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No. 1-12-0822

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LEYRA GONZALEZ,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	09 M1 302020
BEDOLLA ENTERPRISES, INC., d/b/a)	
BEDOLLA FOODS, a/k/a NORTH)	
PULASKI FRESH MARKET)	The Honorable
)	Drella Savage,
Defendant-Appellee.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: Circuit court order granting defendant grocery store's motion for summary judgment affirmed where there was no direct or circumstantial evidence that defendant maintained its store in a negligent manner or that its employees were responsible for the accumulation of liquid on the floor, which was the cause of plaintiff's fall.

¶ 1 Plaintiff Leyra Gonzalez suffered injuries when she slipped on a puddle of clear liquid while shopping at Bedolla Foods, a grocery store operated by defendant Bedolla Enterprises, Inc.

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(Bedolla). Gonzalez subsequently filed a negligence action against Bedolla and sought to recover damages for her injuries. Bedolla responded with a motion for summary judgment, which was granted by the circuit court. On appeal, Gonzalez argues that the circuit court erred in granting Bedolla's motion because genuine issues of material fact exist as to whether defendant's employees created the puddle on the floor that caused her fall. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 2

I. BACKGROUND

¶ 3 On August 30, 2008, Gonzalez was a patron of defendant's grocery store, Bedolla Foods,¹ located at 3850 West North Avenue in Chicago. As she was nearing the onion display, Gonzalez slipped and fell to the ground. Gonzalez believed that a small puddle of water, located on the floor in front of the onion display, was the cause of her fall. She subsequently filed a complaint sounding in negligence against Bedolla. In her complaint, Gonzalez alleged that Bedolla had a duty "to exercise ordinary care in the possession, ownership, maintenance and control of [the store], for the safety of persons lawfully thereon." She further alleged that Bedolla breached its duty of care "in one or more of the following ways:

- a. Carelessly and negligently managed, maintained, controlled and operated said premises so that as a direct and proximate result thereof, Plaintiff was injured;
- b. Failed to make adequate and proper inspection of said premises to determine the

¹ Patricio Bedolla, the owner of Bedolla Foods, and sole shareholder of Bedolla Enterprises, sold his store sometime after the incident. The grocery store is still in existence, and is currently known as North Pulaski Fresh Market.

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dangerous condition thereof;

c. Carelessly and negligently failed to remove a liquid and/or slippery substance that was present on the aforementioned floor;

d. Carelessly and negligently created a hazard by placing liquid and/or a slippery substance on the aforementioned floor;

e. Carelessly and negligently failed to alert or warn the public, including the Plaintiff, that a liquid and/or slippery substance existed on the aforementioned floor;

f. Otherwise negligently managed, maintained, operated and controlled said premises."

¶ 4 Finally, Gonzalez alleged that the injuries she suffered as a result of her fall were "a direct and proximate result of one or more of the aforesaid negligent acts or omissions."

¶ 5 In its answer, Bedolla denied the material allegations of negligence contained in Gonzalez's complaint, and as an affirmative defense, advanced a claim of contributory negligence against her. In support of its affirmative defense, Bedolla alleged that Gonzalez: "a. Carelessly and negligently failed to maintain a proper look-out in the area in which she was walking; b. Failed to observe that which was readily available and observable to the human eye; [and] c. Carelessly and negligently wore improper footwear at the time and place alleged in [her] Complaint."

¶ 6 After the relevant pleadings had been filed, the parties commenced discovery. Gonzalez as well as the owner and employees of Bedolla Foods were deposed.

¶ 7 In her deposition, Gonzalez testified that she went to Bedolla Foods on August 30, 2008, sometime in the afternoon to pick up an onion. Bedolla Foods was a local neighborhood grocery

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store located a few blocks away from her residence. She went to the store with her two-year-old daughter and her step-son. When Gonzalez entered the store, she walked to the produce area. She was approximately two or three steps from the onion display when she slipped and fell to the ground. Because Gonzalez was carrying her daughter in her left arm, she maneuvered her body so that she struck the ground on the right side of her body. When she was on the ground, Gonzalez noticed that there was liquid on the floor and felt her pants getting wet. Gonzalez believed the liquid substance was water because "it was clear and nothing smell[ed]." Gonzalez did not observe any water on the ground before her accident and did not know where the water came from. At the time of her fall, there were no signs near the onion display warning customers about wet floors. Gonzalez acknowledged that there "wasn't that much water" on the ground, and estimated that it was "maybe like half a cup" of water that caused her to fall.

¶ 8 After her step-son helped her get up off the ground, Gonzalez approached the cash register and paid for an onion. She informed "the cash register lady" that there was liquid on the floor in the produce section and that she had just fallen. Gonzalez then left Bedolla Foods and returned home. Although she experienced some pain in her lower back and her right shoulder and neck immediately after the fall, the pain became much worse "three to four days later." As a result, Gonzalez sought treatment from her primary care physician. She received X-rays, but the results were "normal" and Gonzalez was then referred to an orthopedic physician. After an MRI was taken, Gonzalez commenced six weeks of physical therapy. Despite physical therapy, Gonzalez continued to experience pain and she ultimately underwent surgery on her right shoulder. Surgery revealed that Gonzalez had a large cyst on her shoulder, which she believed

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had been caused by her earlier slip and fall at Bedolla Foods. Although the surgery helped, Gonzalez indicated that she has continued to experience some pain in her shoulder "every day" and she "still ha[s] trouble reaching stuff." In addition, Gonzalez also still experiences pain in her neck and is unable to turn her neck "all the way to the left side." Gonzalez described the daily pain she experiences as a "5" on a scale of 1 to 10 and indicated that she continues to take doses of Tylenol 3 and Naprosyn daily for the pain.

¶ 9 Patricio Bedolla testified that in August 2008, he was the owner of Bedolla Foods and the sole shareholder of Bedolla Enterprises. He had been a "grocer all [his] life" and opened Bedolla Foods in 1993. In his deposition, Patricio provided background information about the means by which produce was shipped to, and sold at, his store in August 2008. He explained that most vegetables are commonly cleaned by water "[a]t their source," meaning "wherever they are coming from." Once vegetables arrived at the grocery store, "certain vegetables" were cleaned again with water "just to take off debris that might be in the delivery boxes." Patricio explained that the produce department of Bedolla Foods was not equipped with sprinkler systems, so certain vegetables were cleaned in the "back room" before they were put on display in the store. Patricio indicated that cilantro was "probably" the only vegetable that was cleaned in the back of the store after it was delivered by the wholesalers, and explained that it was customary not to display the cilantro until it was dried. He clarified that "[d]ry vegetable[s]," like onions, were never cleaned with water. In August 2008, onions were displayed next to the bananas and approximately "30 feet away" from the cilantro. Like onions, bananas were never rinsed with water before they were put out on display.

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¶ 10 Patricio testified that in August 2008, all of the maintenance and cleaning of the interior of the store was performed by store employees. Arnulfo Romero, the produce manager, was the employee primarily responsible for cleaning the floors of the produce department. When Patricio was present at the store, he would walk the floor "continuously" about "every 20 minutes" and would assign employees to sweep the floors with a "push broom." In addition to his own inspections, employees were also required to inspect the floor of the store approximately every 2 hours. Patricio explained that although "push brooms" were used to clean the floors during work hours, the only time that the store's floors were cleaned with a mop and "wet material" was at night when the store closed. He emphasized that mops and water were never used to clean the floors while the store was open for business unless there was some kind of "spillage" that occurred. When there was spillage, the store used "yellow caution signs" to warn patrons about moisture on the floor.

¶ 11 Although Patricio was present in the store on August 30, 2008, he did not witness Gonzalez's fall. One of his cashiers, however, informed him about her fall shortly after it occurred, and Patricio went to speak to Gonzalez. At that time, Gonzalez did not appear to be injured and her clothing did not look to be wet. After conversing with Gonzalez, Patricio and Romero, his produce manager, walked over to the produce department to see whether there was any water on the floor. Neither he nor Romero observed water on the ground of the produce department immediately after Gonzalez's fall.

¶ 12 Patricio acknowledged that "a few [falls] here and there" occurred in his store over the years, but indicated that none of the previous slip and falls occurred in the produce department.

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Although incident reports are usually completed if a store patron suffers an injury while at the store, no report was completed in this case because Gonzalez told Patricio she was "fine," and she did not appear to be injured.

¶ 13 Fernando Villalobos testified that in August 2008, he was "a bagger" at the grocery store. As a bagger, Villalobos spent most of his time in the front of the store and did not routinely inspect the store. He was unaware of any specific inspection procedures that were in place at the store during that time. As a bagger, Villalobos was also responsible for cleaning up any spills that occurred in the store. When he cleaned up spills, Villalobos placed yellow cones around the area to warn customers about the wet floor. Villalobos had never seen a situation where water was on the floor of the store and the warning cones were not utilized. Although Villalobos was not familiar with the manner in which most produce items were cleaned prior to being displayed and put on display in the produce department, he did know that onions were never washed before they were put out on display.

¶ 14 Villalobos confirmed that he was working at the store on August 30, 2008. He did not see Gonzalez fall, but remembered speaking to her afterwards. Villalobos could not recall the specific details of their conversation, but remembered that Gonzalez said that she was okay and that she "walked out [of the store] on her own two feet." After conversing with Gonzalez, Villalobos walked over to the produce department. He did not remember finding any remnants of water on the floor and did not recall cleaning up any water at that time. Villalobos had no explanation as to the reason for Gonzalez's fall.

¶ 15 Maria ("Lupe") Garcia worked as a cashier at Bedolla Foods in August 2008. She heard

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about Gonzalez's fall from Arnufu Romero, the produce manager. As the produce manager, Romero transported produce from the back of the store to the produce department. She did not know whether the produce was cleaned before Romero put it out on display, but she did know that onions "don't need water." Garcia never saw wet produce displayed on the sales floor and never observed wet floors in the produce department. She also never saw the produce cart track water from the back of the store to the floor of the produce department. Garcia did not know how many times per day the floor of the produce department was mopped, but testified that warning cones and signs were always placed around wet areas in the store. Garcia had no knowledge about the floor inspection procedure utilized by the store on August 30, 2008, and had no personal knowledge regarding the presence of water on the floor of the produce department that day.

¶ 16 Arnufu Romero confirmed that he was the produce manager of the store on August 30, 2008. He worked at the store from 8 a.m. to 4:30 p.m. that day, but did not witness Gonzalez's fall. Romero acknowledged that he cleaned some produce items before putting them on display in the store. Onions and bananas, however, were never washed. The cleaning took place in a "sink specially designated only for produce" that was located in the back of the store. The produce was not placed onto a cart and wheeled onto the floor until it had dried. He explained, "[r]egularly we let it drip dry so that there's no problem." Romero acknowledged that sometimes the produce cart tracked moisture onto the floor, but explained that "we instantly mop it. And we try to take [the cart] out when there's no clients to avoid problems." During his years as produce manager for the store, he has been aware of instances where there has been water on the floor of

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the produce department, and explained that on "a lot of [those] occasions, the clientele might cause that." If Romero ever saw a puddle on the floor of the produce department, he would clean it up "instantly." Warning cones were always utilized when the store's floors were being cleaned during business hours. In August 2008, Romero "constantly" inspected the produce department because it was his responsibility to make sure that the floor of the produce department did not pose a danger to customers.

¶ 17 Upon completing the aforementioned discovery, Bedolla filed a motion for summary judgment, arguing that "Plaintiff's Complaint fails as a matter of law since Plaintiff cannot establish that Bedolla breached its duty to Plaintiff." Based on the deposition testimony, Bedolla argued that "Plaintiff cannot establish that Bedolla had actual or constructive notice of a liquid substance on the floor. [Citation.] Further, Plaintiff cannot prove that the liquid substance on which Plaintiff slipped and fell was placed on the floor through Defendant's employees or through Defendant's business practices."

¶ 18 After presiding over a hearing on defendant's motion, the transcripts of which do not appear in the record on appeal, the court granted defendant's motion and dismissed the case with prejudice. This appeal followed.

¶ 19 **II. ANALYSIS**

¶ 20 On appeal, Gonzalez argues that the circuit court erred in granting defendant's motion for summary judgment because the deposition testimony provided by Bedolla employees "create[s] a question of fact regarding whether the water which caused [her] fall was placed there by the defendant's employees." Specifically, plaintiff asserts that the deposition testimony of Arnufu

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Romero established that produce was routinely washed in the back room of the store before it was put on display in the produce department and created a question of fact as to whether the puddle of water on which she fell was caused by wet produce.

¶ 21 Defendant responds that the circuit court properly granted its motion for summary judgment because the evidence established during discovery does not support Gonzalez's theory that she slipped and fell on water that was tracked into the store by Bedolla employees as they transported washed produce from the back of the store to the displays in the produce department. Bedolla maintains that Gonzalez could not positively identify the substance that caused her fall and failed to establish that Bedolla or its employees had actual or constructive notice of the presence of the substance on the floor of the store. Because plaintiff failed to establish evidence to support the necessary elements of her negligence claim, Bedolla argues that the circuit court's judgment must be affirmed.

¶ 22 Summary judgment is appropriate when “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 judgment as a matter of law.” 735 ILCS 5/2-1005(c)(West 2006). In reviewing a motion for summary judgment, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the moving party to determine whether a genuine issue of material fact exists. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). A genuine issue of fact exists where the material relevant facts in the case are disputed, or where reasonable persons could draw different inferences and conclusions from undisputed facts. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). To survive a motion for summary

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judgment, the nonmoving party need not prove her case at this preliminary stage of litigation; however, the plaintiff must show some evidentiary facts to support each element of her cause of action, which would arguably entitle her to a judgment. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881 (2009); *Garcia v. Nelson*, 326 Ill. 2d 33, 38 (2001). Although summary judgment has been deemed a “drastic means of disposing of litigation” (*Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)), it is nonetheless an appropriate mechanism to employ to expeditiously dispose of a lawsuit when the moving party’s right to a judgment in its favor is clear and free from doubt (*Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001)). A trial court’s ruling on a motion for summary judgment is subject to *de novo* review. *Weather-Tite, Inc. v. University of St. Francis*, 233 Ill. 2d 385, 389 (2009).

¶ 23 To prevail on a negligence claim, a plaintiff must establish that the defendant owed the plaintiff a duty of care, that the defendant breached that duty, and that the breach of that duty caused plaintiff’s injury. *Reed v. Galaxy Holdings, Inc.*, 394 Ill. App. 3d 39, 42 (2009); *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001). A defendant’s negligence may be shown through both direct and circumstantial evidence. *Barker v. Eagle Food Centers, Inc.*, 261 Ill. App. 3d 1068, 1072 (1994). Ultimately, if a plaintiff cannot establish an element to support her cause of action, summary judgment in favor of the defendant is proper. *Pavlik*, 323 Ill. App. 3d at 1063.

¶ 24 Here, Bedolla does not dispute that it owed plaintiff, a business invitee, a duty of care to maintain its premises in a safe condition. See *Olinger v. Great Atlantic & Pacific Tea Co.*, 21 Ill. 2d 469, 473 (1961) (recognizing that business proprietors owe their customers a duty to maintain

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their business premises in a reasonably safe condition); *Donoho v. O'Connell's*, 13 Ill. 2d 113, 118 (1958) (same); *Pavlik*, 323 Ill. App. 3d at 1063 (same). Accordingly, the issue in the instant case is whether Gonzalez can establish that Bedolla breached its duty of care to maintain its premises in a reasonably safe condition. Here, Gonzalez alleges that Bedolla breached its duty of care by creating an accumulation of liquid in the produce department.

¶ 25 In Illinois, when a business invitee suffers an injury after slipping on the business owner's premises, liability will be imposed on the owner if there is evidence that the substance that caused the fall was placed on the premises as a result of the negligence of the proprietor or his servants. *Donoho*, 13 Ill. 2d at 118; *Olinger*, 21 Ill. 2d at 474. If there is no evidence as to how the substance appeared or if a third party was responsible for the substance's presence, a business owner will nonetheless still be held liable if it appears that the owner or his servant knew of its presence or should have known of its presence given the length of time the substance was on the premises. *Donoho*, 13 Ill. 2d at 118; *Olinger*, 21 Ill. 2d at 474. If the substance appeared on the premises as a result of actions by a third party, then the knowledge or notice of the business owner and his servants becomes a "material factor" to establish the proprietor's negligence; whereas, such knowledge or notice is immaterial if the substance is on the premises due to the negligence of the owner or his employees. *Thompson v. Economy Supermarkets*, 221 Ill. App. 3d 263, 265 (1991); see also *Donoho*, 13 Ill. 2d at 118.

¶ 26 Here, Gonzalez testified that she slipped on approximately ½ of a cup of clear liquid that was on the floor of Bedolla Foods in front of the onion display. She believed that the substance was water because it "clear and nothing smell[ed]." Gonzalez was the only witness to provide

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testimony about the substance which caused her fall as neither Patricio Bedolla nor his employees saw any liquid substance on the floor of the produce department immediately following Gonzalez's fall. Gonzalez acknowledged that she did not see the liquid on the floor prior to her fall and the record is devoid of any *direct* evidence that defendant's employees were responsible for the accumulation of liquid in front of the onion display.

¶ 27 Gonzalez, however, relying on our supreme court's seminal decision in *Donoho*, argues that she provided sufficient *circumstantial* evidence that defendant's employees were more likely to have been the source of the liquid than a third party. In *Donoho*, a restaurant patron brought suit against a restaurant when she sustained injuries after falling on an onion ring that was on the floor. There was no direct evidence as to how the onion came to be on the floor, but there was evidence that a bus boy had cleaned the table closest to where the onion ring was found shortly before the plaintiff's fall. There was also evidence that it was not uncommon for food particles to drop to floor when the tables were wiped clean. This evidence was submitted to a jury and the jury returned with a verdict in favor of the plaintiff; however, the judgment was reversed on appeal when the reviewing court concluded that there was insufficient evidence of the restaurant proprietor's negligence to support the jury's verdict. On review, our supreme court reversed, finding that the plaintiff presented sufficient circumstantial evidence of the defendant restaurant's negligence. The court explained:

"Where, *** in addition to the fact that the substance on the floor was a product sold or related to the Defendant's operations, the Plaintiff offers some further evidence direct or circumstantial, however slight, such as the location of the substance or the

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business practices of the defendant, from which it could be inferred that it was more likely that defendant or his servants, rather than a customer, dropped the substance on the premises, courts have generally allowed the negligence issue to go to the jury, without requiring defendant's knowledge or constructive notice." *Donoho*, 13 Ill. 2d at 122.

In its disposition, the court noted that the plaintiff had presented evidence that the onion ring on which she fell was located by a table that had recently been cleared by a bus boy and that no other restaurant patron had used the table after it had been cleaned. The plaintiff also presented evidence that it was not uncommon for food particles to drop to the floor when the bus boy cleared tables. Accordingly, because the plaintiff had provided circumstantial evidence which would allow a jury to reasonably infer that it was more likely that the defendant's employee, rather than a customer, was responsible for the onion ring falling to the ground, the supreme court found that the issue of negligence was properly submitted to the jury.

¶ 28 Here, Gonzalez argues that Arnufi Romero's deposition testimony provides the requisite circumstantial evidence required by *Donoho* to warrant submission of this question of fact to the jury. Specifically, Gonzalez contends that Romero's testimony supports her theory that the accumulation of water in front of the onion display was caused by a cart wheeling freshly rinsed produce from the back of the store to the produce department. We disagree.

¶ 29 In his deposition, Romero provided general testimony regarding the requirements of his job as the produce manager of Bedolla Foods. Although he testified that onions were never exposed to water, Romero did acknowledge that some produce items were rinsed in a special sink in the back of the store prior to being put out on display in the produce department. Romero

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testified that it was general practice to wait until the rinsed produce "drip-dried" before it was put onto a cart, wheeled out in the store and put on display. He acknowledged, however, that there have been some instances where the produce cart tracked moisture onto the sales floor, but that floors were dried "instantly."

¶ 30 Although Romero's deposition testimony provided an explanation as to how produce was cleaned and displayed at Bedolla Foods, we are unable to agree with Gonzalez that his testimony provided circumstantial evidence that it was more likely that he, or another Bedolla employee, was the individual most likely responsible for the accumulation liquid on the floor in front of the onion display. In *Donoho*, there was evidence that shortly before the plaintiff fell on an onion ring, a bus boy had recently cleaned the table close to where the accident occurred and no one else had eaten at the table prior to the plaintiff's fall. Here, in contrast, there is no evidence that Romero or any other Bedolla employee wheeled produce from the back of the store and tracked moisture in front of the onion display, a dry produce item, at any time prior to Gonzalez's fall, let alone shortly before her fall. Indeed, Romero testified that produce was generally brought out onto the floor when the store was closed and "there's no clients to avoid problems" and he could not recall a time when produce was taken from the back of the store to the produce department prior to noon, which was the approximate time of Gonzalez's fall. Unlike *Donoho*, here there is no evidence, circumstantial or direct, that makes it more likely that the defendant's employees were responsible for the dangerous condition that caused plaintiff's fall. Specifically, there is no circumstantial evidence that the accumulation of liquid in front of the onion display was more likely to have been caused by Bedolla employees as opposed to another customer or third party.

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Because the record does not contain any direct or circumstantial evidence that defendant negligently maintained the premises of its store, we affirm the circuit court's order granting Bedolla's motion for summary judgment. See, *e.g.*, *Thompson*, 221 Ill. App. 3d at 266 (distinguishing *Donaho* and affirming a circuit court order granting the defendant supermarket's motion for judgment notwithstanding the verdict where there was no evidence that it was more likely that the defendant's employees, rather than a customer, were responsible for dropping a leaf of lettuce to the ground, which was the cause of the plaintiff's fall).

¶ 31

III. CONCLUSION

¶ 32 The judgment of the circuit court is affirmed.

¶ 33 Affirmed.