is not shouldered until the defendant establishes negligence on the part of the plaintiff -- i.e., that the plaintiff intentionally and unreasonably exposed self to a hazard of which the plaintiff knew or, in the exercise of ordinary care, should have known." *See id*. Contrary to Martin's suggestion, "while *Robinson* significantly lightens the burden of proof load placed on plaintiffs with regard to their failure to exercise ordinary care and requires defendants to establish a defense to liability, *Robinson* does not hold that every slip and fall case must be sent to the jury. Nor does *Robinson* hold that a plaintiff no longer must prove a prima facie case of negligence from the defendant's alleged misconduct." *See Christopher v. Donna's Country Store*, 236 Ga. App. 219, 220-221 (1999) (internal citation omitted) (affirming summary judgment to defendant).

Importantly, *Robinson* does not change that where, as here, a plaintiff "fails to identify any defective or hazardous condition on the [defendant's] premises and fails to demonstrate that any such condition proximately caused [his] fall," summary judgment to the defendant is due. *See Christopher*, 236 Ga. App. at 221; *see also Kittles*, 2021 U.S. Dist. LEXIS 248463, at *14-15 (granting summary judgment

where plaintiff focused on defendant's constructive knowledge, but "skipped over the 'threshold inquiry' of whether a hazard existed in the first place"). Additionally, *Robinson* confirms that, in circumstances like those before the Court in which the defendant has established the plaintiff's equal knowledge of the alleged hazard, the evidentiary burden shifts back to the plaintiff to produce a genuine issue of fact regarding his negligence or tending to show that his negligence was due to acts within Defendant's control. *See Robinson*, 268 Ga. at 729. Martin failed to shoulder this burden and nothing about *Robinson* excuses this failure. Further, *Robinson* did not disturb or effect that causation remains an essential element of a negligence claim irrespective of the separate element of breach. Here, the absence of non-speculative evidence of causation is independently dispositive. *See supra* § III. At bottom, aside from distracting this Court from the issues at hand, the core argument Martin presents on appeal is irrelevant to the issues presented. Summary judgment was correctly granted for the reasons identified by the trial court and unchanged by the arguments that Martin presents.

CONCLUSION

Because the ruling below was correct and Appellant has failed to show otherwise, Appellee respectfully asks that the trial court's entry of summary judgment to Appellee be affirmed.

This Brief does not exceed the word count limit imposed by Rule 24.

This 12th day of August, 2025.

Respectfully submitted,

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IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

JEFFERY MARTIN, Appellant, v. VISWAS MOTEL, INC., Appellee.	Appeal No. A25A2006 Tift County Superior Court CAFN: 2020CV0199

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **Appellee Viswas Motel, Inc.'s Brief** upon all parties to this matter by emailing this PDF pursuant to a prior agreement with the attorneys listed below to accept service by email as follows:

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