92478-3

NO. 72403-7-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

Karon Steepy

Appellant

v.

Walkin' The Dogs & Pet Services, Inc. d/b/a Bow Wow Fun Towne, a Washington Corporation, and John Doe Company, an entity,

Respondents.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONERS

Petitioner Karon Steepy is the plaintiff in the trial court and the appellant in the Court of Appeals.

B. DECISION

The Court of Appeals filed its decision affirming trial court's dismissal of Ms. Steepy's claim on summary judgment on August 24, 2015. A copy of the Court of Appeals opinion is attached as Appendix A. Ms. Steepy's timely motion for reconsideration was filed on September 14, 2015 and denied by the Court of Appeals on September 30, 2015. A copy of Ms. Steepy's reconsideration brief is attached as Appendix B. A copy of the Court of Appeals order denying Ms. Steepy motion for reconsideration is attached as Appendix C.

C. ISSUE PRESENTED FOR REVIEW

Should this Court grant review under RAP 13.4(b)(1) and (b)(2) when the Court of Appeals' application of the summary judgement standard conflicts with all previous Washington Court of Appeals and Washington Supreme Court decisions, by not considering all the facts on the record in the light most favorable to the nonmoving party, and accepting certain facts as true contrary to conflicting evidence?

D. STATEMENT OF THE CASE

On August 21, 2010, Appellant Karen Steepy took her dog to an event sponsored on the premises of Respondent Bow Wow Fun Towne where dog owners were invited to bring their dogs to a free dog wash and a picnic. Bow Wow Fun Towne's business is pet day care. CP 10. To create a temporary doorway, the section of the premises where the dogs were washed was separated from the picnic area by a Gold Zinc Exercise Pen, Model #562-42. CP 45. Bow Wow Fun Towne employees set the exercise pen flat between two walls as a doorway with a six inch panel or threshold at the bottom. The metal doorway was located where a later-installed wooden gate is currently located. CP 34, 129-131.

As Ms. Steepy walked through the exercise pen doorway, she fell to the cement floor and her foot became trapped. CP 11. Ms. Steepy sustained serious injuries, including a facture to her femoral head of her right leg, resulting in over $57,000 in medical bills. CP 11, 28-30. There are multiple accounts of the incident and differing witness statements regarding what caused Ms. Steepy to fall. The differing versions, any of which a jury could believe, were acknowledged by the defense in its submittals to the trial court. CP 139, 144-145. In response to written discovery propounded by Bow Wow Fun Towne, Ms. Steepy asserted that the door/gate of the fence closed prematurely on her left foot as she

walked through the doorway. CP 45. Colleen Cody, an ex-employee of Bow Wow Fun Towne witnessed the incident. Ms. Cody testified in deposition that as Ms. Steepy walked through the gate and attempted to step over the bottom of the gate, her foot hit the bottom of the gate (its threshold), causing her to trip and fall. CP 106, 152-154. In addition, two employees filled out injury reports at the time of the incident, one of which stated that Ms. Steepy tripped over the bottom of the gate and the other stating that the gate latched as Ms. Steepy was walking through. CP 152-154, 158, 160.

Dr. Gary Sloan, a human factors expert, was retained to analyze and express expert opinions regarding how and why Ms. Steepy fell. CP 113. Dr. Sloan examined, inter alia, photographs taken by Respondent's insurance adjuster measuring the door and threshold of the exercise pen. He verified that the bottom of the assembly of the gate in the fencing, which constituted its threshold, was six inches in height. CP 115, 117. Dr. Sloan opined that the gate implicated in Ms. Steepy's fall failed to meet the applicable safety standards for sizes of doors and thresholds specified in the International Building Code (2009). CP 117. Under the Building Code's safety standards adopted by the State of Washington, the doorway threshold should not have exceeded ½ an inch for a door of this kind. CP

117. Dr. Sloan went on to state that the doorway posed a serious risk to pedestrian safety. CP 117.

E. ARGUMENT

The Superior Court and the Court of Appeals have committed an obvious error by ruling as a matter of law that Ms. Steepy has failed to demonstrate a genuine issue of material fact that the fence being used as a doorway posed an unreasonable risk of harm. In doing so, both the Superior Court and the Court of Appeals have accepted certain facts as true, and disregarded other facts that are equally relevant to the case, in blatant disregard for the summary judgment standard of viewing all facts in the light most favorable to the nonmoving party. This undermines the standard for summary judgement as stated countless times by the Washington Supreme Court and the Washington Court of Appeals.

I. Significance of the Case

Appellate courts in our state are sometimes accused of cherry picking facts to support a predetermined conclusion and holding. When this occurs the integrity of the appellate decision-making process is undermined and compromised. In order to reach its conclusion upholding summary judgment in this case, the Court of Appeals decision makes no mention of significant evidence clearly presented to them which undermines their conclusion that there were no material facts in dispute.

This violates decades of carefully crafted summary judgment standards, not the least of which is the evidence is to be interpreted in the light most favorable to the nonmoving party.

II. The summary judgment standard does not allow The Court to pick and choose facts

The summary judgment standard is well settled within Washington law. As properly stated in 1982 and not criticized to date:

> A summary judgment motion under CR 56(c) can be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Barrie v. Hosts of Am., Inc., 94 Wn.2d 640, 642, 618 P.2d 96 (1980). The court **must consider all facts** submitted and **all reasonable inferences** from the facts in the light most favorable to the nonmoving party. Yakima Fruit & Cold Storage Co. v. Central Heating & Plumbing Co., 81 Wn.2d 528, 530, 503 P.2d 108 (1972); Barber v. Bankers Life & Cas. Co., 81 Wn.2d 140, 142, 500 P.2d 88 (1972). The motion should be granted only if, **from all the evidence**, reasonable persons could reach but one conclusion. Morris v. McNicol, 83 Wn.2d 491, 494-95, 519 P.2d 7 (1974).
>
> *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030, (1982) (emphasis added).

Viewing all evidence in the light most favorable to the nonmoving party is the standard utilized by the court to date. *Save Our Scenic Area & Friends of the Columbia Gorge v. Skamania Cnty.*, 183 Wn.2d 455, 463, 352 P.3d 177 (2015) (viewing the facts in the light most favorable to the nonmoving party); *Cornelius v. Dep't of Ecology*, 182 Wn.2d 574, 615,

344 P.3d 199 (2015) (all facts and reasonable inferences from the facts are considered in the light most favorable to the nonmoving party). If the Trial Court and Court of Appeals had considered all of the facts and evidence submitted, it could not have concluded that there was no genuine issue of material fact.

Does Ms. Steepy's impression that the gate closed prematurely on her foot preclude a reasonable finder of fact from concluding that Ms. Steepy tripped over the six inch threshold which was twelve times as high as Washington law has determined as safe? There is the testimony of Colleen Cody, an ex-employee witness who saw Ms. Steepy trip over the bottom of the gate. Ms. Cody was questioned in the deposition as follows:

> Q What do you remember about the incident?
>
> A **I remember the woman opening and stepping over and her foot like – the little ledge, there's a little raised part, caught – like the tip of her toe caught on it, and then she slipped and fell**, got up – well, people helped her up, and then they took her over to a chair and she sat there for a while…
>
> CP 106, 152 (emphasis added).

A second employee saw the same trip over the threshold and filled out an accident report so stating. In the injury report, the employee responded to a section entitled "How Injury Happened" by stating:

> She was walking through a gate to get to the self-wash area and **she tripped over the bottom of the gate**

> and landed on her right hip **and got her foot caught up in the gate when she fell.**

CP 158 (emphasis added).

As argued at length in the Motion for Reconsideration attached hereto as Appendix B, nothing under Washington law requires the finder of fact to accept this one fact as true, or even allows the Court to disregard evidence and impose one fact as stated by Ms. Steepy as true. The mere fact that there are two versions regarding what about the metal doorway caused Ms. Steepy to falls makes the fact disputed.

The evidence of the case strongly supports a theory that Ms. Steepy tripped over the gate's threshold. As the Court of Appeals states in its opinion:

> [Ms. Steepy] introduced no evidence to show that the gate was equipped with a self-closing mechanism that would automatically close once opened. Indeed, the evidence showed the contrary—that the gate required manual operation to open and close.

The Court of Appeals is correct that the evidence does not support a theory that the gate by itself closed prematurely.[1] There is significant evidence in the record showing that Ms. Steepy tripped over the threshold, which a reasonable finder of fact could conclude was the cause of her fall.

[1] Ms. Steepy is not incorrect that the gate closed prematurely on her ankle—that is to say, that the gate clearly closed before Ms. Steepy was able to make it all the way through the doorway. However, that is not an assertion that tripping over the threshold was not the cause of her to fall or reason the gate closed prematurely.

The Superior Court and the Court of Appeals ignored facts supporting Ms. Steepy's well pled theory.

Summary judgment exists to examine the sufficiency of legal claims and narrow issues, not as an unfair substitute for trial. *City of Seattle v. State*, 136 Wn.2d 693, 697, 965 P.2d 619 (1998). The summary judgment procedure is not designed to deprive a litigant of the right to trial when there are disputed issues of fact. *Meadows v. Grant's Auto Brokers*, 71 Wn.2d 874, 879, 431 P.2d 216 (1967). It is certainly in dispute what caused Ms. Steepy to fall and become severely injured, and a reasonable finder of fact could rely on the multiple witnesses stating that she tripped over the threshold to conclude that the six-inch threshold posed an unreasonable risk.

III. A reasonable trier of fact weighing all of the evidence could conclude that Ms. Steepy tripped over the gate causing her injuries

Proximate cause is a factual question to be determined by the trier of fact. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 83, 170 P.3d 10 (2007). The evidence must be considered as a whole to determine if the finder of fact has sufficient facts to find causation.

In this case, Dr. Sloan's declaration is being dismissed by The Court as speculative because he does not explicitly state that Ms. Steepy tripped

over the gate's threshold. However, it is the finder of fact that must connect facts to determine causation and Dr. Sloan's declaration provides sufficient expert opinion for this to occur. Dr. Sloan established in his declaration that the dimensions of the step-thru gate, as he called it, included a threshold which was six inches in height, twelve times the height a threshold allowed by the recognized safety standards. Dr. Sloan's statement that "the dimensions... of the step-thru door posed a serious risk to pedestrian safety" is tantamount to stating the six in threshold (the dimensions) caused Ms. Steepy to trip (posed a serious risk to pedestrian safety). What other conclusions could be drawn from Dr. Sloan essentially stating that the six inch threshold was too high for someone to walk through? It was a tripping hazard and that is what caused Ms. Steepy to fall. Based on all the evidence presented, a reasonable trier of fact could reach this conclusion.

F. CONCLUSION

This Court should accept review of this case because the injustice of summarily dismissing Ms. Steepy's claim is stark. It deprived Ms. Steepy of the right under the Washington State Constitution to a jury trial because the Trial Court and the Court of Appeals have simply ignored facts that support her claim. The standard for summary judgment demands that the facts be considered in the light most favorable to the nonmoving party.

Here, the evidence in the record provides significantly more than a colorable argument that Ms. Steepy tripped over the dangerous gate being used as a doorway.

DATED this 23rd day of October, 2015 at Seattle, Washington.

BALINT & ASSOCIATES, PLLC

By: _____
David J. Balint, (WSBA # 5881)
Of Attorneys for Appellant/Plaintiff Karon Steepy

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By: _____
Christopher R. D'Abreau, (WSBA # 46687)
Of Attorneys for Appellant/Plaintiff Karon Steepy

Appendix A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KARON STEEPY, a single person, Appellant, v. WALKIN' THE DOGS & PET SERVICES, INC., d/b/a BOW WOW FUN TOWNE, a Washington corporation; and JOHN DOE COMPANY, an entity, Respondents.	)	No. 72403-7-I DIVISION ONE UNPUBLISHED OPINION FILED: August 24, 2015

TRICKEY, J. — Karon Steepy sued Walkin' The Dogs & Pet Services, Inc. (d/b/a Bow Wow Fun Towne) for negligence after she slipped and injured herself while passing through a temporarily installed fence. Steepy failed to demonstrate a genuine factual issue as to whether the fence posed an unreasonable risk to business invitees. Accordingly, we affirm the trial court's dismissal of her claim on summary judgment.

FACTS

On August 21, 2010, Walkin' The Dogs & Pet Services, Inc. (WTD) held an annual fundraiser to raise money for an animal shelter. As part of the fundraiser, WTD offered to wash pet owners' dogs at no charge.

Inside of the premises was a sitting area adjacent to the room where dogs were washed. The two areas were separated by a half-wall. At the end of the half-wall was an opening through which people could walk to and from the dog wash and sitting areas. To prevent dogs from leaving the dog wash area, Mary Mark, the owner of WTD, installed a temporary fence at the opening. The fence was installed for the fundraiser only. WTD had only installed it four times before.

The fencing equipment used was an exercise pen made of metal wire. The fence had a double latch gate made of the same material. Below the gate was a six inch panel or threshold that was stationary and did not swing open.

Steepy was at the fundraiser that day. According to Steepy, after she stepped through the gate with her right foot, the gate "prematurely"[1] closed on her left foot. She alleged that her left foot got trapped between the fence's threshold and the gate. Steepy fell to the ground as a result.

Steepy sued WTD for injuries she sustained as a result of the allegedly dangerous placement of the fence.

WTD filed a motion for summary judgment. The trial court granted WTD's motion. The court determined in part that Steepy failed to identify evidence tending to show that the fence posed an unreasonable risk.

Steepy appeals.

ANALYSIS

We review the grant of summary judgment de novo, undertaking the same inquiry as the trial court. Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). Summary judgment is appropriate only if the supporting materials, viewed in the light most favorable to the nonmoving party, demonstrate "'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.'" Hartley v. State, 103 Wn.2d 768, 774, 698 P.2d 77 (1985) (quoting CR 56(c)). "'[A] complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.'" Young v. Key Pharm., Inc.,

[1] Clerk's Papers (CP) at 27, 68.

112 Wn.2d 216, 225, 770 P.2d 182 (1989) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322–23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

To prevail on a negligence claim, Steepy must prove duty, breach, causation, and injury. Tincani v. Inland Empire Zoological Soc., 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). Here, the parties contest the question of duty.

In a premises liability action, the scope of the duty of care depends on the entrant's common law status as an invitee, licensee, or trespasser. Tincani, 124 Wn.2d at 128. The parties do not dispute Steepy's status as a business invitee.

A landowner generally owes business invitees a duty to exercise "[r]easonable care" and "inspect for dangerous conditions, 'followed by such repair, safeguards, or warning as may be reasonably necessary for [the invitee's] protection under the circumstances.'" Tincani, 124 Wn.2d at 139 (quoting Restatement (Second) of Torts § 343 cmt. b (1965)). A property owner is liable to invitees for injury-causing conditions if the landowner:

> "(a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
> (c) fails to exercise reasonable care to protect them against the danger."

Tincani, 124 Wn.2d at 138 (quoting Restatement § 343).

Here, Steepy failed to demonstrate a genuine issue of material fact that the fence posed an unreasonable risk of harm. The basis of Steepy's claim in the trial court was that the gate "prematurely" closed on her foot as she passed through it. But none of the evidence she submitted supported this allegation. For example, she introduced no evidence to show that the gate was equipped with a self-closing mechanism that would

automatically close once opened. Indeed, the evidence showed the contrary—that the gate required manual operation to open and close it.

Steepy also asserted that the dimension of the fence's threshold was too high, contrary to the International Building Code (IBC), causing her foot to become trapped between the threshold and the closing gate. Her claim rested entirely on the declaration submitted by expert Dr. Gary Sloan, a forensic human factors specialist. In it, Dr. Sloan opined the following:

> 22. In my opinion, the step-thru door implicated in Karon Steepy's fall failed to meet applicable standards specified in the International Building Code (2009). More specifically:
>
> a. **1008.1.1 Size of doors.** The minimum width of each door opening shall be sufficient for the occupant load thereof and shall provide a clear width of 32 inches (813 mm).
>
> The step-thru door at Bow Wow Fun Towne was 24-inches wide.
>
> b. **1008.1.7 Thresholds.** Thresholds at doorways shall not exceed 3/4 inch (19.1 mm) in height for sliding doors serving dwelling units or 1/2 inch (12.7 mm) for other doors.
>
> The bottom assembly of the step-thru door, which constituted its threshold, was 6 inches in height.
>
> 23. In my opinion as a human factors specialist, when Karon Steepy attempted to pass to the other side of the step-thru door at Bow Woe [sic] Fun Towne on August 21, 2010, her left foot became caught in a pinch point. Whether or not her left foot made contact with the bottom assembly before her ankle was caught in a pinch point is, in my opinion, less important than the fact that the *dimensions and possible instability* of the step-thru door *posed a serious risk to pedestrian safety.*[2]

Dr. Sloan's declaration provides no evidentiary support for Steepy's arguments. The declaration merely asserts that "dimensions and possible instability of the step-thru door posed a serious risk to pedestrian safety."[3] He does not explain with specificity why the fence's dimensions posed the alleged risk. Nor does his declaration show how

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[2] CP at 117 (emphasis added).
[3] CP at 117.

the alleged risk caused the gate to prematurely close on Steepy's foot, causing her foot to become trapped in the fence. In other words, Dr. Sloan's explanation of the risk did not relate to Steepy's explanation of how the injury occurred. Accordingly, Steepy failed to provide evidence tending to establish that the fence presented an unreasonable risk. Steepy's claim was properly dismissed.

Affirmed.

Trickey, J

WE CONCUR:

Appendix B

NO. 72403-7-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

Karon Steepy

Appellant

v.

Walkin' The Dogs & Pet Services, Inc. d/b/a Bow Wow Fun Towne, a Washington Corporation, and John Doe Company, an entity,

Respondents.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

MOTION FOR RECONSIDERATION

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COMES NOW the appellant, by and through her attorney, David J. Balint, and moves for the following:

I. Relief Requested

Pursuant to RAP 12.4, the plaintiff moves for reconsideration of the Court's opinion of August 24, 2015.

II. Issues

The trial court dismissed Ms. Steepy's case on summary judgment, which was subsequently upheld on appeal on the basis that Ms. Steepy failed to demonstrate a genuine issue of material fact that the fencing used as a doorway by the defendant posed an unreasonable risk of harm.

Are summary judgment standards properly applied when the courts weigh evidence and when a fact asserted by the plaintiff is accepted as true while other facts in the record are discarded?

Does the trier of fact have the authority to weigh all of the evidence and conclude that Ms. Steepy tripped over a dangerous threshold, and that the trip was at least one of the causes of her fall and injuries, if not the sole cause?

If the trier of fact ultimately concludes that Ms. Steepy tripped over the 6 inch threshold, causing her to fall and sustain injuries, has she provided evidence that the threshold of the gate posed and unreasonable risk of harm?

III. Argument

a. Does the summary judgment standard require all facts, and not only facts provided by the non-moving party, to be interpreted in the light most favorable to the non-moving party?

The summary judgment standard requires that all facts be taken in the light most favorable to the non-moving party.

The court should only affirm a grant of summary judgment if 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. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash.*, Inc., 162 Wn.2d 59, 70, 170 P.3d 10, 15 (2007); CR 56(c). The court cannot pick and choose a particular party's version of the facts to adopt on summary judgment. *Woodall v. Freeman Sch. Dist.*, 136 Wn. App. 622, 631, 146 P.3d 1242, 1247 (2006).

The opinion of this Court seems to adopt as the only fact in evidence that the gate closed prematurely causing Ms. Steepy to fall and her injuries from that fall. The adoption of this fact leads the court to the conclusion that the fence's threshold wasn't dangerous or the cause of Ms. Steepy's injuries, and that Dr. Sloan's declaration provides no support for the gate closing prematurely. All of these conclusions by the Court hinge on the

adoption of one fact. However, this is not the only fact in the record regarding what caused Ms. Steepy to fall and become injured.

In response to the Defendant's motion for summary judgment the plaintiff attached deposition testimony of Colleen Cody, an ex-employee of the defendant. CP 105-110. She was a witness to the fall and states numerous times throughout her testimony that she witnessed Ms. Steepy trip over the gate's threshold. At CP 106 the deposition transcript reads:

> Q What do you remember about the incident?
>
> A I remember a women opening and stepping over and her foot like -- and little ledge, there's a little raised part, caught -- like the tip of her toe caught on it, and then she slipped and fell...

At CP 110 the deposition transcript reads:

> Q Did you see that happen the way you just said it, or --
>
> A I saw her trip, put her arms out, and the gate came back, and then we went through it and picked her up

This is on the record in response to the defendant's assertions that Ms. Steepy has not shown the gate caused her fall.

In addition to evidence submitted by the plaintiff to the Court in support of this theory, in the defendant's motion for summary judgment, the same exact points are emphasized in support of its theory that Ms. Steepy tripped. See CP 139, 152-154. The defendant also cites to a Dog &

Person Injury Report submitted by an employee of the defendant, which states, "she was walking through a gate to get to the self-wash area and she tripped over the bottom of the gate and landed on her right hip and got her foot caught up in the gate when she fell." CP 158.

A jury is not required to accept Ms. Steepy's factual assertions. On summary judgment, the facts taken in the light most favorable to Ms. Steepy, whether directly asserted by her or not, is that she tripped over this gate's threshold causing her to fall and sustain injuries.

The pleadings and the facts on the record support this theory of the case. In section IV of the plaintiff's complaint, it is explicitly asserted that the gate was a risk of tripping and falling. The fact that Ms. Steepy asserts that the gate closed prematurely does not negate this theory of the case. Plaintiff's briefs to this Court set fourth several facts that support a theory that Ms. Steepy tripped over this threshold. The summary judgment standard requires the Court see all facts in the light most favorable to Ms. Steepy in this case. The plaintiff respectfully submits that facts have been overlooked and instead certain facts have been adopted which would in fact justify summary judgment. However, consideration of all facts in the light favorable to Ms. Steepy do not warrant summary dismissal.

b. **Can a reasonable trier of fact properly weigh the evidence and conclude that Ms. Steepy tripped over the gate causing her injuries?**

It is the trier of fact's exclusive province, not the court's, to weigh the evidence. *Ives v. Ramsden*, 142 Wn. App. 369, 381, 174 P.3d 1231, 1237 (2008). Here, the trier of fact would have been provided evidence in the form of witness statements that assert Ms. Steepy tripped over the gate. The jury is entitled to believe this assertion of fact.

The function of the appellate court is to review the action of the trial courts. Appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266, 270 (2009). In this case, the plaintiff respectfully submits that the evidence has been weighed in order for Ms. Steepy's assertion that the gate closed prematurely to be accepted as the sole cause of her fall and resulting injuries. The trier of fact should be given the opportunity to weigh the evidence and determine the cause of Ms. Steepy's fall. There are numerous facts supporting the theory that Ms. Steepy tripped.

A party is entitled to argue its theory of the case and to have the court instruct the jury on his theory of the case if there is substantial evidence to sustain it. *Little v. Ppg Indus.*, 19 Wn. App. 812, 818, 579 P.2d 940, 945 (1978). Ms. Steepy has provided substantial evidence on

two theories of the case. Ms. Steepy asserted that the door to the gate closed prematurely on her leg causing her injuries. However, this was not the only theory for which plaintiff provided evidence. An event causing injuries can have more than one proximate cause. *Jonson v. Chi.*, 24 Wn. App. 377, 381, 601 P.2d 951, 953 (1979). The other theory of causation, pled in the complaint and supported by evidence provided to the Court in response to the defendant's summary judgment motion, was that Ms. Steepy tripped over the threshold. This was supported by testimony of an ex-employee stating that Ms. Steepy tripped over the gate's threshold and the Dog & Person Injury Report submitted by an employee of the defendant stating that Ms. Steepy tripped over the bottom of the gate when walking through.

The theory of Ms. Steepy tripping over the gate's threshold being a cause of her fall is supported by substantial evidence.

c. If a reasonable trier of fact concluded that Ms. Steepy tripped over the threshold, is there sufficient evidence showing the gate posed an unreasonable risk?

The determination that the gate closing prematurely is the sole cause for Ms. Steepy's fall and injuries would likely mean that Dr. Sloan's expert opinion on the gate threshold deviating from minimum safety standards does not establish causation. If the trier of fact is allowed to

weigh all of the evidence, and under the summary judgment we consider these facts in the light most favorable to Ms. Steepy, the fact is that she tripped over the gate's threshold. Now, the inquiry is, was Dr. Sloan's analysis speculative or does it provide evidentiary support that the gate posed an unreasonable risk?

Dr. Sloan's statements that "the dimensions... of the step-thru door posed a serious risk to pedestrian safety" does explain the cause of Ms. Steepy's fall. Dr. Sloan discussed how the 6 inch height of the threshold used by the defendant was twelve times the height a threshold should be according to safety standards and that it was implicated in her fall. CP 117. This is an assertion that Ms. Steepy tripped over a threshold because it was too high off of the ground. Dr. Sloan's declaration provides evidentiary support for a theory of Ms. Steepy's case.

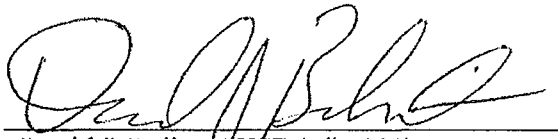
IV. Conclusion

The plaintiff respectfully asks this Court to reconsider its affirmation of the summary judgment dismissal of Ms. Steepy's claim based on consideration of two independent witnesses that were employees of the defendant, who provided evidence that Ms. Steepy tripped over the gate's threshold, and the well plead theory of the case.

Affirming the summary dismissal of Ms. Steepy's claim, with clear evidence in the record supporting a well pled theory of the case, calls into question the application of well settled summary judgment standards in all cases. The foundation for this Court's decision was that the cause of Ms. Steepy's fall was that the gate closed prematurely on her leg because Ms. Steepy made the assertion. Coming to this conclusion required weighing the evidence against several facts in the record that support the theory that Ms. Steepy tripped and ignores that there can be more than one proximate cause of an injury. If this decision holds, it contradicts well settled principles guiding summary judgment decisions, and gives the Court power to dismiss any case on summary judgment by adopting one set of facts over other facts in evidence.

DATED this 11th day of September, 2015 at Seattle, Washington.

BALINT & ASSOCIATES, PLLC

By: 

David J. Balint, (WSBA # 5881)
Of Attorneys for Appellant/Plaintiff Karon Steepy

Appendix C

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

KARON STEEPY, a single person, Appellant, v. WALKIN' THE DOGS & PET SERVICES, INC., d/b/a BOW WOW FUN TOWNE, a Washington corporation; and JOHN DOE COMPANY, an entity, Respondents.	No. 72403-7-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Karon Steepy, has filed a motion for reconsideration herein. The court has taken the matter under consideration and has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Done this 30th day of September, 2015.

FOR THE COURT:

Trickey, J