IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 19, 2015 Session

HILDA WILLIS, ET. VIR. v.
MCDONALD'S RESTAURANTS OF TENNESSEE, INC.

Appeal from the Circuit Court for Greene County
No. 13CV276 Hon. Alex Pearson, Judge[1]

No. E2015-00615-COA-R3-CV-FILED-DECEMBER 23, 2015

This is a premises liability case in which the plaintiffs filed suit against the defendant, alleging that Hilda Willis slipped and fell on the floor after entering the defendant's dining establishment. The defendant filed a motion for summary judgment, asserting that the plaintiffs could not prove the cause of the fall or that its employees had notice of the dangerous condition prior to the fall. The trial court agreed and granted the motion for summary judgment. The plaintiffs appeal. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

JOHN W. MCCLARTY, J., delivered the opinion of the Court, in which CHARLES D. SUSANO, JR., C.J. and D. MICHAEL SWINEY, J., joined.

William H. Bell, Greeneville, Tennessee, for the appellants, Hilda Willis and James Willis.

Lane Wolfenbarger and Scott Hickerson, Knoxville, Tennessee, for the appellee, McDonald's Restaurants of Tennessee, Inc.

OPINION

I. BACKGROUND

On Sunday, February 24, 2013, Hilda Willis and her husband, James Willis (collectively "Plaintiffs"), traveled to a McDonald's restaurant owned by McDonald's Restaurants of Tennessee, Incorporated. ("Defendant"). Once inside the restaurant, Mrs.

[1] Sitting by interchange.

Willis approached the service counter to place an order, while Mr. Wills secured a table in the dining area. After placing an order, Mrs. Willis walked to the drink station to prepare two large drinks for her and Mr. Willis. After preparing the drinks, Mrs. Willis, with a large cup in each hand, walked past the service counter toward Mr. Willis. While walking, she slipped and fell, spilling the drinks and causing severe injury to her knee.

Plaintiffs frequently dined at the restaurant and were familiar with the layout of the establishment. The restaurant had tile flooring, but a non-skid surface abutted the service counter, presumably to absorb spills as customers frequently traversed the area. On the day in question, a French fry had been left on the bottom right corner of the non-skid surface abutting the service counter. Mrs. Willis fell shortly after stepping over the French fry. She claimed that a sharp object, which she believed to be a piece of ice, caused her to slip and fall. She asserted that she felt the sharp object through the sole of her shoe immediately before she slipped. The sharp object was never positively identified as a piece of ice because the area where Mrs. Willis fell was littered with ice and drink from the two large cups dropped in the fall.

The restaurant's security cameras reflected that placards were placed throughout the restaurant, near the service counter and drink station, to alert patrons of possible slippery conditions. The security cameras did not cover the entire area of the fall. However, the cameras recorded Mrs. Willis as she placed her order, retrieved drinks for her and Mr. Willis, traversed the non-skid surface littered with the French fry, and fell.

Plaintiffs filed suit against Defendant, alleging negligence in the design, construction, and maintenance of the facility. They alleged that the transition from a non-skid surface to a tiled surface amounted to a trap and that employees were negligent in permitting a foreign object, namely ice, to collect and remain on the floor. Plaintiffs sought $500,000 in compensatory damages for Mrs. Willis's injuries and $100,000 in compensatory damages for Mr. Willis's loss of consortium. Defendant responded by denying wrongdoing and filing a motion for summary judgment, arguing that Plaintiffs could not identify the cause of her fall and that she could not establish that Defendant created the dangerous condition that caused the fall or that Defendant had any knowledge, either actual or constructive, of the dangerous condition prior to the fall.

Plaintiffs responded by asserting that material questions of fact remained as to whether she could or was even required to identify the cause of her fall and whether the trier of fact could determine that Defendant created the condition or had actual or constructive notice of the dangerous condition. Plaintiffs noted that Mrs. Willis had just left the drink station, where ice and liquid littered the tile floor without a mat to catch debris. They claimed that the failure to place a mat near the drink station left the entire area slippery and that employees walked to and from the kitchen with mops,

contaminating the area with grease. They asserted that Defendant had notice of a defective or dangerous condition on the premises, as established by the French fry in plain view of the employees working at the service counter, the lack of a mat near the drink station, and the conduct of the employees.

Plaintiffs provided testimony in the form of affidavits from other patrons of the restaurant in support of their response.[2] The patrons alleged that the floor was notoriously slippery before the day of the accident and on the day of the accident.

Plaintiffs also provided deposition testimony. As pertinent to this appeal, Mrs. Willis testified that she and Mr. Willis had frequented the restaurant on a number of occasions prior to her fall in February 2013. She noted that she had even fallen in the parking lot on a prior occasion. She recalled that on the day of her accident at issue, she and Mr. Willis entered the restaurant through a designated entrance and proceeded to the service counter, where she placed their order. She then proceeded to the drink station, which was to the left of the service counter, and prepared two drinks in the provided cups. She placed a lid on only one cup and then turned to walk toward her husband. After reaching the tile flooring past the service counter, she felt "something hard" under her foot that caused her to slide forward and fall to her knee. She suspected that the object was a piece of ice. She agreed that she did not know what the object was, when it appeared on the floor, or how long it had been on the floor. She also agreed that she did not know whether any of the employees knew that there was a hard object on the floor or whether anyone had reported the object to an employee prior to her accident. She acknowledged that if the object she slipped on was a piece of ice, it had not been present for very long because it had not yet melted when she slipped.

Mrs. Willis testified that she did not notice any placards alerting customers to possible slippery conditions prior to her fall. However, she identified still photographs from the security cameras on the day of her accident that documented several safety placards in the area. She agreed that she walked to the service counter and the drink station without incident and that other patrons may have walked in the area of the fall without incident. She did not believe the flooring was defective, but she suggested that she may not have slipped if the area had been carpeted. She recalled that an employee found a straw wrapper in the area where she fell. She did not believe the wrapper was the hard object that caused her to fall.

Mr. Willis could not recall whether he accompanied his wife to the service counter to place their order. He explained that he likely sat down immediately after entering the restaurant because he was "real dizzy" from an inner ear infection. He noted that he was

[2] These affidavits were not included in the record for this court's review.

seated to the left of the front door when he saw his wife fall "out of the corner of [his] eye." It took him a "second or two" to reach her because of his condition. He recalled that she spilled ice and drink "everywhere" as a result of her fall. He agreed that he had not inspected the floor prior to the accident and that he did not see what caused her to fall. He was unaware as to whether anyone in the restaurant had reported any debris in the area where she fell. He recalled that an employee found a straw wrapper in the area where she fell.

Following a hearing, the trial court granted the motion for summary judgment, finding that summary judgment was appropriate when Plaintiffs could not positively identify the object that caused the fall or establish that Defendant had notice of the object. The court noted that the videotape from the security cameras established that numerous patrons walked through the same area without difficulty and that placards were placed in the area to alert the patrons of possible slippery conditions. This timely appeal followed.

II. ISSUES

We consolidate and restate the issues raised by Plaintiffs on appeal as follows:

> A. Whether the trial court erred in granting the motion for summary judgment based upon the failure to identify the cause of the fall.
>
> B. Whether the trial court erred in granting the motion for summary judgment based upon the insufficiency of the evidence concerning Defendant's knowledge of the dangerous condition.

III. STANDARD OF REVIEW

This action was initiated in June 2013; therefore, the dispositive summary judgment motion is governed by Tennessee Code Annotated section 20-16-101, which provides,

> In motions for summary judgment in any civil action in Tennessee, the moving party who does not bear the burden of proof at trial shall prevail on its motion for summary judgment if it:

> (1) Submits affirmative evidence that negates an essential element of the nonmoving party's claim; or
>
> (2) Demonstrates to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim.

Tenn. Code Ann. § 20-16-101.

A trial court's decision to grant a motion for summary judgment presents a question of law, which we review de novo with no presumption of correctness. *See City of Tullahoma v. Bedford Cnty.*, 938 S.W.2d 408, 417 (Tenn. 1997). We must view all of the evidence in the light most favorable to the nonmoving party and resolve all factual inferences in the nonmoving party's favor. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008); *Luther v. Compton*, 5 S.W.3d 635, 639 (Tenn. 1999); *Muhlheim v. Knox Cnty. Bd of Educ.*, 2 S.W.3d 927, 929 (Tenn. 1999). If the undisputed facts support only one conclusion, then the court's summary judgment will be upheld because the moving party was entitled to judgment as a matter of law. *See White v. Lawrence*, 975 S.W.2d 525, 529 (Tenn. 1998); *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995).

IV. DISCUSSION

A. & B.

Plaintiffs argue that the trial court erred in granting the motion for summary judgment when they presented sufficient evidence from which a jury could infer that Defendant caused the dangerous condition, namely the slippery floor littered with debris, the absence of a mat at the drink station, and the tile flooring. They claim that they also presented sufficient evidence to establish that Defendant either had actual knowledge of the condition or that the condition existed for a sufficient length of time that it could have been discovered with reasonable care. Defendant responds that summary judgment was appropriate when Plaintiffs cannot identify the object that caused the fall. Defendant asserts that the attempt to establish that anything other than a hard object caused the fall must fail when Mrs. Willis repeatedly asserted that she slipped on a hard object. Defendant alternatively respond that even if Plaintiffs could identify the object that caused the fall, they failed to establish that the object had been in the area for long enough to have been discovered and corrected in the exercise of reasonable care.

In premises liability cases, liability is imposed upon property owners due to their superior knowledge of the premises. *McCormick v. Waters*, 594 S.W.2d 385, 387 (Tenn.

1980). A plaintiff seeking recovery under a premises liability theory must establish the elements of negligence. The elements of a negligence claim include:

> (1) a duty of care owed by the defendant to plaintiff; (2) conduct by the defendant falling below the standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate or legal cause.

Satterfield v. Breeding Insulation Co., 266 S.W.3d 347, 355 (Tenn. 2008). In addition to the elements of negligence, a plaintiff must also establish:

> (1) the condition was caused or created by the owner, operator, or his agent, or (2) if the condition was created by someone other than the owner, operator, or his agent, that the owner had actual or constructive notice that the condition existed prior to the accident.

Blair v. West Town Mall, 130 S.W.3d 761, 764 (Tenn. 2004) (citations omitted).

Plaintiffs presented several theories in support their claim, namely either Defendant caused the dangerous condition or had actual or constructive knowledge of the dangerous condition. Plaintiffs pointed to a number of dangerous conditions, namely the absence of a mat at the drink station, the transition from a non-skid surface to tile, the French fry on the rug abutting the service counter, and the negligent behavior of employees who traversed the area with greasy shoes and mops. However, Mrs. Willis admitted that she did not slip on the French fry, that she did not fall as a result of the existence of two flooring surfaces, and that she did not fall at the drink station.

The "fatal flaw" in this action is that Plaintiffs cannot identify the hard object that actually caused the fall; therefore, they cannot establish that Defendant caused the dangerous condition or that Defendant had actual or constructive notice that the condition existed long enough to be discovered by proper diligence. *Psillas v. Home Depot, USA, Inc.*, 66 S.W.3d 860, 865 (Tenn. Ct. App. 2001). "[I]n the context of injuries to plaintiffs resulting from a fall, mere speculation about the cause of an injury is insufficient to establish liability on a negligence claim." *Pittenger v. Ruby Tuesday, Inc.*, No. M2006-00266-COA-R3, 2007 WL 935713, at *3 (Tenn. Ct. App. Mar. 28, 2007) (internal quotation omitted). Defendant may be responsible for a myriad of dangerous conditions throughout the restaurant. Plaintiff simply cannot establish that any of these conditions caused her fall without identifying the object responsible. Without any additional evidence concerning the identity of the object, we hold that the trial court did not err in granting the motion for summary judgment because the evidence was insufficient to establish an essential element of Plaintiffs' claim, namely causation.

V. CONCLUSION

The judgment of the trial court is affirmed, and the case is remanded to the trial court for such proceedings as may be necessary. Costs of the appeal are taxed equally to the appellants, Hilda Willis and James Willis.

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JOHN W. McCLARTY, JUDGE