[Cite as *Shick v. Rite Aid*, 2019-Ohio-2238.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JANE SHICK, :

Plaintiff-Appellant, :

No. 107805

v. :

RITE AID, ET AL., :

Defendants-Appellees. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: June 6, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-17-885978

Appearances:

L. Bryan Carr, *for appellant*.

John M. McManus, *for appellees*.

EILEEN T. GALLAGHER, P.J.:

{¶ 1} Plaintiff-appellant, Jane Schick, appeals an order granting summary judgment in favor of defendants-appellees, Rite Aid and Rite Aid Ohio Inc. (collectively "appellees"), and claims the following error:

The trial court erred in granting appellee's motion for summary judgment.

{¶ 2} We find no merit to the appeal and affirm the trial court's judgment.

I. Facts and Procedural History

{¶ 3} Shick filed a complaint in the Cuyahoga County Court of Common Pleas seeking damages for injuries she sustained when she slipped and fell on a puddle of water while shopping at a neighborhood Rite Aid store. Shick sued the Rite Aid store and its corporate parent, Rite Aid of Ohio, Inc., alleging that she sustained personal injuries as a result of appellees' negligence.

{¶ 4} Following discovery, appellees filed a motion for summary judgment, arguing that Rite Aid was not negligent because the puddle on which Shick slipped was open and obvious since it was a snowy day, and customers were trekking snow into the store. Shick testified at deposition that she went to Rite Aid on February 26, 2014, to buy some pop. She recalled that it was a snowy day with "that fluffy kind of snow." (Shick depo. at 42, 48.)

{¶ 5} While walking into the store, Shick observed a mat inside the door. When asked if she recalled wiping her feet on the mat, she replied that she "probably stomped [her] feet." (Shick depo. at 49.) She continued walking into the store and observed a "wet floor" sign some distance away near the back of the store. (Shick depo. at 49.) She progressed approximately ten feet into the store when she fell. (Shick depo. at 50.) Shick acknowledged that the floor was wet because "a lot of people had trekked through with wet footwear." (Shick depo. at 57-58.)

{¶ 6} Shick confirmed that the water on the floor was dirty and is what she would have expected given the snowy weather conditions. (Shick depo. at 58.) She

admitted that she observed the "trekked-in water" before she fell "because [she] wouldn't have afterward." (Shick depo. at 58.) She also testified that she had "no idea" how long the "trekked-in" water had been there before she fell. (Shick depo. at 59.)

{¶ 7} Shick opposed the motion for summary judgment, arguing the open-and-obvious doctrine did not apply to the circumstances of this case. She also argued that even if the open-and-obvious doctrine applied, there were "attendant circumstances" that rendered the condition not open and obvious. After reviewing the parties' briefs and Shick's deposition testimony, the trial court granted appellees' motion for summary judgment. This appeal followed.

II. Law and Analysis

A. Standard for Summary Judgment

{¶ 8} Appellate review of summary judgments is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Pursuant to Civ.R. 56(C), summary judgment is appropriate when (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his or her favor. *Horton v. Harwick Chem. Corp.*, 73 Ohio St.3d 679, 653 N.E.2d 1196 (1995), paragraph three of the syllabus; *Zivich v. Mentor Soccer Club*, 82 Ohio St.3d 367, 696 N.E.2d 201 (1998). The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact

and that she is entitled to judgment as a matter of law. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

B. Open-and-Obvious Doctrine

{¶ 9} Shick argues the trial court erred in granting summary judgment in favor of appellees because she was a business invitee, and Rite Aid had a duty to maintain the premises in a reasonably safe condition and to warn its invitees of latent or hidden dangers. She also argues the puddle on which she slipped was not open and obvious due to attendant circumstances.

{¶ 10} It is undisputed that Shick was appellees' business invitee and that store owners owe business invitees a duty of care to maintain the premises in a reasonably safe condition so that its customers are not unnecessarily and unreasonably exposed to danger. *Paschal v. Rite Aid Pharmacy, Inc.*, 18 Ohio St.3d 203, 203, 480 N.E.2d 474 (1985). "A shopkeeper is not, however, an insurer of the customer's safety." *Id*. Indeed, "a shopkeeper is under no duty to protect business invitees from dangers 'which are known to such invitee or are so obvious and apparent to such invitee that he may reasonably be expected to discover them and protect himself against them.'" *Id*. at 203-204, quoting *Sidle v. Humphrey*, 13 Ohio St.2d 45, 233 N.E.2d 589 (1968), paragraph one of the syllabus.

{¶ 11} In *Paschal*, the Ohio Supreme Court affirmed an order granting summary judgment in favor of a shopkeeper where the plaintiff admitted at deposition that he slipped on a puddle that resulted from melted snow that had been trekked into the store. *Id*. at 203. The plaintiff, who was using crutches at the time

he slipped and fell, testified that he was aware of snow being present after he walked into the store. *Id*. In reaching its conclusion, the *Pashcal* court held:

> It is not the duty of persons in control of such buildings to keep a large force of moppers to mop up the rain as fast as it falls or blows in, or is carried in by wet feet or clothing or umbrellas, for several very good reasons, all so obvious that it is wholly unnecessary to mention them here in detail."

Id., quoting *S. S. Kresge Co. v. Fader*, 116 Ohio St. 718, 723-724, 158 N.E. 174 (1927). *See also Boles v. Montgomery Ward & Co.*, 153 Ohio St. 381, 92 N.E.2d 9 (1950), paragraph two of the syllabus ("Ordinarily, no liability attaches to a store owner or operator for injury to a patron who slips and falls on the store floor which has become wet and slippery by reason of water and slush tracked in from the outside by other patrons.").

{¶ 12} Similarly, in *Pesci v. William Miller & Assocs., L.L.C.*, 10th Dist. Franklin No. 10AP-800, 2011-Ohio-6290, the plaintiff slipped and fell upon entering the main entrance of the office building where she worked. The trial court granted summary judgment in favor of the property owner and the plaintiff appealed. In affirming the summary judgment, the Tenth District held that the property owner had no duty to warn the plaintiff of the wet floor because the presence of moisture at the entranceway, which resulted from slush and snow being tracked inside, was open and obvious. The court observed that the plaintiff had admitted at deposition that "(1) she was aware of the presence of moisture on the floor; (2) she did not need anyone to tell her that the tiles were slippery; and (3) she knew to take more caution when traversing that area of the floor." *Id*. at ¶ 29.

{¶ 13} Other courts have found no negligence due to the open-and-obvious nature of slippery conditions caused by snowy weather. For example, in *Bragg v. GFS Marketplace, L.L.C.*, 2018-Ohio-3781, 109 N.E.3d 1277, ¶ 42 (5th Dist.), the Fifth District observed the axiom that "snow and ice are part of wintertime life in Ohio." In *Hicks v. Kroger Co.*, 5th Dist. Richland No. 96 CA 54, 1996 Ohio App. LEXIS 6193 (Dec. 10, 1996), the court held that a store owner is not liable for falls on water tracked in from ice and/or snow.

{¶ 14} In *Blair v. Vandalia United Methodist Church*, 2d Dist. Montgomery No. 24082, 2011-Ohio-873, ¶ 43, the Second District held that "'[o]rdinarily, no liability attaches to a store owner or operator for injury to a patron who slips and falls on the store floor which has become wet and slippery by reason of water and slush tracked in from the outside by other patrons.'" *Id*. at ¶ 17, quoting Boles, 153 Ohio St. 381, 92 N.E.2d 9 (1950), paragraph two of the syllabus. *See also Towns v. WEA Midway, L.L.C.*, 9th Dist. Lorain No. 06CA009013, 2007-Ohio-5121, ¶ 14 ("[A]ppellant knew it had been raining when she entered the mall and presumptively knew as a result of the rain that the floor might be wet and slippery"); *Lupica v. Kroger Co.*, 3d Dist. Marion No. 9-91-48, 1992 Ohio App. LEXIS 2677 (May 29, 1992) (Water tracked in near a store's entrance, which causes a patron to slip and fall, "will not give rise to a cause of action against the owner or lessee of the store.").

{¶ 15} Shick's testimony demonstrates the slippery floor was open and obvious. She testified that it was a snowy night with "that fluffy kind of snow," and that she "probably stomped [her] feet" when she entered the store. (Shick depo. at

48-49.) She conceded "[t]hat a lot of people had trekked through [the store] with wet footwear." (Shick depo. at 57-58.) And she admitted she noticed the "trekked in snow" before she fell "because [she] wouldn't have afterward." (Shick depo. at 58.) Moreover, Shick testified that the snowy conditions were not unusual because "[i]t was Cleveland in February." (Shick depo. at 45.)

{¶ 16} By her own admission, Shick was aware that the floor inside the Rite Aid store was slippery as a result of snow that had been trekked in by other customers prior to, or at the time of, her arrival. Based on the open-and-obvious nature of the wet conditions inside the store, Shick was on notice that the floor inside the store could be hazardous. Therefore, a warning from Rite Aid concerning the wet floor would have been redundant and unnecessary.

{¶ 17} Shick nevertheless argues that attendant circumstances distracted her attention and obscured the dangerous nature of the slippery floor. Indeed, the presence of attendant circumstances can create an issue of fact as to whether a danger is open and obvious. *Humble v. Boneyard Westlake, L.L.C.*, 8th Dist. Cuyahoga No. 104348, 2016-Ohio-8149, ¶ 8.

{¶ 18} Attendant circumstances are distractions that draw a person's attention away from an open-and-obvious danger and thus reduce the degree of ordinary care a person may ordinarily exercise at the time. *Id*. at ¶ 8, citing *Johnson v. Regal Cinemas, Inc.*, 8th Dist. Cuyahoga No. 93775, 2010-Ohio-1761. "Attendant circumstances" refer to other conditions surrounding the event including "time, place, surroundings or background and the conditions normally existing that would

unreasonably increase the normal risk of a harmful result of the event.'" *Id.*, quoting *Klauss v. Marc Glassman, Inc.*, 8th Dist. Cuyahoga No. 84799, 2005-Ohio-1306, ¶20.

{¶ 19} Shick argues the presence of a "wet floor" sign in another part of the store distracted her attention from the presence of moisture in the location where she fell. However, Shick testified that the "wet floor" sign was near the back of the store and "was not near me." (Shick depo. at 49.) Moreover, as previously stated, Shick admitted she was aware that the floor was wet before she fell. She acknowledged that the floor was "wet" and "dirty." (Shick depo. at 58.) Therefore, there is no evidence that Shick's attention was distracted by attendant circumstances, and the trial court properly granted summary judgment in appellees' favor.

{¶ 20} The sole assignment of error is overruled.

{¶ 21} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
RAYMOND C. HEADEN, J., CONCUR