STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1640

Brittany Deleon, et al.,
Appellants,

vs.

Target Corporation,
Respondent.

Filed June 22, 2010
Affirmed
Hudson, Judge

Hennepin County District Court
File No. 27-CV-08-17113

Scott Selmer, Conner Mcalister Selmer, LLC, Minneapolis, Minnesota (for appellants)

William L. Davidson, Peter L. Gregory, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Klaphake, Presiding Judge; Hudson, Judge; and Collins, Judge.*

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

Appellants challenge the dismissal on summary judgment of a slip-and-fall negligence claim against respondent, asserting that the district court erred by determining

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

that respondent owed no duty to appellants based on the lack of evidence to support respondent's actual or constructive knowledge of the puddle of water on which appellant slipped. Appellants also assert that the district court abused its discretion by failing to continue the matter for additional discovery, based on respondent's late and incomplete discovery responses. Because the district court did not err by concluding that respondent owed no duty to appellants and did not abuse its discretion by declining to continue the matter for further discovery, we affirm.

FACTS

Appellant Brittany Deleon, a high-school junior, entered the Brooklyn Center store of respondent Target Corporation with her younger sister while their parents waited in the car. After turning left down the main aisle, Brittany slipped in a puddle of clear water in the aisle and fell backwards, injuring herself. She testified that the puddle was about three to four feet around and less than a half-inch deep. She testified that she saw water dripping from the ceiling. She testified that she was not sure how long she remained on the floor, but that one "dime-sized" drop of water dripped onto her during that time. She saw no "wet floor" signs or any indications that store personnel were trying to catch the drips.

Brittany's sister, a high-school freshman, testified that she was walking about five feet ahead of Brittany and to the left when Brittany fell. She testified that she saw the puddle when Brittany pointed it out to her and believed it to be about twelve inches around. She saw no dripping or signs in the area. She testified that there had been a

rainstorm earlier that week, and she believed the water came from a leak resulting from the storm.

When Brittany fell, her sister used a cell phone to call their mother, appellant Angela Deleon, who came into the store to help. Angela Deleon checked on the girls, and, within ten minutes, she proceeded to the area where the accident occurred. She testified that from three to four feet away, she could see the puddle, which she believed to be at least twelve inches around. She testified that she could see the ceiling leaking, with drips coming directly from the ceiling, and she saw at least five drops during the "minute or two" she stood watching. She stated that it had been raining heavily that morning or the night before.

Appellants commenced an action in Hennepin County district court, alleging respondent's negligence on the ground that a liquid substance on the floor of respondent's store caused Brittany to fall and sustain injuries. Respondent moved for summary judgment. The day before the summary-judgment hearing, appellants' attorney submitted an affidavit stating that he had not yet received responses to his discovery requests, despite previous assurances by respondent's counsel that responses would be forthcoming. At the hearing, appellants' counsel stated that he had just received responses, which indicated that store employees may have known about the puddle at the time of the accident. Appellants' counsel also reiterated a discovery request for store videotape of the accident; respondent's counsel stated that no videotape existed.

The district court stated that it intended to consider the matter on its merits and granted summary judgment to respondent, concluding that respondent did not owe

appellants a legal duty because respondent did not have constructive knowledge of the dangerous condition and because the condition was open and obvious. This appeal follows.

D E C I S I O N

I

In reviewing the district court's grant of summary judgment, this court examines whether any genuine issue of material fact exists and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court views the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). This court "review[s] de novo whether a genuine issue of material fact exists" and "whether the district court erred in its application of the law." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002).

Appellants argue that the district court erred by granting summary judgment to respondent. A prima facie case of negligence requires evidence of a duty owed by the defendant, a breach of that duty, causation, and damages. *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 157 (Minn. 1982). A property owner who holds out property for public use has a duty to use reasonable care to prevent persons from being injured by conditions on the property that present a foreseeable risk of injury. *Hanson v. Christensen*, 275 Minn. 204, 213, 145 N.W.2d 868, 874 (1966). But even when landowners owe persons a duty to keep and maintain their premises in a reasonably safe condition, they are not

insurers of safety. *Wolvert v. Gustafson*, 275 Minn. 239, 241, 146 N.W.2d 172, 173 (1966).

To prevail on a negligence claim relating to a dangerous condition on property, the plaintiff has "the burden of proving either that defendant caused the dangerous condition or that it knew, or should have known, that the condition existed." *Messner v. Red Owl Stores*, 238 Minn. 411, 415, 57 N.W.2d 659, 662 (1953). Proof that a dangerous condition continued for an extended period of time may establish constructive notice of the hazard. *See Anderson v. St. Thomas More Newman Ctr.*, 287 Minn. 251, 253, 178 N.W.2d 242, 243–44 (1970). "But speculation as to who caused the dangerous condition, or how long it existed, warrants judgment for the landowner." *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 365 (Minn. App. 2000).

In *Rinn*, a spectator at a horse show at the Minnesota State Fair coliseum sued in negligence after she slipped on a puddle on the coliseum stairs. *Id.* at 363. Evidence showed that the puddle had not existed 30 minutes before, when the spectator used the same stairs. *Id.* This court affirmed summary judgment in favor of the landowners, concluding that the passage of 30 minutes was not sufficient time to give the landowners constructive notice of the puddle. *Id.* at 365; *see also Anderson*, 287 Minn. at 253, 178 N.W.2d at 243–44 (affirming directed verdict for defendant in the absence of any proof that the puddle of water in which plaintiff fell had existed "for such an appreciable period of time . . . as to place defendant on notice, actual or constructive, of the danger to be apprehended," and no direct evidence existed as to source of water); *Otis v. First Nat'l Bank of Minneapolis*, 292 Minn. 497, 497–98, 195 N.W.2d 432, 433 (1972) (affirming

directed verdict for defendant bank when plaintiff fell in 3-5 inch-diameter puddle after rainstorm, and bank had only been open 20 minutes when injury occurred).

Appellants argue that a genuine issue of material fact existed as to whether respondent had constructive notice of the puddle, based on the testimony of Brittany's mother and sister that there had been a recent, heavy rainstorm. Appellants also argue that Brittany's statement that only a single, dime-sized drop of water fell on her as she lay on the floor gives rise to a reasonable inference that the puddle had existed for a protracted period of time.

But we agree with the district court that "the record contains no evidence of actual or constructive notice by [respondent]." There were no signs or buckets in place to indicate that store employees had actual notice of the leak in the ceiling. Further, Brittany did not recall how long she lay on the floor, and Angela Deleon testified that, during the "minute or two" she looked at the scene, she saw at least five drops come from the ceiling. The record shows that the puddle was, at most, three to four feet around at the time of the accident. Water dripping at the rate of five drops every minute or two would not have taken a substantial time to accumulate in a puddle of that size. *See Rinn*, 611 N.W.2d at 365. Therefore, we conclude that the district court did not err by granting summary judgment to respondent on the ground that no material factual issue existed as to whether respondent had constructive notice of the puddle, so that respondent owed no duty of care to appellants with respect to that condition. *See id.*

Because we affirm on the ground that no genuine issue of material fact existed as to respondent's actual or constructive knowledge of the puddle of water, we need not

address the district court's alternative ground for summary judgment that the puddle was open and obvious.

II

Appellants also argue that the district court abused its discretion by denying their motion for a continuance for further discovery. This court reviews a district court's denial of a request for a continuance to conduct additional discovery for abuse of discretion. *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466, 473 (Minn. App. 2005), *review denied* (Minn. June 14, 2005); *see also Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 919 (Minn. App. 2003) (same standard applies when district court implicitly denies request for additional discovery).

The rules of civil procedure allow the district court to continue a summary-judgment hearing "to permit affidavits to be obtained or depositions to be taken or discovery to be had[.]" Minn. R. Civ. P. 56.06. In deciding whether to continue a matter for additional discovery, "a district court considers the moving party's diligence in seeking discovery as well as the materiality of the facts that party is seeking." *QBE Ins. Corp. v. Twin Homes of French Ridge Homeowners Assoc*., 778 N.W.2d 393, 400 (Minn. App. 2010) (citing *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982)).

The day before the summary-judgment hearing, appellants' counsel filed an affidavit stating that, although he had delivered discovery requests to respondent several months earlier, he had not yet received discovery responses. He asserted that he had relied on the assertions of respondent's counsel that responses would be forthcoming and had cancelled a hearing on a motion to compel discovery. At the summary-judgment

hearing, appellants' counsel stated that he had just received discovery responses, but the responses (1) did not include any security videotape of the accident; and (2) indicated that store employees might have had actual notice of the puddle. Respondent's counsel stated that no videotape existed. The district court did not order a continuance for further discovery.

Although counsel properly sought responses to his discovery, the record does not show that he pursued the matter by rescheduling a motion to compel discovery. More significantly, appellant has failed to specify potentially available material evidence. Because the accident occurred more than two years before the complaint was filed, the district court reasonably accepted respondent's assertion that no videotape of the incident existed. And any statements of respondent's employees relating to their notice of the puddle appear to be included only in the store incident report. This post-accident report would not tend to establish that respondent had a duty of due care before the accident. We conclude that the district court did not abuse its discretion by failing to order a continuance for further discovery.

Affirmed.