

No. 1-12-0477

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GLORIA A. CHAMBERS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	
)	
THE CHICAGO TRANSIT AUTHORITY, a municipal)	No. 10 L 1721
corporation; JOHN DOE, driver, individually and/or as)	
agent, servant and/or employee of the Chicago Transit)	
Authority,)	The Honorable
)	Kathy M. Flanagan,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Quinn and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* Order granting summary judgment in favor of defendants affirmed where there was no constructive notice of the slippery substance on the floor which allegedly caused plaintiff to fall.

¶ 2 Plaintiff Gloria Chambers filed a negligence complaint against defendants Chicago Transit Authority (CTA) and its employees for injuries she sustained while a passenger on a CTA

Green Line train. The circuit court of Cook County granted defendants' motion for summary judgment, and plaintiff now appeals from that judgment. She claims that the court erred in granting defendants' motion where an inference of constructive knowledge can be drawn from the undisputed facts.

¶ 3 The record shows that plaintiff filed her complaint against defendants on February 8, 2010. She alleged that she was a passenger on an elevated Green Line train on July 15, 2009, and sustained injuries when she fell near the Austin Boulevard stop. She maintained that defendants negligently, carelessly and improperly failed to keep the train car under safe, suitable, and proper control to avoid injury to her, and failed to comply with its rule of exercising constant care to insure the safety of its passengers and prevent injury to them. She further alleged that defendants negligently and suddenly stopped the train in a lurching manner, which caused her to be thrown forcefully to the floor and injured, and that defendants were otherwise careless and negligent in the operation of the train and owed her the highest duty of care. As a direct and proximate result, plaintiff claimed that she suffered severe, serious and permanent injuries, and requested pecuniary compensation therefor.

¶ 4 Depositions were taken of plaintiff, the train operator, another passenger who was present during the incident, and a CTA car appearance coordinator. Plaintiff testified at her deposition that at 8 p.m. on July 15, 2009, she left her workplace for home, boarded a Green line train at Clinton and Lake Streets in Chicago. As she entered the car, she did not notice a slippery substance on the floor. Shortly before the train arrived at the Austin Boulevard station, she noticed someone standing at the front exit door, and stood up to get close to the rear exit door. As she stood there, the train car came to a "sudden stop," she fell on her back and her legs went out in front of her. When asked what caused her to fall, plaintiff stated that there was "some

slippery substance on the floor." She described the substance as clear, with quite a bit of it on the aisle floor, but she was not sure if she saw the substance prior to her fall.

¶ 5 Plaintiff further testified that she was taken to the hospital by ambulance and treated for pain in her left knee. She underwent surgery on her left leg on August 12, 2009, and physical therapy from October 2009, through December 2009. When she completed her therapy, she was able to walk with a cane, but was unable to return to work. She was terminated from her job on December 6, 2009, and currently has difficulty with daily tasks.

¶ 6 Carol Melton testified that she was a passenger on the same train as plaintiff at the time in question. She entered at Clark and Lake Streets in Chicago, and about 8 p.m., she heard a "thump," while the train was between the Oak Park and Harlem Avenue stops. She then saw plaintiff lying on the floor, but she did not recall if the train was moving when plaintiff fell.

¶ 7 Melton further testified that while she was on the train, and before the fall, she noticed some substance on the floor. Melton did not recall anyone spilling that substance while she was on the train, but acknowledged that someone seated behind her could have done so.

¶ 8 Melton further testified that she could not identify the substance, but knew that it was not water, that it was slippery, and did not have an odor to it. She explained that the slippery substance covered the width of the aisle, and looked dark because it was dirty, and darker than the floor, but not shiny. Melton did not notice any debris or dirt on top of the slippery substance, and explained that:

"I only mentioned that it could be dirty because I was trying to explain how the color - it looked like it was probably a clear substance except that it had taken on a different shade, which could be because it's just making the floor look darker because it's

another layer and maybe it picked up some dirt along the way; I don't know."

Melton testified that she did not recall seeing any footprints in the substance, but she moved her foot over the substance and could tell that it was slippery. She also testified that she did not notice the train being operated improperly or erratically at the time of the fall.

¶ 9 Betty Rivera testified that she is a CTA train operator and was operating the train plaintiff was riding at the time of her fall. She explained that before she operates the train, she inspects the springs between the train cars, but does not walk through the cars. If she enters a train car and notices a substance on the floor, she will get a mop and clean it up or will ask one of the CTA car servicers to do so. On the day in question, no one had notified her that there was a slippery substance on one of her train cars, and she had not inspected the cars before operating the train.

¶ 10 At 8:30 p.m., someone notified her over the passenger information unit that plaintiff had fallen and needed an ambulance. She called for assistance and when she entered the Harlem Avenue station, she went to the train car that plaintiff was on and noticed a substance on the floor that looked "a little slippery, like glossy." She rubbed her boot on it, which, she stated, felt like "baby oil, like a little greasy, like slippery."

¶ 11 James Payne testified that at the time in question he was a CTA train car appearance coordinator. His responsibilities included managing the train car appearance personnel, and ensuring that they adhere to certain cleaning schedules and maintain clean and safe train cars. He stated that the train cars are cleaned at least once every round trip at the Harlem Avenue and Lake Street station. The cleaning involves a car servicer walking through the train cars sweeping up small debris, picking up larger items and placing them in a garbage bag, and mopping, as needed.

If there is a spill, they will take the time to clean it up and communicate to their supervisor, if necessary, to stop the car until the spill is cleaned up.

¶ 12 Payne further testified that on July 15, 2009, he was assigned to the CTA Green Line when he received a call from train car servicer Contreras that there was a substance on one of the train cars which was said to be the cause of a slip and fall outside the Harlem Avenue station. Payne went to that station where he observed a "shiny substance on the floor" of the train car at issue which "struck [him] as being oily." He rubbed his shoe on it, found it to be slippery, and believed it might be baby or mineral oil. Payne prepared a report of the incident in which he noted that he found an oily substance spread about the floor of the train car.

¶ 13 Payne further testified that the substance had not been there for a while and did not have any debris or residue embedded in it. Payne explained that it was standard procedure that "each car is cleaned after each circuit from terminus to terminus," and that the floors are mopped as needed. He further testified that if this substance was encountered by the car servicers, they would have immediately cleaned it up.

¶ 14 Defendants filed a motion for summary judgment claiming that plaintiff could not prove that they had actual or constructive knowledge of any slippery substance on the floor of the train car that allegedly caused her fall. Defendants alleged that there was no indication that the slippery substance was due to any act of the CTA, and that they had no actual knowledge of the substance. Defendants also alleged that plaintiff failed to present any evidence establishing the length of time the slippery substance was on the floor before her fall, and thus, was unable to show that the substance was there for a sufficient amount of time for there to be constructive notice. Defendants further alleged that they owed no duty to warn plaintiff of the substance because it was an open and obvious condition.

¶ 15 In her response to defendants' motion, plaintiff alleged that defendants had constructive knowledge of the hazardous state of the train floor. She claimed that as long as she presented some evidence to show that time elapsed between the appearance of the substance and her fall, the question of liability is properly put before a trier of fact. She maintained that the inference to be drawn from the available facts is that the slippery substance was on the train floor prior to the Clark and Lake Streets station and CTA staff should have discovered it before her fall. Plaintiff claimed that Melton's description of the substance as dark, and possibly dirty, leads to the presumption that it was walked on by several passengers over a course of time. Plaintiff further alleged that defendants owed her a duty where the condition was not open and obvious, noting that she did not observe the danger when she entered the train car, that Melton did not recall when she first saw it, and that it was unlikely that plaintiff could avoid the danger where she "only detected the condition immediately preceding her fall."

¶ 16 Defendants replied that they did not have constructive knowledge of any slippery substance on the train floor, noting that Melton did not recall any tracks in the substance, thus leaving plaintiff's presumption that several passengers walked over it entirely unsupported. Defendants maintained that plaintiff was unable to show that the substance was present for a sufficient length of time necessary to impose constructive notice on them, and, further, that the slippery substance was an open and obvious condition.

¶ 17 The trial court granted defendants' motion for summary judgment, noting that neither plaintiff nor any witnesses knew how long the substance was on the floor of the train car. The court observed that Rivera did not receive any reports or complaints about the substance prior to the fall, that plaintiff first noticed it when she stood up to exit, and Melton could not recall whether she saw it when she boarded the train, but she did see it prior to the fall. Melton was

also unsure if the substance was dirty, noting that it was darker than the floor, but she did not recall seeing any tracks or footprints in it. The court thus concluded that there was no evidence to raise an issue of fact as to constructive notice, and although the question of whether the condition and danger posed by it was open and obvious was one of fact, the CTA could not be held liable for negligence where it had no actual or constructive notice of the condition.

¶ 18 Plaintiff filed a motion to reconsider that ruling, alleging that the court's findings invaded the province of the jury by improperly weighing the evidence. She maintained that she met the requirements to present the issue to the jury, which could then address how long the foreign substance was on the floor, whether the facts demonstrate more likely than not that the substance should have been detected and corrected by defendants, and the relative weight of each witness' credibility.

¶ 19 The trial court denied plaintiff's motion to reconsider noting that plaintiff had not pointed to any evidence which was not already considered by it and which could alter its ruling. The court stated that it did not weigh the evidence, as suggested by plaintiff, where there was no evidence to weigh, and that there was simply nothing in the record which was capable of raising an issue of fact as to constructive notice.

¶ 20 In this appeal, plaintiff asserts that the trial court erred in granting defendants summary judgment where an inference of constructive knowledge can be drawn from the undisputed facts. She specifically claims that Melton's testimony supported an inference that the substance had been on the floor for a greater, rather than shorter, period of time, where it could have been darkened by the soles of passengers' shoes, and that it was for the jury to decide what weight to give Melton's testimony.

¶ 21 A motion for summary judgment is granted only when the pleadings, depositions, and

admissions on file, together with any affidavits, construed strictly against the movant and liberally in favor of the opponent, show there was no genuine issue of material fact and that the movant is entitled to judgment as a matter of law. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). If plaintiff fails to establish any element of the cause of action, summary judgment for defendant is proper. *Williams*, 228 Ill. 2d at 417. Our review of the trial court's grant of summary judgment is *de novo*. *Williams*, 228 Ill. 2d at 417.

¶ 22 To recover damages based on a negligence claim, plaintiff must establish the existence of a duty owed by defendant, a breach of that duty, and an injury proximately resulting from that breach. *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001). Defendant breaches its duty to plaintiff, who slips on a foreign substance, if it had actual or constructive notice of the substance. *Pavlik*, 323 Ill. App. 3d at 1063. Here, plaintiff does not contest the lack of actual notice, but maintains that defendants had constructive notice of the slippery substance. Liability for injury caused by a foreign substance on a carrier could be imposed upon proof that the object was present for a sufficient period of time to impute constructive notice. *Brown v. Chicago Transit Authority*, 123 Ill. App. 2d 145, 149 (1970).

¶ 23 Plaintiff maintains that neither she, nor Melton, testified that the slippery substance was deposited on the train while they were on it, which leads to the inference that the substance was on the floor prior to the Clark and Lake Streets stop. Thus, plaintiff argues, whether this inference established a period of time sufficient to provide constructive notice was a question for the trier of fact to decide and not the court.

¶ 24 Inferences of negligence, however, cannot be based on inferences which are merely speculative in nature. *Bermudez v. Martinez Trucking*, 343 Ill. App. 3d 25, 30 (2003). In this case, the only evidence regarding any passage of time is Melton's testimony that she was not sure

when she first noticed the substance, but that it was prior to the fall, and that the substance could have been spilled while she was on the train. The record shows that Melton boarded the train around 8 p.m., plaintiff boarded at the next station, and the fall occurred about 8:30 p.m. Neither woman testified to seeing the substance when they boarded, and plaintiff did not see it until she fell. Under these circumstances, plaintiff's inference that the substance was on the train car prior to the time she and Melton boarded the train is mere conjecture, speculation and guesswork, which is insufficient to establish liability. *Bermudez*, 343 Ill. App. 3d at 30.

¶ 25 Moreover, CTA train car appearance coordinator, Payne, testified that the train cars were cleaned after each round trip at the Harlem Avenue and Lake Street stop, that if the foreign substance in question was present at that stop, it would have been cleaned up, and that the substance was fresh and had no debris in it. Thus, even if the substance was on the train prior to the Clark and Lake Streets stop, absent any evidence that it was there for a substantial period of time, constructive notice of the substance may not be imputed to defendants. *Hayes v. Bailey*, 80 Ill. App. 3d 1027, 1031 (1980).

¶ 26 Plaintiff, nonetheless, maintains that as long as she presents "some" evidence to show that time elapsed between the appearance of the substance and her fall, the question of liability is proper for the jury to decide, citing *Wiegman v. Hitch-Inn Post of Libertyville, Inc.*, 308 Ill. App. 3d 789, 803 (1999). *Wiegman*, however, is factually distinguishable from the case at bar. In *Wiegman*, plaintiff slipped and fell at the bottom of the stairway near the sauna room at defendant's hotel, and the reviewing court found there was some evidence of constructive notice to defendant in the testimony of plaintiff's sister that she had seen water on the floor in that area hours before the fall and that there were no mats in the area, and defendant presented no evidence that the water was cleared away. (Emphasis added.) *Wiegman*, 308 Ill. App. 3d at 791, 802.

Here, unlike *Wiegman*, defendant presented testimony from Payne that the train cars are cleaned after each round trip, and that a foreign substance, such as that found on the train car in this case, would have been mopped up at the Harlem and Lake station. In addition, witness Melton recalled only seeing the substance shortly before the fall, *i.e.*, some time between 8 and 8:30 p.m., and not hours before as in *Wiegman*.

¶ 27 Plaintiff further claims that Melton's testimony that the substance was darker than the floor and possibly dirty suggested that another person walked through the substance, which weighs in favor of finding constructive notice. In support of this claim, plaintiff cites *Brooks v. National Railroad Passenger Corp.*, 221 F.3d 1338 (2000) (unpublished disposition). We first observe that lower federal court decisions are not binding authority in this court (*Illinois State Toll Highway Authority v. Amoco Oil Co.*, 336 Ill. App. 3d 300, 317 (2003)), and further, that the disposition in *Brooks* has no precedential value as it is an unpublished case, and does not fall into any of the exceptions (*Napleton v. Great Lakes Bank, N.A.*, 408 Ill. App. 3d 448, 453 (2011), citing Ill. S. Ct. R. 23(e) (eff. July 1, 2011)). In addition, *Brooks* is readily distinguishable from the present case.

¶ 28 In *Brooks*, plaintiff presented evidence showing that ice and water were present permitting the inference that the ice was there long enough to melt, there was testimony that there were tracks through the debris the plaintiff slipped on, and the debris was scattered over a large area. The court found that "all of" these factors tended to show that some time elapsed between the appearance of the debris and the fall, and based on that and the fact that the debris was easily visible, defendant's employees had constructive notice of it. *Brooks*, 221 F.3d 1338. Here, Melton testified that she did not recall seeing tracks in the substance, and stated that "maybe it picked up some dirt" or it may have made the floor darker because it was just another layer.

Plaintiff's inference from this testimony that another person might have walked through the slippery substance causing it to look darker was mere speculation, which cannot be the basis of liability. *Bermudez*, 343 Ill. App. 3d at 30. In addition, as found above, there was no evidence that the substance was on the train car for a sufficient period of time to impute constructive notice upon defendants. *Hayes*, 80 Ill. App. 3d at 1031.

¶ 29 Plaintiff also cites *Canales v. Dominick's Finer Foods, Inc.*, 92 Ill. App. 3d 773 (1981), in support of her case, maintaining that close questions of fact regarding constructive notice are for the jury to decide. We do not quarrel with that principle of law, but find *Canales* distinguishable. In *Canales*, plaintiff slipped on the contents of a Ben-Gay tube in a Dominick's Store, and there was evidence that the substance had been on the floor for a "considerably longer time" where the tube had been crushed, while the cap was still on, the "greasy and pasty" ointment had been spread over a wide area, and there were six greasy footprints extending out from the ointment. *Canales*, 92 Ill. App. 3d at 774-75, 777. Here, by contrast, the evidence only shows that there was a slippery substance, in the aisle of a train car, which plaintiff slipped on and nothing more than speculation as to its origin or to indicate the length of time it was on the floor. *Bermudez*, 343 Ill. App. 3d at 30. In the absence of evidence tending to show that defendants had constructive notice of the slippery substance on the floor of the train car (*Hayes*, 80 Ill. App. 3d at 1031), defendants could not be legally responsible for plaintiff's injury and the court properly granted summary judgment to defendants.

¶ 30 Having so found, we need not address plaintiff's brief reference to a breach of duty by the train operator, or defendants' contention regarding an open and obvious condition. *Williams*, 228 Ill. 2d at 417.

¶ 31 Affirmed.

No. 1-12-0477