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Division I
State of Washington
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NO. 83850-4

COURT OF APPEALS
DIVISION ONE
OF THE STATE OF WASHINGTON

MICHAEL REID,

Petitioner/Plaintiff,

v.

KING COUNTY,

Respondent/Defendant.

AMENDED PETITION FOR REVIEW

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A. INTRODUCTION

On or about August 22, 2017 Respondent Michael Reid ("Reid"), an attorney, while interviewing an inmate at the King County jail in Kent, Washington, also known as the Maleng Regional Justice Center ("MRJC"), was injured when the chair he was sitting in collapsed, causing Reid to crash to the concrete floor. At the time, Reid weighed approximately 437 pounds (his weight had doubled because of serious sleep apnea and concomitant major surgery). Reid suffered serious injuries and was hospitalized and in an institutionalized rehabilitation care facility for approximately three years. The Trial Court erred in entering an order on March 7, 2022, granting Defendant King County's Motion for Summary Judgment. CP 268 – 271. The Court of Appeals erred in affirming the dismissal.

B. IDENTITY OF PETITIONER

Michael Reid, the plaintiff, seeks review of the decision of the Court of Appeals identified in Part C below.

C. COURT OF APPEALS DECISION

Division I of the Court of Appeals issued an unpublished decision in Cause No. 83850-4 on May 30, 2023 affirming the King County Superior Court's summary judgment. A copy of the decision is in the Appendix at pages A-1 through A-16.

D. ISSUES PRESENTED FOR REVIEW

Whether the Court of Appeals erred in affirming the King County Superior Court's summary judgment:

1. The Court of Appeals erred when it held that no fact issue was raised under the doctrine of res ipsa loquitur; and
2. The Court of Appeals erred when it held that no spoliation occurred when King County disposed of evidence after Reid had notified it of the broken chair and his injury and King County still disposed of the chair in accordance with its systemic evidence destruction procedure.

E. STATEMENT OF THE CASE

1. At the time of the incident, Reid met with a client inmate and a potential client inmate at the Maleng Regional Justice Center jail.

Reid was a criminal defense attorney when he entered the Maleng Regional Justice Center jail on or about August 22, 2017. CP 201 - 202.[1] Reid's purpose in entering the jail was to meet an existing client inmate, Kristopher Raybell, and interview a potential new client inmate named David Reimers. *Id.*

Upon entering the MRJC jail, Reid does not recall any sign-in requirement. CP 204.[2] Later, upon arriving at the attorney visiting rooms section of the jail, Reid was met at the entry by an officer who was stationed at the entrance of the visiting area, and Reid filled out paperwork and provided identification to the officer, directed to the visiting room, and then was allowed to proceed to the visiting room. CP 203 -

[1] Reid deposition at 33:10-17; 48:14-17

[2] Reid deposition at 62:8-11

207.[3] The attorney-client visiting area of the jail is generally open to attorneys with proper identification who want to meet with inmates, being their clients and potential clients. CP 256.[4] In the dozens of times Reid has visited clients and potential clients at the MRJC, he has never been turned away by the jail and experienced no requirements other than passing through a metal detector, providing identification and filling out paperwork at the entrance to the visiting area. CP 256 - 257.[5]

Upon entering the attorney client visiting room Reid met with his existing client, Kristopher Raybell, and then interviewed a potential new client, David Reimers. CP 202.[6]

2. During the meeting, Reid's chair collapsed under him.

On the day at issue, Reid weighed approximately 437

[3] Reid deposition at 61:17 to 65:22
[4] Reid Declaration at ¶2
[5] Reid Declaration at ¶3
[6] Reid deposition at 48:14-17

pounds. CP 25, CP 257.[7]

After being seated in the chair in the visiting room for approximately 40-45 minutes, and while meeting with Reimers, the chair collapsed. CP 208 – 209;[8] CP 211 – 212;[9] CP 217;[10] CP 218;[11] CP 219.[12] At the time of the collapse, Reid was using the chair normally. CP 210 - 211; CP 213 - 216.[13]

The other participant in the meeting and an eyewitness, Reimers, confirmed Reid's account of the chair collapsing below Reid:

Q. Okay. Did you -- did you see the chair collapse?

A. Yes.

Q. Okay. What --

A. Well, let me say this, let me say that I, sitting

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[7] King County's Motion for Summary Judgment at 1:16; Reid declaration at ¶4
[8] Reid deposition at 91:11 to 92:14
[9] Reid deposition at 100:19 to 101:19
[10] Reid deposition at 108:11-22
[11] Reid deposition at 110:4-16
[12] Reid deposition at 118:13-20
[13] Reid deposition at 99:20 to 100:11; 102:13 to 105:5

down, there is a desk, we are both chest to chest, I just seen his body just (indicating) to the floor. At that point, I stood up to see what the heck happened and the chair was just collapsed. There was no broken pieces, it is almost like the legs just all went out and it went down. But he -- he was unable to get up, so --

CP 247.[14]

3. Immediately after the incident, Reid notified an officer about the chair collapse.

Immediately after the incident, and when checking out of the visitor area, Reid notified the officer stationed at the area's entrance/exit of his "bad accident," that the chair collapsed on him, that he was hurting, that chair could hurt other people, and the officer needed to take a record. CP 197 - 199.[15] He tried to give a statement relating to the collapse. *Id*. The officer looked up at Reid and then apparently ignored Reid and went back to

[14] David Reimers deposition at 8:15-25

[15] Reid deposition at 9:15 to 11:6

his paperwork. *Id.*

King County's CR 30(b)(6) witness, David Richardson ("Richardson"), conceded that if an attorney told the officer on duty about the chair collapse and had requested for the chair to be preserved, then guidelines for handling evidence for crimes would kick in (even though this situation would not be a crime) and the chair would have been preserved. CP 240 - 243.[16] In this case, immediately after the collapse, Reid informed the officer and tried to give a statement and tried to get the officer to make a record.

4. King County cannot account for the chair, it was probably disposed of in accordance with King County's practice to dispose of broken chairs, destroying evidence.

King County cannot account for the chair at issue. CP 152.[17] If the chair was broken (as described by Reid), King County probably would have discarded the chair in the

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[16] Richardson deposition at 56:21 to 59:8

[17] Richardson Declaration at ¶3

dumpster as was its practice. CP 239 - 240.[18]

5. The chairs, which have been heavily used by King County for over 20 years, are not inspected or maintained.

The chairs in the visiting rooms were purchased by King County in 1996-97 when the MRJC opened. CP 226 - 227.[19] They have generally been in constant use, 365 days per year for 14 hours per day. CP 233 - 234.[20] During the 20 years prior to the Reid collapse, the chairs had not been specifically inspected or maintained beyond janitorial staff or officers conducting a cursory viewing of the visitor rooms. CP 237 - 238.[21]

King County confirmed there have been no inspections in the 20 years prior to the Reid collapse relating specifically to the chairs. CP 237 - 239.[22]

King County also admits that there are no records relating

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[18] Richardson deposition at 55:6 to 56:20
[19] Richardson deposition at 22:1 to 23:9
[20] Richardson deposition at 48:17 to 49:20
[21] Richardson deposition at 53:13 to 54:20
[22] Richardson deposition at 53:13 to 55:5

to the inspection, maintenance and/or disposal of broken chairs. CP 233 - 236.[23]

6. The only document King County has relevant to the weight specification of its plastic chairs is a document relating to similar chairs and similar application.

King County has no documents or information relating to the weight specification of the chair at issue. However, King County did produce a document relating to similar chairs for use in a similar application for its jail in Seattle that King County acquired after 1997. See CP 244.[24] Richardson concedes that the weight specification for those chairs is 400 pounds (less than Reid's 437-pound weight). Richardson testified in his deposition:

Q. All right. Here's an example of the -- and this is a document that the County produced. Here's an example of -- relating to the Integra chairs which came later in 2006-7, approximately. Do you see where Exhibit -- do you see where

[23] Richardson deposition at 48:17 to 51:5

[24] Ex. 3 to Richardson 30(b)(6) deposition

Exhibit 3 shows performance testing standards?

A. Yes.

Q. And the "product tested to 400 pounds static load." Do you see that?

A. Yes.

Q. Was that -- is that consistent with the type of document you looked at in the -- relating to the 1996 chairs --

A. Yes.

Q. -- '97 chairs?

A. Yes.

Q. So why has the County -- it seems like the County has reduced the weight-bearing capacity to 400 pounds based on your testimony; is that right?

A. I guess you could draw that conclusion based on we ordered this model more recently.

Q. And this model was used for what purpose?

A. General --

MR. WONG: Objection. Objection. That goes beyond the scope of the subpoena.

BY MR. FOGARTY:

Q. You can answer.

A. General use in some staff areas and in our inmate housing areas. Mainly inmate housing areas, but they've found their way into -- some have found their way into our staff dining rooms and in our roll call rooms and into our locker rooms at times.

Q. So relating to the 1997 chairs and even comparing to these chairs the Integra chairs, it really doesn't make a difference if the staff person is 450 pounds versus an attorney is 450 pounds versus a visitor is 450 pounds versus an inmate is 450 pounds, it all relates to the static load of the chair; right?

A. I do believe 450 pounds is 450 pounds no matter how you weigh it.

Q. So for the chairs -- so a 450-pound person would

exceed the static load of 400 pounds for these Integra chairs; right?

A. That's correct.

CP 228 - 230.[25]

Q. Right. So what happened to the chair?

A. Again -- again, it wasn't pointed out to us that -- on that day that anything had happened and there was any questions with a chair; so we had no reason to identify any particular chair as having failed. So between 2017 and 2019, or even 2017 and now, for all I know, the chair is still out there being used.

Q. Okay.

A. I -- I couldn't tell you.

Q. Or it's been disposed, you don't know; right?

A. Correct. I can't say for sure either way.

Q. Okay. And so you're not testifying that the chair

[25] Richardson deposition at 34:6 to 36:1

at issue from 1997 had a weight-bearing capacity of 450 kilograms, are you?

A. Again, I don't even think I'm getting to the point that a chair did what -- what it is claimed that it did; so my answer to your question is no, I'm not testifying either way what happened to a chair, a regular chair.

Q. Yeah. And further to that point, Exhibit 3 shows that the County purchased chairs with a 400-pound static load capacity in 1997; correct?

A. After 1997, yes.

CP 231 - 232.[26]

The only document in King County's possession relating to its general use plastic chairs indicates that the weight specification for the chair is 400 pounds, less than Reid's 437 pounds. While the 400-pound specified chairs were purchased after the chair at issue, they are basically similar chairs with

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[26] Richardson deposition at 38:15 to 39:14

similar applications.

F. ARGUMENTS WHY REVIEW SHOULD BE ACCEPTED

1. Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *Hartley v. State*, 103 Wn.2d 768, 774-78 (1985). On summary judgment motions, the reviewing court takes the position of the trial court, assuming facts most favorable to the nonmoving party. *Id.* The burden is on the moving party to prove there is no genuine issue as to a fact which could influence the outcome at trial. *Id., citing Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wn.2d 255, 256-57, 616 P.2d 644 (1980) (summary judgment is not appropriate when reasonable minds might reach different conclusions).

"Whether the case goes to the jury or the judge dismisses the claim for a failure to make a case for causation may depend on the actors and the circumstances involved." *Hartley v. State*, 103 Wn.2d 768, 774-78 (1985), citing *Herskovits v. Group Health Coop.*, 99 Wn.2d 609, 637, 664 P.2d 474 (1983) (Brachtenbach, J., dissenting). Thus, when reasonable minds could reach but one conclusion, questions of fact may be determined as a matter of law. *Hartley v. State*, 103 Wn.2d 768, 774-78 (1985); *LaPlante v. State*, 85 Wn.2d 154, 531 P.2d 299 (1975); *Balise v. Underwood*, 62 Wn.2d 195, 381 P.2d 966 (1963).

2. The Court of Appeals erred in rejecting Reid's res ipsa loquitur argument contrary to established summary judgment standard.

At the time of the chair collapse, Reid was appropriately and normally using the chair. CP 210 - 211, CP 213 - 216.

A plaintiff may rely upon res ipsa loquitur's inference of negligence if (1) the accident or occurrence that caused the

plaintiff's injury would not ordinarily happen in the absence of negligence, (2) the instrumentality or agency that caused the plaintiff's injury was in the exclusive control of the defendant, and (3) the plaintiff did not contribute to the accident or occurrence. *Curtis v. Lein*, 169 Wn.2d 884, 891 (2010). The first element is satisfied if one of three conditions is present: (1) When the act causing the injury is so palpably negligent that it may be inferred as a matter of law, i.e., leaving foreign objects, sponges, scissors, etc., in the body, or amputation of a wrong member; (2) when the general experience and observation of mankind teaches that the result would not be expected without negligence; and (3) when proof by experts in an esoteric field creates an inference that negligence caused the injuries. *Id.*

General experience and observation teach that a chair being normally used does not collapse unless it cannot support the weight of the person or it has a defect or is negligently

maintained. King County admits that it never inspected the heavily-used plastic chairs for the 20 years preceding the collapse. Additionally, the weight specification for a similar chair used by King County in its Seattle jail is only 400 pounds, less than Reid's 437-pound weight. CP 228 – 232, CP 244. King County has no documents relating to the weight specification of Reid's chair.

Like in Curtis, an inference of negligence on the part of the King County should be assessed: what King County knew or reasonably should have known about the chair's condition is part of the King County's duty owed to Reid. *See*, *Curtis v. Lein*, 169 Wn.2d 884, 891 (2010). What King County knew or reasonably should have known about the chair is exactly the sort of information that res ipsa loquitur is intended to supply by inference, if the inference applies at all. *Id.*; see also *Ripley v. Lanzer*, 152 Wn. App. 296, 307, 215 P.3d 1020 (2009) (accident's occurrence is of itself sufficient to establish prima

facie the fact of negligence on the part of the defendant, without further direct proof).

In *Penson v. Inland Empire Paper Co.*, 73 Wash. 338, 132 P. 39 (1913), cited by Curtis, wooden scaffolding collapsed while a painter was working upon it. The Supreme Court held that res ipsa loquitur supplied the necessary evidence of negligence, noting that the result was to shift the burden to the defendant to prove, through evidence sufficient to rebut the inference arising from application of res ipsa loquitur, that the faulty condition of the scaffolding was undiscoverable. *Id.* at 347-48 ("The burden of explanation … was upon the appellant. … If the defect which caused it to break was latent and unobservable by the exercise of reasonable care, no evidence was offered to prove it."). In this case, since King County cannot account for the chair, through no fault of Reid, it is unable to explain the collapse of the chair.

A plaintiff claiming res ipsa loquitur is not required to eliminate with certainty all other possible causes or inferences in order for res ipsa loquitur to apply. *Curtis* at 894, citing *Pacheco v. Ames*, 149 Wn.2d at 440-41 (quoting *Douglas v. Bussabarger*, 73 Wn.2d 476, 486, 438 P.2d 829 (1968) (quoting William L. Prosser, Handbook of the Law of Torts 222 (3d ed. 1964)). Instead, "res ipsa loquitur is inapplicable where there is evidence that is completely explanatory of how an accident occurred and no other inference is possible that the injury occurred another way." *Curtis* at 894. The rationale behind this rule lies in the fact that res ipsa loquitur provides an inference of negligence. *Id.*

As with any other permissive evidentiary inference, a jury is free to disregard or accept the truth of the inference. *Id.* The fact that King County may offer reasons other than negligence for the accident or occurrence merely presents to the jury alternatives that negate the strength of the inference of

negligence res ipsa loquitur provides. *Id*. Whether the inference of negligence arising from res ipsa loquitur will be convincing to a jury is a question to be answered by that jury. *Id*.

The Court of Appeals acknowledged that "even if allegations that a chair could turn to Jell-O or jelly seem extraordinary, Reid's account of what happened is at a minimum sufficient to establish that the chair collapsed or gave way. The doctrine of res ipsa loquitur applies here because, in people's general experience, chairs do not collapse in the absence of negligence." Court of Appeals opinion at 12-13.

After recognizing that the doctrine of res ipsa loquitur applies, the Court of Appeals states that when the inference applies, the result is "to shift the burden to the defendant to prove, through evidence sufficient to rebut the inference arising from the application of res ipsa loquitur, that the faulty

condition was undiscoverable by the defendant." Court of Appeals opinion at 13, *citing Curtis*, 169 Wn.2d at 892-93 (citing *Penson v. Inland Empire Paper Co.*, 73 Wash. 338, 347-48, 132 P. 39 (1913)).

Then the Court of Appeals states that "[h]ere, King County provides unrebutted expert testimony that there are no known theories that explain how what Reid claims happened was a discoverable condition such that, with the exercise of reasonable care, the occurrence could have been avoided." Court of Appeals opinion at 14-15. The Court of Appeals goes on to reason that "[b]ased on the testimony of King County's expert, the record also contains unrebutted testimony that Sebel Integra chairs require no maintenance or repair, as the chairs are made out of a single piece of heavy-duty cast plastic and have never been known to fail under normal use." *Id.* Based on this conclusion by the Court of Appeals, the Court held that [t]he evidence presented by King County,

unrebutted by Reid, supports a conclusion that the allegedly faulty condition was undiscoverable. Thus, the evidence "destroys any reasonable inference of negligence" supplied by the application of res ipsa loquitur.

The Court of Appeals erred because the foregoing evidence submitted by King County merely creates a fact issue.

King County's expert argues that the Sebel chairs have never been known to fail under normal use. For purposes of summary judgment, it is unrebutted that Reid was using the chair normally which undermines the expert's opinion that Sebel chairs only break when used abnormally.

Additionally, for purposes of summary judgment, it is unrebutted that King County never inspected the heavily-used plastic chairs for the 20 years preceding the collapse. Accordingly, using King County's theory, if Reid was using the chair normally (unrebutted) and it still broke, then it is

likely that the chair had been used abnormally prior to Reid using it. The prior abnormal use weakened the chair (e.g. a crack) but King County never inspected the chairs for 20 years, so, with no inspections, any defect caused by prior use would not have been discovered. Under this circumstance, a jury could find that King County was negligent in *never* inspecting the chairs even though it was known by King County that the chairs had broken in the past.

Additionally, the unrebutted summary judgment evidence reveals that the weight specification for a similar chair used by King County in its Seattle jail is only 400 pounds, less than Reid's 437-pound weight. CP 228 – 232[27]. Under the summary judgment facts, a jury could find that King County used similar-application chairs with a weight specification of 400 pounds when it is within the common knowledge of people that some people weigh more than 400

[27] Richardson deposition 34:6 to 36:1, 38:15 to 39:14

pounds. The jury could find that Reid's weight exceeded the weight specification of the chair causing the chair to collapse and that King County acted negligently in not providing safe chairs for people weighing over 400 pounds.

3. The Court of Appeals erred in rejecting Reid's spoliation argument.

Spoliation is defined as the intentional destruction of evidence. *Ripley v. Lanzer*, 152 Wn. App. 296, 326, 215 P.3d 1020, 1036 (2009). In deciding whether to apply a sanction, courts consider the potential importance or relevance of the missing evidence and the culpability or fault of the adverse party. *Id*.

The Washington Supreme Court recognized the following rule on spoliation: "[W]here relevant evidence which would properly be a part of a case is within the control of a party whose interests it would naturally be to produce it and he fails to do so, without satisfactory explanation, the only inference which the finder of fact may draw is that such

evidence would be unfavorable to him." *Pier 67 v. King County*, 89 Wn.2d 379, 385-86, 573 P.2d 2 (1977). The trial court weighs (1) the potential importance or relevance of the missing evidence and (2) the culpability or fault of the adverse party. *Homeworks Constr. v. Wells*, 133 Wn.App. 892, 898-99 (2006). After weighing these two general factors, the trial court uses its discretion to craft an appropriate sanction. *Id.*

A thrust of King County's motion for summary judgment is the alleged lack of evidence relating to the chair. But King County cannot account for the chair at issue. CP 152.[28] If the chair was broken (as described by Reid), King County probably would have discarded the chair in the dumpster. CP 239 - 240.[29] It was probably discarded even though immediately after the incident, and when checking out of the visitor area, Reid notified the officer stationed at the area's entrance/exit of his "bad accident," that the chair

[28] Richardson Declaration at ¶3
[29] Richardson deposition at 55:6 to 56:20

collapsed on him, that he was hurting, that chair could hurt other people, and the officer needed to take a record. CP 197 - 199.[30] Reid tried to give a statement relating to the collapse. *Id*. The officer looked up at Reid and then apparently ignored Reid and went back to his paperwork. *Id.* Even King County's CR 30(b)(6) witness, David Richardson, conceded that if an attorney told the officer on duty about the chair collapse and had requested for the chair to be preserved, then guidelines for handling evidence for crimes would kick in (even though this situation would not be a crime) and the chair would have been preserved. CP 240 - 243.[31] In this case, immediately after the collapse, Reid informed the officer and tried to give a statement and tried to get the officer to make a record to set the foundation for a claim.

[30] Reid deposition at 9:15 to 11:6

[31] Richardson deposition at 56:21 to 59:8

King County is seeking to capitalize on what appears to be a systemic procedure of disposing of broken chairs without an investigation and without any documentation.

G. CONCLUSION

For these reasons, Reid respectfully requests that the Supreme Court review this matter and then later, will respectfully request that the Court reverse the Summary Judgment and to remand the matter back to the Superior Court for trial on a new trial calendar.

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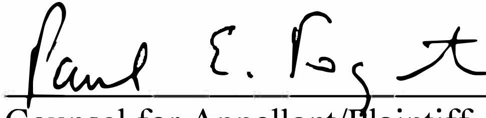
DATED and respectfully submitted this 29th day of June, 2023.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 29, 2023, a copy of the Amended Petition for Review was served on the following counsel of record at the address and in the manner described below:

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SIGNED this 29th day of June 2023.

s/ Johan Karlsen
Johan Karlsen

APPENDIX

FILED
5/30/2023
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MICHAEL REID, an individual, Appellant, v. NORIX GROUP, INC., an Illinois Corporation, and KING COUNTY, Respondents.	No. 83850-4-I DIVISION ONE UNPUBLISHED OPINION

CHUNG, J. — Michael Reid filed this premises liability suit against King County based on injuries he sustained at the Maleng Regional Justice Center (MRJC) when he sat on a chair in an attorney-client visiting room that gave way. The trial court granted King County's motion for summary judgment. We hold that Reid is not entitled to an adverse inference based on spoliation of the chair, as King County did not owe Reid a duty to preserve that evidence. And while the doctrine of res ipsa loquitur establishes an inference of negligence, the inference is rebutted by evidence that any injury-causing condition was undiscoverable. Because the record evidence does not raise a triable issue of material fact, we affirm the summary judgment dismissal of Reid's claim.

FACTS

In the summer of 2017, attorney Michael Reid went to the MRJC to meet a client and interview a prospective client. Reid's meetings took place in one of the MRJC's attorney-client meeting rooms.

In the meeting room, Reid, who weighed 437 pounds at that time, sat down in a blue plastic chair, model name Integra, made by Sebel, an Australian company. According to Reid, the Integra chair "seemed like a normal chair" and was one of a group[1] in use at the MRJC since it opened in 1997.[2]

Reid met with an existing client for about a half hour and then waited about ten more minutes to talk with a prospective client, David Reimers. After Reid talked with Reimers for about ten to fifteen minutes, "the chair totally gave out and threw [Reid] to the concrete floor." Reid testified at his deposition that "[t]he chair all of a sudden turned to jelly." The chair gave "no warning, no anything, and immediately slammed [Reid] to the ground on [his] left hip."

Reid is clear that the chair did not break. He said, "I don't know exactly what [the chair's legs] did when it collapsed other than it didn't shatter, it didn't break, it turned to Jell-O and was, you know, like, in a Jell-O form. And then, boom, it reconstituted itself." After the event, in Reid's words, the chair "looked

[1] As of 2022, there were approximately 45 Sebel chairs in use in the visitation booths at MRJC.

[2] The parties do not dispute that King County's 6-year records retention policy means it has no precise records regarding the purchase of Sebel Integra chairs used at the MRJC since it opened. The record shows King County made three Integra chair purchases for its jail in Seattle, but there is no record these chairs were sent to the MRJC in Kent. The maintenance and supply sergeant at the MRJC for the period 2014-20 does not recall whether the MRJC ever purchased Integra chairs after it opened. The parties do not dispute that Integra chairs do not have individual serial numbers.

perfectly normal. You know, like a normal chair, like it did before the accident when I walked in the room."

Reimers, the potential client who was present at the time of the incident, was sitting facing Reid. In the meeting room, there is a window in the wall separating attorneys from clients and a counter at which the attorney sits. Reimers testified in his deposition that he could not see the chair's legs when Reid fell. Nevertheless, Reimers corroborated Reid's statement that the chair did not break and testified the chair was laying on its side after Reid fell. The chair did not look like Jell-O or jelly to Reimers.

After Reid fell, he was "so startled, surprised and in pain that the interview only lasted about another 10 minutes." Reid told an officer at the MRJC check-in desk that he just had a bad accident. He explained the chair collapsed and that he was really hurting. He told the officer, "You need to do something or take a record . . . ." The officer "just ignored [Reid]," did not respond and "wouldn't even talk to [Reid]."

Reid initially sued the chair's manufacturer, wholesaler, and retailer for products liability, then added a claim for premises liability against King County.[3] King County moved for summary judgment in February 2022, and the trial court granted the motion, dismissing the claim. Reid timely appeals.

[3] Although this information is not in the record on appeal, according to King County, the claims against the other defendants were dismissed. King County is the only respondent in Reid's appeal.

DISCUSSION

Reid assigns error to the trial court's order granting King County's motion for summary judgment. On appeal, we review summary judgments de novo. Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). "The moving party has the burden of showing that there is no genuine issue as to any material fact." Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d 59, 70, 170 P.3d 10 (2007). The court views all facts and reasonable inferences in the light most favorable to the nonmoving party. Elcon Constr., Inc. v. E. Wash. Univ., 174 Wn.2d 157, 164, 273 P.3d 965 (2012). "When a nonmoving party fails to controvert relevant facts supporting a summary judgment motion, those facts are considered to have been established." Cent. Wash. Bank v. Mendelson-Zeller, Inc., 113 Wn.2d 346, 354-55, 779 P.2d 697 (1989) (citing Wash. Osteopathic Med. Ass'n v. King County Med. Serv. Corp., 78 Wn.2d 577, 579, 478 P.2d 228 (1970).

The essential elements of any negligence action are (1) the existence of a duty to plaintiff; (2) breach of that duty; (3) resulting injury; and (4) proximate cause between the breach and the injury. Hutchins v. 1001 Fourth Ave. Assocs., 116 Wn.2d 217, 220, 802 P.2d 1360 (1991).

On appeal, Reid contends the court granted summary judgment improperly for several reasons. First, Reid argues King County owed him a duty of reasonable care to inspect and make safe its chairs at the MRJC. Reid also argues there are material issues of fact either because the doctrine of res ipsa loquitur applies and affords him an inference of negligence, or because King County spoliated evidence so he was due an adverse inference in his favor. King County counters that the res ipsa loquitur and spoliation doctrines do not apply, the event was not within the field of danger that it could have foreseen, and there is insufficient evidence to establish proximate cause.[4]

We hold that there was no spoliation because King County did not owe Reid a duty to preserve the chair. We agree with Reid that he is due an inference of negligence pursuant to the doctrine of res ipsa loquitur. However, because there is insufficient evidence to create a genuine issue of material fact as to foreseeability, we affirm the trial court's summary judgment dismissal of his negligence claim.

I. Spoliation

Reid argues that King County spoliated evidence—the chair that injured him—so he was due an adverse evidentiary inference. We disagree. King County had no duty to preserve the evidence and, thus, no adverse evidentiary inference is due.

[4] King County also argues that it did not owe Reid a duty of care because Reid was not an invitee, but a licensee. At oral argument, Reid conceded "it doesn't matter" whether Reid was an invitee or a licensee at the MRJC, so we do not reach that issue.

"[A] court may impose a sanction for the failure to preserve evidence before a lawsuit is initiated only if, as a threshold legal issue, the allegedly spoliating party owed a duty [to the party seeking sanctions] to preserve that evidence." Seattle Tunnel Partners, et al. v. Great Lakes Reinsurance (UK) PLC, et al., No. 79460-4-I, slip op. at 29 (Wash. Ct. App. Apr. 10, 2023), https://www.courts.wa.gov/opinions/. We review the question of whether a duty exists de novo. Cook v. Tarbert Logging, Inc., 190 Wn. App. 448, 461, 360 P.3d 855 (2015).

If a party had a duty to preserve evidence and breached that duty, then a court will determine the level of culpability—i.e., whether the spoliating party acted intentionally, in bad faith, with conscious disregard for the importance of the evidence, negligently, or innocently. Seattle Tunnel Partners, No. 79460-4-I, slip op. at 35 (citing Henderson v. Tyrrell, 80 Wn. App. 592, 609, 910 P.2d 522 (1996); Homeworks Constr., Inc. v. Wells, 133 Wn. App. 892, 900, 138 P.3d 654 (2006)). "[A]n adverse inference jury instruction is not an appropriate sanction for spoliation if the party's failure to preserve evidence is neither intentional nor rises to the level of bad faith." Seattle Tunnel Partners, No. 79460-4-I, slip op. at 37. Merely negligent destruction of evidence cannot support an adverse inference. Cook, 190 Wn. App. at 469-70.

In this case, the parties do not dispute that the exact chair at issue has never been identified. According to King County, MRJC custodial staff may have

discarded the chair or possibly "the chair is still out there being used" because the chair did not break.[5]

Regarding duty, Reid argues that his statements to the officer who checked him out of the attorney-client interview room imposed a duty on King County to preserve the chair. Reid testified that he tried to give a statement and tried to get the officer to make a record, but the officer "ignored" him. But he does not provide authority as to why these efforts created a duty on King County's part to preserve specific evidence. In Washington, there is no general duty to preserve evidence. Cook, 190 Wn. App. at 461. A duty "does not arise simply because a person has been injured by an arguably negligent act and a lawsuit is a possibility." Seattle Tunnel Partners, No. 79460-4-I, slip op. at 23 (citations omitted). While a duty "may, under some circumstances, arise out of a pre-lawsuit letter from an injured party or their attorney requesting that the party in control of the evidence not dispose of it without prior notice," id. at 29 (citing Cook, 190 Wn. App. at 464), here, there is no evidence of such a request by Reid to King County.[6]

We agree with King County that it had no duty to preserve the chair as evidence. Thus, we need not reach the issues of culpability or sanctions to conclude that Reid was not due an adverse evidentiary inference due to spoliation.

[5] Reid testified in his deposition that the chair was "normal" when he left the meeting room and did not look damaged or defective.

[6] In fact, the record shows Reid did not begin investigating until two years after the incident, as Reid's prior attorney appears to have initiated a public records request in June 2019.

II. Res ipsa loquitur

Reid argues that res ipsa loquitur applies so the question of negligence must go to a jury. We agree the doctrine applies, but the effect is only to supply a rebuttable inference of negligence.

Res ipsa loquitur means "the thing speaks for itself." W. PAGE KEETON, ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 39, at 243 (5th ed. 1984). "Res ipsa loquitur is not an independent legal claim; it is instead a tool of circumstantial evidence that allows a plaintiff to proceed with a negligence claim when a defendant's specific act of negligence is unclear." Wells v. Nespelem Valley Elec. Coop., Inc., 13 Wn. App. 2d 148, 155, 462 P.3d 855 (2020) (citing Pacheco v. Ames, 149 Wn.2d 431, 436, 69 P.3d 324 (2003)). Generally, the doctrine "provides nothing more than a permissive inference" of negligence. Curtis v. Lein, 169 Wn.2d 884, 889, 239 P.3d 1078 (2010) (quoting Zukowsky v. Brown, 79 Wn.2d 586, 600, 488 P.2d 269 (1971)). It is "ordinarily sparingly applied, 'in peculiar and exceptional cases, and only where the facts and the demands of justice make its application essential.' " Curtis, 169 Wn.2d at 889 (quoting Tinder v. Nordstrom, Inc., 84 Wn. App. 787, 792, 929 P.2d 1209 (1997) (quoting Morner v. Union Pac. R.R. Co., 31 Wn.2d 282, 293, 196 P.2d 744 (1948))). As the Washington Supreme Court has explained,

> "The doctrine of res ipsa loquitur spares the plaintiff the requirement of proving specific acts of negligence in cases where a plaintiff asserts that he or she suffered injury, the cause of which cannot be fully explained, and the injury is of a type that would not ordinarily result if the defendant were not negligent. In such cases the jury is permitted to infer negligence. The doctrine permits the inference of negligence on the basis that the evidence of the

> cause of the injury is practically accessible to the defendant but inaccessible to the injured person."

Curtis, 169 Wn.2d at 890 (quoting Pacheco, 149 Wn.2d at 436). Whether res ipsa loquitur applies in a given context is a question of law. Curtis, 169 Wn.2d at 889.

A. Whether res ipsa loquitur applies

A plaintiff may rely upon res ipsa loquitur's inference if (1) the accident or occurrence that caused the plaintiff's injury would not ordinarily happen in the absence of negligence, (2) the instrumentality or agency that caused the plaintiff's injury was in the exclusive control of the defendant, and (3) the plaintiff did not contribute to the accident or occurrence. Id. at 891.

The record shows no dispute regarding the last two elements. Neither party disputes the chair was the instrumentality of Reid's injuries or that the chair was in the MRJC's exclusive control. As to whether Reid contributed to the occurrence that caused him injury, Reid asserts he sat in the chair "fully balanced and in control . . . [he] wasn't doing anything weird or unusual in the chair." Because the court must view the facts in the light most favorable to the nonmovant, the evidence is that Reid did not contribute to the occurrence that caused him injury. Therefore, whether the doctrine applies depends on the first element, whether the accident or occurrence that caused the plaintiff's injury would not ordinarily happen in the absence of negligence.

The first element is satisfied if one of three conditions is present:

> (1) When the act causing the injury is so palpably negligent that it may be inferred as a matter of law, i.e., leaving foreign objects, sponges, scissors, etc., in the body, or amputation of a wrong

> member; (2) when the general experience and observation of mankind teaches that the result would not be expected without negligence; and (3) when proof by experts in an esoteric field creates an inference that negligence caused the injuries.

Curtis, 169 Wn.2d at 891 (internal citations omitted). Reid relies on the second condition and argues that "[g]eneral experience and observation teach that a chair being normally used does not collapse unless it cannot support the weight of the person or it has a defect or is negligently maintained."

In Curtis, the Court held res ipsa loquitur applied when Curtis fell through a wooden dock on the Leins' property. Id. at 888-89. The Court concluded the trial court erred by failing to apply the doctrine merely because other non-negligent causes could have caused Curtis's injury. Id. at 894-95. And the Court further held that this court erred by parsing the inference: "When res ipsa loquitur applies, it provides an inference as to the defendant's breach of duty." Id. at 892. Thus, because wooden docks do not normally give way if properly maintained, the dock was in the Leins' exclusive control, and there was no dispute that Curtis had not contributed to the occurrence, Curtis was entitled to the inference. Id. at 895.

The Washington Supreme Court has also held that "[i]n the general experience of [people], the collapse of a seat is an event that would not be expected without negligence on someone's part." Zukowsky, 79 Wn.2d at 596 (plaintiff was injured when a sailboat's helm seat on which she was sitting collapsed); see also Rose v. Melody Lane of Wilshire, 39 Cal.2d 481, 486, 247 P.2d 335 (1952) ("Seats designed for use by patrons of commercial

establishments do not ordinarily collapse without negligence in their construction, maintenance, or use."),[7] cited in Zukowsky, 79 Wn.2d at 596.

The undisputed summary judgment evidence was that Reid was sitting on the chair, and then it gave way. In addition to Reid's own account, Reimers testified he observed Reid sitting down, then he saw Reid on the ground and the chair on its side.[8] For the purpose of determining whether res ipsa loquitur applies, the proper focus is whether the chair caused Reid's injury due to negligence, rather than the details of what precisely happened to the chair.[9] Reid uses the word "collapse," and it is undisputed that the chair did not break and that, after Reid fell, the chair was "normal." As the Curtis Court made clear, if the

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[7] The California Supreme Court in Rose cited to multiple other cases, including in other jurisdictions, in support of this proposition. 39 Cal.2d at 486 (citing Gross v. Fox Ritz Theatre Corp., 12 Cal. App. 2d 255, 256, 55 P.2d 227 (1936); Micek v. Weaver-Jackson Co., 12 Cal. App. 2d 19, 21-22, 54 P.2d 768 (1936); Gow v. Multnomah Hotel, 191 Or. 45, 65, 224 P.2d 552 (1950); Billroy's Comedians v. Sweeny, 238 Ky. 277, 278, 37 S.W.2d 43 (1931); Sasso v. Randforce Amusement Corp., 243 App. Div. 552, 275 N.Y.S. 891 (1934); Fox v. Bronx Amusement Co., 9 Ohio App. 426, 430 (1918); cf. Durning v. Hyman, 286 Pa. 376, 379-82, 133 A. 568 (1926); Gates v. Crane Co., 107 Conn. 201, 203, 139 A. 782 (1928); Bence v. Dembo, 98 Ind. App. 52, 56-57, 183 N.E. 326 (1932)).

[8] While Reimers did not observe the chair turning to "Jell-O," he did testify that the chair was lying on its side after Reid fell.

[9] The present case is not one in which there is doubt about whether the injury-resulting event occurred. By contrast, in Marshall v. W. Air Lines, the court determined that res ipsa loquitur did not apply to a plaintiff's claim that alleged an airline's negligence caused her ear injury because there was no evidence other than plaintiff's own speculation that the injury-causing incident, a sudden change in air pressure, actually occurred. 62 Wn. App. 251, 259, 813 P.2d 1269 (1991). This court explained:

> We believe. . . that an implied requirement of the first element is that the "accident or occurrence" alleged to have produced the injury actually occurred. In the typical case the parties do not dispute the occurrence of the event alleged to have produced the injury. . . If the court cannot say within reasonable probabilities that the alleged injury-producing event occurred, then the doctrine of res ipsa loquitur cannot be invoked to create an inference of negligence.

Id. at 259-60. In Marshall, the plaintiff alleged a sudden change in air pressure caused her injury, but the only direct evidence of a sudden change in air pressure was Marshall's own testimony; her expert's hypothesis was speculation. Id. at 252, 260. The airline's expert's testimony that the pressurization problems were repaired by the time of the flight, and no such problems occurred during the flight, was supported by flight and maintenance records. Id. at 260. Marshall presented no evidence that other passengers noticed a pressure change. Id. at 252-53.

plaintiff shows the injury-producing event is of a type that would not ordinarily occur absent negligence, it is improper to require plaintiff to prove that the injury-producing instrument had obvious defects. 169 Wn.2d at 893-94. A plaintiff claiming res ipsa loquitur is not required to eliminate with certainty all other possible causes or inferences. Id. at 894 (internal quotations omitted). The doctrine is inapplicable only when "there is evidence that is completely explanatory of how an accident occurred and no other inference is possible that the injury occurred another way." Id. (citing Pacheco, 149 Wn.2d at 439-40).

Here, Reid is correct that King County has not provided evidence that is completely explanatory of the accident so as to preclude the application of res ipsa loquitur. And Reid has shown each of the elements necessary for the application of the res ipsa loquitur inference: (1) he has shown the injury-producing event is of a type that does not ordinarily happen in the absence of negligence because general experience counsels that chairs do not collapse, (2) it is not disputed that the chair was in the exclusive control of King County at the MRJC, and (3) the evidence shows that Reid did not contribute in any way to the accident.[10] See Curtis, 169 Wn.2d at 895. Thus, even if allegations that a chair could turn to Jell-O or jelly seem extraordinary, Reid's account of what happened is at a minimum sufficient to establish that the chair collapsed or gave

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[10] The parties do not dispute whether Reid was using the chair properly. Reid also does not argue that King County had a duty to provide him a chair that could support his weight. Although there is evidence that Sebel Integra chairs subsequently purchased by King County for similar use are tested to bear a static load of 400 pounds, Reid concedes the record contains no evidence stating the weight capacity of the Integra chairs that were at the MRJC at the time of the incident.

way. The doctrine of res ipsa loquitur applies here because, in people's general experience, chairs do not collapse in the absence of negligence.

B. Effect of the res ipsa loquitur inference and summary judgment

If the doctrine of res ipsa loquitur applies, the next issue is the procedural effect of the inference. Zukowsky, 79 Wn.2d at 597 ("Having determined that res ipsa loquitur applies, there remains the question of its procedural effect."). The procedural effect of the doctrine is a question of law. Id. at 592 (citing Nelson v. Murphy, 42 Wn.2d 737, 258 P.2d 572 (1953)).

The primary purpose of the res ipsa loquitur doctrine is to withstand the challenge of judgment as a matter of law. Zukowsky, 79 Wn.2d at 598. In a given case, the doctrine's procedural effect depends upon the strength of the inference to be drawn from the circumstances in evidence. Id. at 599-600 (citing W. PROSSER, LAW OF TORTS § 40, at 234 (3rd ed. 1964)) (other citations omitted). "The strength of the inference varies not only according to the manner of the particular occurrence, but also with the standard or degree of care which the defendant owed to the plaintiff in connection with the occurrence." Id. at 600. Thus, contrary to Reid's suggestion, the application of the res ipsa loquitur inference does not always mean that there is a question of triable fact.

Instead, if the inference applies, the result is "to shift the burden to the defendant to prove, through evidence sufficient to rebut the inference arising from the application of res ipsa loquitur, that the faulty condition was undiscoverable by the defendant." Curtis, 169 Wn.2d at 892-93 (citing Penson v. Inland Empire Paper Co., 73 Wash. 338, 347-48, 132 P. 39 (1913)).

> If the defendant seeks a directed verdict . . . , [the defendant] must produce evidence which will destroy any reasonable inference of negligence, or so completely contradict it that reasonable persons could no longer accept it. . . . If the defendant shows definitely that the occurrence . . . could not have been avoided by the exercise of all reasonable care, the inference of negligence is no longer permissible, and the verdict is directed for the defendant.

W. PAGE KEETON, ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 40, at 261-62 (5th ed. 1984).[11] At summary judgment, the moving party has the burden of showing there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law. CR 56(c). Thus, if res ipsa loquitur supplies an inference of negligence, a defendant at summary judgment may still satisfy this burden by showing there is no genuine issue of material fact as to whether “the occurrence . . . could not have been avoided by the exercise of all reasonable care.” KEETON, ET AL., supra, § 40, at 261-62.

Here, King County provides unrebutted expert testimony that there are no known theories that explain how what Reid claims happened was a discoverable

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[11] Prosser and Keeton further explain:

> But if the defendant merely offers evidence of [the defendant’s] own acts and precautions amounting to reasonable care, it is seldom that a verdict can be directed in [the defendant’s] favor. The inference from the circumstances remains in the case to contradict [the defendant’s] evidence. If the defendant testifies that [the defendant] used proper care to insulate [the] wires, to inspect [the] chandelier, to drive [the] bus, or to keep defunct mice and wandering insect life out of [the] bottled beverage, the fact that electricity escaped from the wires, that the chandelier fell, that the bus went into the ditch and the bug was in the bottle, with the background of common experience that such things do not usually happen if proper care is used, may permit reasonable [jurors] to find that [the defendant’s] witnesses are not to be believed, that the precautions described were not sufficient to conform to the standard required . . . .

KEETON, ET AL., supra, § 40, at 261-62. Accord 5 KARL B. TEGLAND AND ELIZABETH A. TURNER, WASH. PRAC., EVIDENCE LAW & PRACTICE § 301.14, at 230-31 (6th ed. 2016) (“The doctrine of res ipsa loquitur seems to embody the Thayer theory of presumptions,” i.e., those which disappear like a “bursting bubble” and no longer operate for any purpose as soon as evidence contrary to the presumption exists.).

condition such that, with the exercise of reasonable care, the occurrence could have been avoided. King County's commercial materials failure analysis expert, Wade Lanning, stated that even if he assumed Reid was speaking poetically, "[n]o material properties or theories from deformation mechanics known to me offer an explanation for why the chair material would suddenly and spontaneously lose strength and rigidity before suddenly and spontaneously regaining its original properties and shape."

Reid points to evidence that King County "admits that it never inspected the chairs in the visiting rooms for defects for the entire 20 years they had been in service," and did not maintain records relating to previously broken chairs.[12] But the record also contains unrebutted testimony that Sebel Integra chairs require no maintenance or repair, as the chairs are made out of a single piece of heavy-duty cast plastic and have never been known to fail under normal use. King County's CR 30(b)(6) representative, David Richardson, testified he could not recall a chair collapsing under normal use. The only occasion he could recall a chair being broken involved misuse. Likewise, a corrections officer responsible for purchasing and inventory at MRJC, James McComas, stated that the only time chairs had broken were because of misuse, such as inmates leaning back or sitting on top of a stack of chairs.

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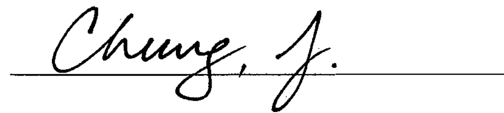
[12] Reid points to King County's admission that "there are no records relating to the inspection, maintenance and/or disposal of previously broken chairs." King County has a six-year records retention policy. King County searched its available records for information about Integra chair purchases and chair collapses at the MRJC and found no such records. It is also undisputed that the chair in question was purchased before 1997, more than twenty years before the event in question.

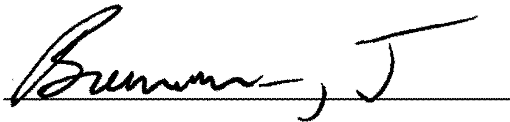
The evidence presented by King County, unrebutted by Reid, supports a conclusion that the allegedly faulty condition was undiscoverable. Thus, the evidence “destroys any reasonable inference of negligence” supplied by the application of res ipsa loquitur.

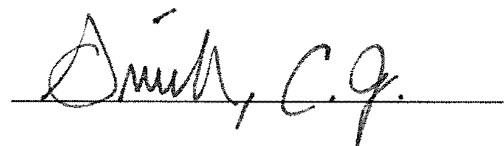
We conclude that there is no question of fact as to whether King County breached a duty it owed to Reid. Because Reid has the burden of proving each element of negligence, King County is entitled to judgment as a matter of law.

We affirm.



WE CONCUR:





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