VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 22nd *day of* November, 2013.

Amaya Patel, a Minor, by her Parent and Next Friend, Seema Patel, Appellant,

against Record No. 130237
Circuit Court No. 12-626

Williamsburg Indoor Sports Complex, L.L.C., et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Williamsburg and James City County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is reversible error in the judgment of the Circuit Court of Williamsburg-James City County ("circuit court").

On July 8, 2011 at approximately 8:30 a.m., Amaya Patel ("Amaya") was taken to Williamsburg Indoor Sports Complex, L.L.C. ("WISC") by her mother. At the time, she was two years old and attended daycare at WISC's facilities. Amaya showed no signs of physical injury prior to arriving at WISC that morning. Amaya first showed signs of discomfort after she was placed inside WISC's "foam pit." At approximately 11:30 a.m., WISC employees called Amaya's mother to inform her that Amaya had "twisted her ankle" and was experiencing pain. When Mrs. Patel arrived, Amaya was "crying by herself in a corner." Amaya was taken to Sentara Williamsburg Medical Center by ambulance where she was diagnosed with a spiral fracture of her right thigh bone. Due to the seriousness of her

injury, Amaya was transferred to Children's Hospital of the King's Daughters in Norfolk where she underwent surgery, was placed in a partial body cast and was immobilized for several weeks.

On May 9, 2012, Amaya, by her parent and next friend, filed a complaint in circuit court against WISC and Lydia Ayres ("Ayres") for "[breaching their duty] to exercise the care of reasonable professionals in the field of child care with respect to the safety, supervision, custody and control of Amaya . . . [and] by caus[ing] Amaya's fracture to her thigh bone through its own negligent acts." The pleading alleges that: "the spiral fracture of [her] thigh bone could not have occurred in the manner described in [WISC's] incident report." Finally, Amaya's complaint alleges that WISC had "exclusive control over the means or circumstances of the accident," and it "had, or should have had, exclusive knowledge of how Amaya suffered a fracture of her thigh bone."

WISC filed a demurrer which stated: "The plaintiff fails to assert any facts to support its allegations that defendants were negligent or in any way caused injury to the plaintiff." In opposition to the demurrer, Amaya argued that her complaint stated a cause of action because she had alleged that WISC and Ayres had breached their "duty through [their] own negligent acts . . . which caused Amaya's fracture to her thigh bone," and "the means or circumstances of the accident were under the exclusive control of the Defendants."

The circuit court sustained WISC's demurrer, stating that, "In looking at the complaint, it just feels like there's a gap that leads to too much speculation. I agree with the arguments put forth by [WISC] . . . about how it calls for too much speculation

[because] other things could have occurred." The circuit court also denied leave to amend the pleadings. Amaya appealed to this Court and assigned error to the circuit court's holdings.

A demurrer tests whether a complaint states a cause of action upon which the requested relief may be granted. Dunn, McCormack & MacPherson v. Connolly, 281 Va. 553, 557, 708 S.E.2d 867, 869 (2011); Code § 8.01-273. A demurrer "does not allow the court to evaluate and decide the merits of a claim." Fun v. Virginia Military Inst., 245 Va. 249, 252, 427 S.E.2d 181, 183 (1993).

When judging the sufficiency of a complaint, we "consider as true all the material facts alleged in the . . . complaint, all facts impliedly alleged, and all reasonable inferences that may be drawn from such facts." Concerned Taxpayers v. County of Brunswick, 249 Va. 320, 323, 455 S.E.2d 712, 713 (1995). When a complaint "contains sufficient allegations of material facts to inform a defendant of the nature and character of the claim, it is unnecessary for the pleader to descend into statements giving details of proof in order to withstand demurrer." CaterCorp, Inc. v. Catering Concepts, Inc., 246 Va. 22, 24, 431 S.E.2d 277, 279 (1993). "[E]ven though a . . . complaint may be imperfect, when it is drafted so that defendant cannot mistake the true nature of the claim, the trial court should overrule the demurrer." Id. Because a demurrer "involves issues of law," we review the circuit court's decision de novo. Dunn, McCormack & MacPherson, 281 Va. at 557, 708 S.E.2d at 869 (quoting Abi-Najm v. Concord Condo., LLC, 280 Va. 350, 357, 699 S.E.2d 483, 487 (2010)).

Amaya argues that her complaint was legally sufficient to state a cause of action for negligence. Rule 3:18(b) provides

that: "An allegation of negligence or contributory negligence is sufficient without specifying the particulars of the negligence." Upon review of her complaint, it is apparent that Amaya states a cause of action for personal injuries caused by negligence.

Amaya's complaint alleges that "her right thigh bone was fractured at WISC while she was under the exclusive supervision, custody and control of employees and agents of the WISC." Her pleadings further allege that, "WISC and its agents and employees were under a duty to exercise the care of reasonable professionals in the field of child care with respect to the safety, custody and control of Amaya . . . ." Finally, her complaint states that, "the fracture of Amaya's thigh bone would not have occurred if the Defendant had exercised ordinary care," and "the means and circumstances of the accident were under the exclusive control of the defendant." Because Amaya's complaint states a cause of action for negligence, the circuit court erred by sustaining WISC and Ayres' demurrer. Accordingly, it is unnecessary to address whether the circuit court erred by denying leave to amend her pleadings.

We reverse the judgment of the circuit court and remand for further proceedings including consideration of any motions to amend pursuant to Rule 1:8.

JUSTICE McCLANAHAN, dissenting.

I would affirm the circuit court's judgment.

While Rule 3:18 may relieve Amaya from the obligation of setting forth the "particulars of the negligence" asserted in her complaint, it does not eliminate the requirement that she allege how she came to be injured by Ayres.

"Negligence constitutes an actionable tort only when it is shown to be the proximate cause of an injury." Farren v. Gilbert, 224 Va. 407, 412, 297 S.E.2d 668, 671 (1982). Therefore, "[t]he plaintiff must show why and how the accident happened. And if the cause of the accident is left to conjecture, guess, or random judgment, the plaintiff cannot recover." Sneed v. Sneed, 219 Va. 15, 17, 244 S.E.2d 754, 755 (1978). Where the plaintiff fails to allege facts showing that defendant's negligence proximately caused the injuries claimed, the plaintiff cannot state a viable cause of action for negligence. See, e.g., Robinson v. Matt Mary Moran, Inc., 259 Va. 412, 417, 525 S.E.2d 559, 562 (2000) (trial court did not err in sustaining demurrer where plaintiff's pleading insufficient as a matter of law to allege proximate causation).

Amaya's complaint does not allege how she was injured or even that an accident occurred. Rather, the complaint alleges that "[u]pon information and belief, external force was necessary to cause the fracture of Amaya's right thigh bone" and the fracture "would not have occurred if the Defendants had exercised ordinary care." In order to find that an actionable claim of negligence has been stated against Ayres, therefore, we must infer from the facts alleged not only that Amaya was injured at WISC, but that her injury resulted from some unexplained occurrence that was proximately caused by the unspecified negligent act or omission

of Ayres. Yet it is clear that Amaya's allegation of proximate cause "is merely [her] conclusion of law, deduced from facts not stated." Arlington Yellow Cab Co. v. Transportation, Inc., 207 Va. 313, 318, 149 S.E.2d 877, 881 (1966). And it is well-settled that a demurrer "does not admit the correctness of the conclusions of law stated by the pleader" or "inferences or conclusions from facts not stated." Id. at 318-19, 149 S.E.2d at 881 (internal quotation marks and citation omitted).

Although Amaya readily concedes she does not know how she came to be injured, she alleges that "the means or circumstances of the accident were under the exclusive control of the Defendants" and seeks the application of res ipsa loquitur to "fill the legal gap" of what or who caused her injury. Yet, as this Court has explained, the doctrine of res ipsa loquitur may only be invoked at trial "to establish a breach of duty owed [plaintiff] by a legal inference of negligence from proved facts." Easterling v. Walton, 208 Va. 214, 216, 156 S.E.2d 787, 789 (1967). In other words, "res ipsa loquitur means that the facts of the occurrence warrant the inference of negligence." Id. at 217, 156 S.E.2d at 790 (internal quotation marks and citations omitted). Clearly, res ipsa loquitur has no application at the pleading stage and, in any event, does not affect the plaintiff's obligation to allege and prove the facts of the occurrence in which she was injured. Amaya's failure to allege how she was injured, or how Ayres caused her to be injured, is not merely a "legal gap." It is a gaping hole in her pleadings that cannot be filled by any reasonable inference or legal doctrine.

While the majority declines to expressly address Amaya's argument that she may invoke the doctrine of res ipsa loquitur at the pleading stage, the majority holds, by implication, that not only may the doctrine be relied upon by Amaya to state a viable cause of action in her complaint, but that the doctrine may also be used in lieu of alleging how Amaya came to be injured or, indeed, any facts identifying an occurrence caused by Ayres' negligence. Thus, despite this Court's recognition over 75 years ago that "[i]n Virginia the doctrine, if not entirely abolished, has been limited and restricted to a very material extent," the majority has sanctioned an unprecedented and expanded notion of the doctrine that goes well beyond its use at trial as a permissible inference of negligence. City of Richmond v. Hood Rubber Prods. Co., 168 Va. 11, 17, 190 S.E. 95, 98 (1937).*

I cannot join the majority's abandonment of the most elementary pleading requirement for stating an actionable negligence claim against a defendant, i.e., how the defendant caused plaintiff's injury. In my view, because Amaya has not alleged facts stating how she came to be injured, she has not alleged that Ayres proximately caused her injury as a matter of law. Furthermore,

---

* Amaya admittedly set forth in her complaint the specific elements necessary to invoke res ipsa loquitur and argues she "properly pled a cause of action in her complaint using the doctrine of res ipsa loquitur." The majority reformulates Amaya's argument in holding that her complaint sufficiently alleges negligence under Rule 3:18. Nevertheless, by allowing Amaya to proceed with her complaint, which contains no factual allegations of how she was injured, the majority has implicitly approved Amaya's express reliance on res ipsa loquitur to remedy the deficiency in her complaint that was apparent even to her.

because Amaya conceded that she cannot allege such facts, the circuit court did not err in sustaining the demurrer without leave to amend.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Clerk