

**SECOND DIVISION
DOYLE, P. J.,
DAVIS and WHITAKER, JJ.**

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October 21, 2026

In the Court of Appeals of Georgia

A26A1133. SPRAY PROPERTIES, LLC et al. v. WASHINGTON.

DOYLE, Presiding Judge.

In this wrongful death action against a landlord, defendant Spray Properties, LLC, appeals from the denial of its motion for summary judgment against plaintiff Robert Washington, Jr. (“Washington”). Specifically, Spray Properties contends that the trial court erred by finding that the record contains a genuine issue of fact as to whether it had installed smoke detectors at a house where a fire killed the plaintiff’s father, Robert Washington (“the Decedent”). Because the only material evidence in the record shows that Spray Properties installed two smoke detectors at the time it turned the property over to its tenant, we reverse.

“Summary judgment is appropriate when the moving party can show that there is no genuine issue of material fact and that the movant is entitled to judgment as a matter of law.” *Yash Solutions, LLC v. New York Global Consultants Corp.*, 352 Ga. App. 127, 139(2) (834 SE2d 126) (2019) (quotation marks omitted). “On appeal from the grant or denial of a motion for summary judgment, we review the evidence de novo, and all reasonable conclusions and inferences drawn from the evidence are construed in the light most favorable to the nonmovant.” *Id.* at 138–39(2) (quotation marks omitted).

So viewed, the record shows that Spray Properties owns a rental house in Quitman, Georgia, and leased it to Shirley Hollis on September 1, 2019. The Decedent subsequently moved into the property with Shirley. On February 24, 2022, the property was destroyed by a fire. Shirley escaped, but the fire killed the Decedent and another occupant, Chance Hollis.

In May 2022, certified fire investigator Kenneth Wright visited the scene to make initial observations. In June 2022, he returned to the property for three days to conduct a thorough investigation and determine “whether smoke detectors were

present in the home at the time of the incident.” After performing his investigation, Wright reported that “there were no smoke detectors found at the residence[.]”

Washington sued Spray Properties, alleging claims for negligence, negligence per se, and wrongful death — all based on the alleged lack of smoke detectors.¹ Spray Properties answered and later moved for summary judgment, relying on undisputed affirmative evidence that it had installed smoke detectors when Shirley took possession. The trial court denied the motion, reasoning that the fire inspector’s report was “slight” evidence giving rise to a triable fact as to whether smoke detectors had been installed at the time Shirley took possession. Spray Properties now appeals.

Spray Properties contends that the trial court erred by finding that there was a genuine issue of fact as to whether it had installed smoke detectors at the property. We agree.

We begin our analysis with an overview of the relevant duties owed by landlords. As a general matter, under OCGA § 51-3-1,

¹ Washington also named Michael Spray (the principal of Spray Properties) as a defendant, but the trial court granted his summary judgment motion on the ground that he was not liable in his individual capacity.

[w]here an owner or occupier of land, by express or implied invitation, induces or leads others to come upon his premises for any lawful purpose, he is liable in damages to such persons for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.

“But when[, as here,] the landowner cedes possession of the property to a tenant, the landowner’s control over the property and the concomitant ability to make the property safe becomes limited.” *Cham v. ECIMgmt. Corp.*, 311 Ga. 170, 175(2)(a) (856 SE2d 267) (2021). In this context, the duty of a landlord is governed by OCGA § 44-7-14, which provides:

Having fully parted with possession and the right of possession, the landlord is not responsible to third persons for damages resulting from the negligence or illegal use of the premises by the tenant; provided, however, the landlord is responsible for damages arising from defective construction or for damages arising from the failure to keep the premises in repair.

See *Cham*, 311 Ga. at 175(2)(a) (“Georgia law has long excepted landlords from general landowner liability with respect to premises possessed by tenants; this exception is now codified in OCGA § 44-7-14.”). See also *Housing Auth. of the City of Atlanta v. Jefferson*, 223 Ga. App. 60, 63(3) (476 SE2d 831) (1996) (“[G]eneral rules

[of parties' equal or superior knowledge] have no application in the face of a specific duty imposed on [a landlord] by statute.”) (physical precedent only).

Finally, with respect to smoke detectors specifically, Georgia imposes a statutory duty codified at OCGA §§ 25-2-40(a)(1) and (a)(2), which provide, in relevant part, that every dwelling shall have an approved smoke detector installed. But under subsection (g) of that Code section,

[f]ailure to maintain a smoke detector in good working order in a dwelling [or] dwelling unit ... in violation of this Code section shall not be considered evidence of negligence [and] shall not be considered by the court on any question of liability of any person [or] corporation[.]

OCGA § 25-2-40(g). “Therefore, OCGA § 25-2-40(g) precludes admission of evidence of failure to *maintain* a battery-operated smoke detector even in connection with a claim of breach of more general duties.” *Hill v. Tschannen*, 264 Ga. App. 288, 292(2)(b) (590 SE2d 133) (2003) (physical precedent only) (emphasis added). See also *Wadkins v. Smallwood*, 243 Ga. App. 134, 136(1) (530 SE2d 498) (2000) (“[E]vidence of the [landlord’s] failure to maintain the battery-operated smoke detector is not admissible in a civil case.”). See generally *Cham*, 311 Ga. at 175(2)(a) n.4 (explaining that the duty under OCGA § 44-7-13 to keep the premises in repair “imposes

contractual, but not tort, liability on a landlord”) (quoting *Colquitt v. Rowland*, 265 Ga. 905, 907(2) (463 SE2d 491) (1995)).

Washington’s complaint based each of its claims on Spray Properties’s alleged failure to install smoke detectors. In this context, Spray Properties moved for summary judgment, arguing, in part, that Washington could not demonstrate any breach of a duty because the undisputed record showed that it had installed two smoke detectors prior to leasing the property to Shirley. We agree.²

As argued by Spray Properties, the only evidence addressing whether it had installed smoke detectors at the time Shirley took possession was the affidavit of Pedro Arce, Spray Properties’s maintenance worker. Arce averred that prior to Shirley taking possession of the property in 2019, he had installed two smoke detectors (one battery operated and one hard-wired) and showed them to her, informing her how to “check and reset” them. Arce also added that Shirley asked him if cigarette smoke would set them off. Consistent with this, Shirley’s lease, which she signed, contained an

² We note that the parties dispute the Decedent’s status as an invitee or licensee, and point to conflicting evidence as to whether he should be considered a tenant despite not being named in the lease. We need not resolve this issue because our ruling turns on the lack of a triable issue as to Spray Properties’s breach of a duty with respect to smoke detectors regardless of the Decedent’s status.

acknowledgment that the property was equipped with a smoke detector, and it was her responsibility to check the smoke detector and notify the landlord of any issues. She also signed a separate document stating that she was responsible for replacing smoke detector batteries.

Against this evidence, the trial court ruled that Wright's fire investigation report stating that no smoke detectors were found created a genuine issue of fact as to whether smoke detectors had been installed at the time Shirley took possession in 2019. This was error. By its own terms, the report addressed only whether Wright found smoke detectors in the investigation, which occurred in the aftermath of a fire nearly three years after Shirley took possession of the dwelling. Although the non-movant on summary judgment "is entitled to all reasonable conclusions and inferences drawn from the evidence, . . . an inference cannot be based upon evidence which is too uncertain or speculative or which raises merely a conjecture or possibility." *Shadburn v. Whitlow*, 243 Ga. App. 555, 557 (533 SE2d 765) (2000) (citation and punctuation omitted). "To overcome direct evidence to the contrary on a motion for summary judgment, circumstantial evidence of a defendant's negligence must amount to more than a mere conjecture. The evidence must in some proximate

degree establish the conclusion sought as well as render less probable all inconsistent conclusions.” *Feazell v. Gregg*, 270 Ga. App. 651, 655(2) (607 SE2d 253) (2004) (cleaned up).

[G]uesses or speculation which raise merely a conjecture or possibility are not sufficient to create even an inference of fact for consideration on summary judgment. A plaintiff must introduce evidence which affords a reasonable basis for the conclusion that it is more likely than not that the conduct of the defendant was a cause in fact of the result. A mere possibility of such causation is not enough.

Hunsucker v. Belford, 304 Ga. App. 200, 202–03(1) (695 SE2d 405) (2010).

Here, the fire investigation report invites only conjecture and is too remote to afford a reasonable basis to conclude that it is more likely than not that Spray Properties failed to install smoke detectors three years prior to the fire inspection. As such, this case differs from *Gordon v. Fleeman*, 298 Ga. App. 662 (680 SE2d 684) (2009), relied upon by Washington and the trial court. In that case, which went to trial, a fire occurred ten months after the tenant took possession. See *id.* at 663-64. In addition to an investigation finding no smoke detectors, there was testimony from the tenant that “she had no conversation with [the landlord] about smoke detectors,” and two witnesses stated that they did not recall seeing any smoke detectors in the

dwelling. *Id.* at 664, 667(1). This differs from the evidentiary posture here, which includes an affidavit from the person who installed the smoke detectors, a signed acknowledgment from the tenant, and no other evidence addressing the installation of smoke detectors at the time the tenant took possession.

Accordingly, based on the record before us, including the direct, unrefuted evidence that Spray Properties had installed smoke detectors at the time Shirley took possession, the trial court erred by denying Spray Properties's summary judgment motion. See *id.* at 201(1) ("Although issues of negligence are generally left to the jury, in cases where the alleged negligent conduct is susceptible to only one inference, the question becomes a matter of law for the court to determine.") (quotation marks omitted).³

Judgment reversed. Davis and Whitaker, JJ., concur.

³ Spray Properties's remaining enumerations are moot.