[Cite as *Richardson v. Kroger Co.*, 2014-Ohio-1302.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Benita Richardson	Court of Appeals No. L-13-1190
Appellant	Trial Court No. CI0201203445
v.	
The Kroger Company	**DECISION AND JUDGMENT**
Appellee	Decided: March 28, 2014

* * * * *

Kimberly C. Kurek and Kenneth L. Mickel, for appellant.

Sarah A. McHugh, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that dismissed appellant's personal injury action against appellee, The Kroger Company, and granted summary judgment in favor of appellee on appellant Benita

Richardson's complaint alleging injuries suffered as a result of a fall in one of appellee's stores. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} From that judgment, appellant sets forth the following assignment of error:

> The trial court erred as a matter of law by granting Kroger's motion for summary judgment and finding that sufficient evidence was not presented as to Kroger's prior knowledge of the hazard.

{¶ 3} The following undisputed facts are relevant to this appeal. On May 29, 2010, appellant went to one of appellee's stores in Toledo, Ohio, to purchase a few items. As she walked down one of the aisles looking for a particular item, she slipped, hitting her elbow and knee and landing in a prone position on the floor. Appellant sustained injuries to her knee for which she subsequently required surgery.

{¶ 4} On May 23, 2012, appellant filed a complaint alleging negligence on the part of appellee. Appellant alleged that, while walking down one of the aisles in the store, she slipped and fell in a puddle of water or other liquid that may have leaked from a nearby cooler. Appellant further alleged that appellee had negligently failed to warn customers of the danger created by water or some other substance that had leaked from the cooler and accumulated on the floor. Appellant claimed that as a direct and proximate result of appellee's negligence, she suffered severe and permanent physical injury, as well as medical bills and other damages. On March 4, 2013, appellee filed a motion for summary judgment and on August 13, 2013, the motion was granted. This timely appeal followed.

{¶ 5} When reviewing a trial court's summary judgment decision, the appellate court conducts a de novo review. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment will be granted when there are no genuine issues of material fact, and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 67, 375 N.E.2d 46 (1978). When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleading, but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery*, 11 Ohio St.3d 75, 79, 463 N.E.2d 1246 (1984).

{¶ 6} To maintain an action for negligence, the plaintiff must show that the defendant owed a duty of care to the plaintiff, that the defendant breached that duty, and that the breach proximately caused the plaintiff's injuries. *See Strother v. Hutchinson*, 67 Ohio St.2d 282, 285, 423 N.E.2d 467 (1981); *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 81 Ohio St.3d 677, 693 N.E.2d 271 (1988). It is undisputed that appellant herein was a business invitee on the premises at the time of the accident. Generally, an owner or occupier of land owes an "invitee" a duty of ordinary care to maintain the premises in a reasonably safe condition and a duty to warn the invitee of "latent or hidden dangers." *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 5. Where negligence revolves around the question of the existence of a hazard or defect, the legal principle prevails that notice, either actual or constructive, of

such hazard or defect is a prerequisite to the duty of reasonable care. *Heckert v. Patrick*, 15 Ohio St.3d 402, 405, 473 N.E.2d 1204 (1984). It is well-established, however, that a business owner is not an insurer of a customer's safety or against all types of accidents that may conceivably occur on his premises. *Paschal v. Rite Aid Pharmacy, Inc.*, 18 Ohio St.3d 203, 480 N.E.2d 474 (1985). Business invitees are to be warned of latent or concealed perils of which the business owner or building occupier has, or reasonably should have, knowledge. *Perry v. Eastgreen Realty Co.*, 53 Ohio St.2d 51, 52, 372 N.E.2d 335 (1978). Appellant correctly states that in order to prevail, a plaintiff asserting negligence must show:

> 1. That the defendant through its officers or employees was responsible for the hazard complained of; 2. That at least one of such persons had actual knowledge of the hazard and neglected to give adequate notice of its presence or remove it promptly; or 3. That such danger had existed for a sufficient length of time reasonably to justify the inference that the failure to warn against it or remove it was attributable to a want of ordinary care. *Calabrese v. Romano's Macaroni Grill*, 8th Dist. Cuyahoga No. 94385, 2011-Ohio-451, ¶ 8, citing *Johnson v. Wagner Provision Co.*, 141 Ohio St. 584, 589, 49 N.E.2d 925 (1943).

{¶ 7} As the Supreme Court of Ohio has declared in *Presley v. City of Norwood*, 36 Ohio St.2d 29, 303 N.E.2d 81 (1973), in the absence of proof that the owner or its agents created the hazard, or that the owner or its agents possessed actual knowledge of

the hazard, no liability may attach. *Id*. at 32. As such, a lack of reported incidents constitutes evidence establishing lack of notice or knowledge. *See Calabrese, supra,* at ¶ 17. Further, an injured party may not rely on mere speculation and conjecture to attempt to demonstrate that the substance gave sufficient notice. *Id*. at ¶ 19.

{¶ 8} On appeal, appellant asserts without supporting legal evidence that appellee had prior notice of water on the floor where she slipped. Appellant maintains that the placement of an absorbent foam "snake" under the cooler situated near the aisle where she fell constituted evidence of notice to appellee of the claimed dangerous condition. To the contrary, appellant did not show that appellee had notice or knowledge of any potentially dangerous condition in the area on the date of her fall, nor did she show that the liquid had been on the floor for an amount of time sufficient to constitute a breach of duty by appellee. The record reflects no prior incidents in the same location or reports of concern in connection with that area of the floor.

{¶ 9} Given these facts and circumstances, reasonable minds can only conclude that appellee did not possess the requisite notice or knowledge of a potential hazard so as to constitute a genuine issue of material fact as to whether liability in negligence could be imposed. As such, summary judgment in favor of appellee was proper. Appellant's sole assignment of error is found not well-taken.

{¶ 10} Upon consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE