2012 IL App (3d) 110314-U

Order filed February 27, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

AURORA DELGADO,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit
Plaintiff-Appellant,	)	Will County, Illinois
	)	
v.	)	Appeal No. 3-11-0314
	)	Circuit No. 09-L-778
	)	
MEIJER STORES LIMITED,	)	Honorable
	)	Michael J. Powers
Defendant-Appellee.	)	Judge Presiding

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly entered summary judgment in favor of defendant in a slip-and-fall case in which plaintiff failed to establish that substance on which she slipped was placed on the floor by defendant's employees or that defendant's employees had actual or constructive notice of the substance.

¶ 2 Plaintiff, Aurora Delgado, slipped and fell in a grocery store owned by defendant, Meijer Stores Limited. Plaintiff filed a complaint against defendant, alleging that defendant's negligent acts caused her fall. Defendant filed a motion for summary judgment. The trial court granted defendant's

motion. We affirm.

¶ 3 On December 16, 2006, plaintiff was shopping at a Meijer grocery store in Bolingbrook. As she proceeded to a checkout line, she slipped on a liquid substance on the floor and was injured.

¶ 4 Plaintiff filed a complaint against defendant. Plaintiff's complaint alleged that defendant's negligent acts, including creating an unreasonably dangerous condition and failing to warn of an unreasonably dangerous condition, caused her to be injured.

¶ 5 Plaintiff was deposed. At her deposition, plaintiff explained that when she was approximately five feet from the conveyor belt in Aisle 20 of the grocery store, her foot slipped on something. She fell to floor, landing on her buttocks and back. While she was on the ground, she felt something wet on her buttocks and saw liquid on her shoe.

¶ 6 Plaintiff stood up, proceeded to the register in Aisle 20, and asked the cashier to call someone for help. The cashier made a phone call and said the line was busy. When plaintiff asked the cashier to try again, she did. The cashier then rang up plaintiff's groceries while plaintiff held on to the conveyer belt for support because her foot and back were "hurting very much."

¶ 7 When the paramedics arrived, one of them asked a store employee what plaintiff slipped on. The employee answered: "It is shampoo." The same employee estimated that there was "about eight ounces" of the substance on the floor. Plaintiff testified that she did not see the substance on the floor before she fell and did not know what she slipped on.

¶ 8 Defendant's employee, Elisa Lovero, also provided deposition testimony. Lovero testified that she was working as a cashier in Aisle 20 of the grocery store at the time of plaintiff's fall. Lovero did not see plaintiff fall. When plaintiff came to Lovero's register, plaintiff told Lovero that she "almost slipped and had to grab on the cart to keep from falling."

¶ 9 Lovero asked plaintiff if she was okay, and she responded, "Not really." Lovero then called Gina Potts, the service coordinator, and told her that a customer had fallen and wanted to speak to a manager. After Lovero finished ringing up and bagging plaintiff's groceries, plaintiff walked toward the service desk. As plaintiff was walking away, Lovero saw Michael Villalobos, from the loss prevention department, approach plaintiff. Plaintiff and Villalobos spoke, but Lovero could not hear what they were saying.

¶ 10 Approximately five minutes after plaintiff fell, someone cleaned up the substance on the floor. Lovero did not know who cleaned it up. Lovero never left her register to look at the substance on the floor. She did not recall if any customer came through her line that day with a leaking bottle of liquid soap. She did not recall telling a customer, "You don't have a full bottle of liquid soap," or anything like that.

¶ 11 Prior to plaintiff's fall, Lovero checked out one or two customers who were in line in front of plaintiff. No other customers reported a slippery substance on the floor. Lovero prepared a report after the incident, in which she stated that she had no knowledge of the spill until after plaintiff reported that she had fallen.

¶ 12 In its answers to interrogatories, defendant stated: "All Meijer employees are responsible for maintenance of the store" and that no cleaning record is kept, "as clean up is continuous." Defendant indicated that the nature of the substance on the floor was unknown but that it was continuing to investigate.

¶ 13 In response to plaintiff's requests to produce, defendant produced a document entitled, "Meijer Supplemental Investigation Report." That report was prepared by Villalobos on the date of plaintiff's fall. According to the report, Villalobos found a foreign substance on the floor after

plaintiff's fall. Villalobos described the substance as follows: "White color, eight inches in diameter, slippery."

¶ 14 Defendant filed a motion for summary judgment, arguing that plaintiff could not prove that defendant had notice, prior to plaintiff's fall, of the substance on which plaintiff slipped. Plaintiff responded, arguing that it could be inferred that the substance on the floor was related to defendant's business and was left there by one of defendant's employees. The trial court granted defendant's motion for summary judgment, finding "that there is no genuine issue of material fact as to whether or not the defendant, Meijer, was on either actual notice or constructive notice as to *** the existence of this liquid on the ground."

¶ 15 Summary judgment is appropriate if, viewing the evidence in the light most favorable to the nonmovant, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. See *Pageloff v. Gaumer*, 365 Ill. App. 3d 481, 483 (2006). We apply a *de novo* standard of review to the trial court's decision to grant summary judgment. *Pageloff*, 365 Ill. App. 3d at 483.

¶ 16 The general rule is that liability will be imposed where a business invitee is injured by slipping and falling on a foreign substance on the premises if (1) the substance was placed there by the negligence of the owner or its employees, (2) the owner or its employee knew of its presence, or (3) the owner had constructive notice of the substance because it was there for such a long time that its presence should have been discovered. *Donoho v. O'Connell's, Inc.*, 13 Ill. 2d 113, 118 (1958); *Olinger v. Great Atlantic & Pacific Tea Co.*, 21 Ill. 2d 469, 474 (1961). Where the plaintiff alleges constructive notice, the time element is a material factor; the plaintiff must establish that the foreign substance was on the floor long enough to constitute constructive notice to the defendant. *Hayes v.*

Bailey, 80 Ill. App. 3d 1027, 1030 (1980).

¶ 17 Here, there was no evidence that defendant or any of its employees had actual notice of the substance's presence. There was also no evidence regarding how long the substance had been there. Absent such evidence, plaintiff could not establish that defendant had constructive notice of the substance. See *Hayes*, 80 Ill. App. 3d at 1030. Because plaintiff could not prove actual or constructive notice, she could only succeed on her negligence claim if she established that the substance was placed on the floor by defendant or one of its employees. See *Donoho*, 13 Ill. 2d at 118; *Olinger*, 21 Ill. 2d at 474.

¶ 18 Where the foreign substance is unrelated to defendant's operations, it cannot reasonably be inferred that the substance was more likely to have been dropped by defendant's employees than third persons. *Olinger*, 21 Ill. 2d at 475. Thus, the defendant is entitled to judgment as a matter of law. *Id*. Similarly, where there is no evidence as to what the substance is, the plaintiff cannot establish that the substance is related to the defendant's business, and defendant is entitled to judgment as a matter of law. *Id*. at 476.

¶ 19 Where there is proof that the foreign substance was sold at or related to defendant's business, but no further evidence is offered other than the presence of the substance and the occurrence of the injury, the defendant is entitled to judgment as a matter of law. *Olinger*, 21 Ill.2d at 475; *Thompson v. Economy Super Marts, Inc.*, 221 Ill. App. 3d 263, 265-66 (1991). However, where the plaintiff offers some direct or circumstantial evidence, however slight, such as the location of the substance or the business practices of the defendant, from which it could be inferred that it was more likely that defendant or its employees, rather than a customer, dropped the substance on the premises, the negligence issue should go to the jury. *Olinger*, 21 Ill. 2d at 475-76; *Thompson*, 221 Ill. App. 3d at

265.

¶ 20 Here, plaintiff stated in her deposition that she did not know what the substance she slipped on was. A report prepared by an employee of defendant shortly after plaintiff's fall described the substance as "[w]hite color, eight inches in diameter, slippery." According to plaintiff, an employee of defendant told a paramedic that the substance was shampoo. Defendant's employee's statement identifying the substance is admissible and should be considered in ruling on defendant's motion for summary judgment. See *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1064 (2001).

¶ 21 Shampoo is a product sold by defendant. In order to defeat defendant's motion for summary judgment, plaintiff had to present some evidence from which it could be inferred that it was more likely that defendant's employee, rather than a customer, dropped the shampoo on the floor. See *Olinger*, 21 Ill. 2d at 475-76; *Thompson*, 221 Ill. App. 3d at 265. Plaintiff failed to do so. She did not present any evidence that the location of the substance, approximately five feet from the conveyor belt in a check-out aisle, made it more likely that an employee, rather than a customer, spilled the shampoo. Plaintiff also failed to establish that any business practice of the defendant made it more likely that the substance was dropped by defendant's employee than a third person.

¶ 22 While there was proof that the foreign substance was sold at defendant's store, plaintiff presented no further evidence other than the presence of the substance and the occurrence of the injury. Thus, the trial court properly granted defendant's motion for summary judgment. See *Olinger*, 21 Ill.2d at 475; *Thompson*, 221 Ill. App. 3d at 265-66.

¶ 23 The order of the circuit court of Will County is affirmed.

¶ 24 Affirmed.