

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

Tina Schemmer, et al.

Court of Appeals No. {22}E-25-057

Appellants

Trial Court No. 2024 CV 0300

v.

Corso Flower & Garden Center, et al.

DECISION AND JUDGMENT

Appellees

Decided: September 30, 2026

* * * * *

John K. Rinehardt, Melanie S. Fahey, and
Rachel A. Rinehardt, for appellants.

Cari Fusco Evans, for appellees.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment by the Erie County Court of Common Pleas which granted the motion for summary judgment by defendant-appellee, August Corso Sons, Inc. dba Corso Flower & Garden Center (hereafter, “August” or “Corso”)¹, against plaintiffs-appellants Tina and Gary Schemmer. For the reasons set forth below, this court affirms the trial court’s judgment.

¹ Appellants filed their complaint against two defendants-appellees, Corso Flower & Garden Center and August Corso Sons, Inc. dba Corso Flower & Garden Center. All pleadings were filed by August, while codefendant Corso Flower & Garden Center remained a separate party.

{¶ 2} On June 26, 2024, appellants filed a complaint with jury demand against appellees setting forth claims of negligence towards Tina, a business invitee, and loss of consortium by Tina’s husband, Gary. Tina alleged she suffered physical injuries two years earlier, on July 2, 2022, at the Corso Flower & Garden Center located in Sandusky, Erie County, Ohio, from slipping on accumulated water over the polished concrete floor near a distracting display of enticing plant products for sale. August generally denied the allegations. Following a period of discovery by the parties, August filed a motion for summary judgment, which appellants opposed. On November 4, 2025, the trial court granted August’s motion, for which the trial court explained:

In the above captioned matter Plaintiff Tina Schemmer slipped and fell while walking down a main [a]isle of the garden center of Corso Flower & Garden Center. As there was water in the vicinity of the fall location, Plaintiff Tina Schemmer speculates that she slipped on water on the floor. Plaintiff Tina Schemmer testified that her clothes were not wet as a result of her falling on the ground. Defendant does not dispute that there were small puddles of water in the photograph taken by Plaintiffs sister of Plaintiff lying on the ground after her fall. Corso Flower & Garden is a greenhouse that contains plants that require daily watering. At the entrance of the store as well as throughout the store Defendant has wet floor signs. In construing the facts in a light most favorable to Plaintiffs, reasonable minds can only conclude that the presence of water on the floor of a greenhouse is an open and obvious condition in which no duty is owed by Defendant to Plaintiffs.

{¶ 3} Appellants timely appealed the trial court’s judgment and set forth two assignments of error:

1. The trial court erred in granting summary judgment to Defendants-Appellees because genuine issues of material fact exist regarding whether the transparent pool of water on a mottled, multi-colored concrete floor was an “open and obvious” hazard.
- 2.

2. The trial court erred in granting summary judgment by failing to properly consider attendant circumstances that precluded Plaintiff-Appellee from observing the hazard.

I. Standards of Review

A. Summary Judgment

{¶ 4} An appellate court reviews the grant or denial of summary judgment under a de novo standard of review. *Lepkowski v. Wild Wings Camp & Boat-O-Minimum Water Slip Condominium Owners' Assn.*, 2024-Ohio-5625, ¶ 13 (6th Dist.), citing *Bliss v. Johns Manville*, 2022-Ohio-4366, ¶ 12. In employing the same Civ.R. 56 standard as trial courts, we will uphold summary judgment when there is no issue of material fact; the moving party is entitled to judgment as a matter of law; and when viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only come to one conclusion, and that is adverse to the nonmoving party. *Id.*, citing Civ.R. 56(C). A “material” fact is one which would affect the outcome of the suit under the applicable substantive law. *Charlie's CDJR, LLC v. Charlie's Toledo, Inc.*, 2026-Ohio-18, ¶ 22 (6th Dist.).

{¶ 5} The moving party “bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party’s claims.” *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). “[I]f the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial

and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.” *Id.*

B. Slip-and-Fall Negligence

{¶ 6} It is undisputed Tina was a business invitee of August. A business invitee is an individual who is “‘rightfully on the premises of another for purposes in which the possessor of the premises has a beneficial interest.’” *Gilliam v. Rucki*, 2023-Ohio-1413, ¶ 10 (6th Dist.), quoting *Clark v. BP Oil*, 2005-Ohio-1383, ¶ 10 (6th Dist.). “A business owner owes its invitees a duty of ordinary care ‘in maintaining the premises in a reasonably safe condition so that its customers are not unnecessarily and unreasonably exposed to danger.’” *DeVault v. St. Charles Mercy Hosp.*, 2006-Ohio-1626, ¶ 13 (6th Dist.), quoting *Paschal v. Rite Aid Pharmacy, Inc.*, 18 Ohio St.3d 203 (1985). A business owner is not an insurer of a business invitee’s safety and is under no duty to protect a business invitee from dangers known to the invitee “‘or are so obvious and apparent to such invitee that he may reasonably be expected to discover [the dangers] and protect himself against them.’” *Paschal* at 203-204, quoting *Sidle v. Humphrey*, 13 Ohio St.2d 45 (1968), paragraph one of the syllabus.

To recover in a slip and fall negligence case against the premises owner, the invitee must establish: (1) that the premises owner through its officers or employees was responsible for the hazard complained of; or (2) that at least one of those persons had actual knowledge of the hazard and neglected to give adequate notice of its presence or remove it promptly; or (3) that the danger had existed for a length of time sufficient to justify the inference that the failure to warn against it or remove it was attributable to a lack of ordinary care.

DeVault at ¶ 14.

{¶ 7} Where the open-and-obvious doctrine applies, it “obviates the duty to warn and acts as a complete bar to any negligence claims.” *Armstrong v. Best Buy Co.*, 2003-Ohio-2573, ¶ 5. “A hazard is considered to be open and obvious when it is in plain view and readily discoverable upon ordinary inspection.” *Miller v. First Internatl. Fid. & Trust Bldg., Ltd.*, 2009-Ohio-6677, ¶ 68 (6th Dist.).

Even when an invitee does not actually see the object or danger until after he or she falls, no duty exists when the invitee could have seen the object or danger if he or she had looked. The issue of whether a risk was open and obvious may be decided by the court as a matter of law when only one conclusion can be drawn from the established facts. But, where reasonable minds could reach different conclusions as to the obviousness of the risk, the issue should be resolved by a jury.

Semprich v. Cty. of Erie, 2013-Ohio-3561, ¶ 12 (6th Dist.).

{¶ 8} This court has described attendant circumstances, the existence of which may distract the invitee from exercising the degree of care an ordinary person would have exercised to avoid the danger, as all the factors both contributing to and reducing the risk of the fall that is beyond the control of the injured party. *Townsend v. Dollar Gen. Corp.*, 2010-Ohio-6523, ¶ 24-26 (6th Dist.). “While there is no precise definition of attendant circumstances, they generally include any distraction that would come to the attention of an invitee in the same circumstances and reduce the degree of care an ordinary person would exercise at the time.” *Hunter v. Hall*, 2008-Ohio-4485, ¶ 12 (6th Dist.). “[T]he issue is whether a reasonable person would have seen the danger and not whether a particular plaintiff saw it.” *O’Connor v. Kroger Co.*, 2017-Ohio-1077, ¶ 9 (6th Dist.).

II. Analysis

{¶ 9} We will address Tina's two assignments of error together while conducting a de novo review of the entire record under Civ.R. 56.

{¶ 10} To support its initial evidentiary burden under Civ.R. 56(C) for its motion for summary judgment, August points to the five depositions, with exhibits, taken in this matter: of appellant Tina Schemmer; Michelle Corso, August's office support and part-owner of the business; Priscilla Chumley, August's greenhouse lead; Robert Weaver, August's nursery lead; and Patricia Munson, a seasonal employee for August. August showed where in the record there is no genuine issue as to any material fact that August owed appellant no duty due to the open-and-obvious nature of the business where the plants are frequently watered, the open-and-obvious water puddles, and the open-and-obvious signage warning patrons of the existence of water used on the premises for the plants.

{¶ 11} August argues:

Everything about the store makes it apparent that it is a greenhouse and there may be water on the floor. As can be seen from the photograph taken by Plaintiff's sister in the minutes after the fall, there were small puddles in the area and in the surrounding areas. . . . Corso's has a warning sign at the entrance and leaves out wet floor signs throughout the store every day.

{¶ 12} Tina and her sister, Deb, were looking to buy at Corso's perennial plants on sale, such as lavender, to plant at Deb's home. After selecting some lavender plants from the outside nursery, Tina and Deb entered the greenhouse to purchase those plants and

some hanging baskets caught their attention. Tina testified, “And then we were heading toward the baskets, and that’s when I slipped.” She explained:

Alls I remember is heading toward the baskets, and then I -- I put my, you know, foot down to step, and I just, like, flew back and I -- I believe my hands flew in the air. And the next thing I know I was like on the ground, and I felt something pop in my back and I panicked. I just couldn’t believe what had -- that I fell.

{¶ 13} We know the physical layout of where Tina fell from deposition exhibits in the record: photographs taken by Deb immediately after Tina fell (and while Tina still lay on the ground) and from the surveillance video from inside the greenhouse that day. Tina testified she was pushing a cart holding the unpurchased lavender plants when she fell. When Tina was directly asked, “Who was pushing the cart?” she replied, “I was pushing the cart. I’m controlling. My sister says, I always want to push the cart.” However, the surveillance video in record shows, and Tina now argues on appeal, that she was walking alongside the “large, ‘two-tiered’ nursery cart” that her sister was pushing.

{¶ 14} When Tina was asked when she first noticed the water on the ground, she testified:

No, I don’t -- trying to think how. I’m, I think I’m like, what happened? And I -- I knew something happened and then Deb said there’s - - I think she said, I’m not 100 percent sure because I was -- I was freaking out, that there’s water there. So that’s kind of how I remember it. . . . I didn’t see anything because I was just, like, looking up. I couldn’t -- I mean, I think I was told, and I’m not sure if Deb told me or if I heard people talking, but all I cared about was what am I going to do?

{¶ 15} Yet, Tina did not fall into the puddle of water that allegedly caused her to slip:

Q. As far as where you were laying on the floor, I -- did you get wet? Were your clothes wet?

A. No.

Q. Okay. So if there -- wherever the water was, it wasn't where you fell onto. You weren't laying in water at the time of the fall?

A. Not that I know of. I mean, I didn't feel dampness or anything. . . . So I mean, I was told [by Deb] it was water. . . . I didn't see any water when I was at Corso's. You know, I didn't -- I didn't see it even after. I didn't, like, look around. I was told that I slipped on water. I -- that I recall, I mean.

{¶ 16} With respect to the three-part test for a slip-and-fall negligence case, we find that even if we concede that Tina established that August was responsible for the water puddles near where she fell, August successfully points out that Tina failed to show that August had actual knowledge of the specific water puddle that allegedly caused her fall and neglected to give advance notice of its presence or remove it promptly. Tina testified “No” in response to the question, “[D]id you see any Corso’s employees watering any of the plants?” Tina further testified that she did not notice the distinct, yellow sign at the greenhouse entrance warning customers as follows: “NOTICE: Non-slip footwear is recommended. Plant watering & rain result in wet surfaces.” August further successfully points out that Tina failed to show that the water puddle was dangerous and existed for a length of time sufficient to justify the inference that the failure-to-warn-against-it or to remove it was attributable to a lack of ordinary care. Tina admitted, and the surveillance video confirmed, that although she did not know what caused her to slip, it was not the water puddle because she did not land in it and she was not wet from it or from anything else wet on the ground. Finally, August points to Deb’s

own photographs showing Tina on the ground a distinct distance away from two small, open-and-obvious water puddles.

{¶ 17} Upon de novo review we find that August met its burden of establishing the absence of a genuine issue of material fact on the essential elements of Tina’s slip-and-fall negligence claim against it.

{¶ 18} The burden then shifts to Tina to set forth specific facts showing that there is a genuine issue of material fact for trial. Tina argues in support of her first assignment of error that August’s employees admitted in depositions that “at the bottom of this [south] wall allowed water from the outdoor garden to seep through and pool in the main indoor aisle.” The surveillance video shows that Tina did not fall near any walls, but in a wide aisle at least one body length away from any walls. In any event, Tina argues the south wall was a known source of water seepage and was an ongoing problem for which August’s employees knew they had to monitor and squeegee the water away. Tina further argues that August’s employees admit there was no warning sign specifically where she fell. Despite that knowledge, Tina argues, “they took no meaningful steps to remedy the condition until after she was injured.” Then after her fall, Tina argues, “The most significant evidence comes from what Appellees did after Mrs. Schemmer’s fall.” August’s employees caulked the south wall to stop the water leaking, which under Evid. 407 is not admissible evidence to prove negligence.

{¶ 19} Further, Tina argues the open-and-obvious doctrine does not apply because, “The water was clear and transparent, sitting atop a mottled, multi-colored concrete floor

that acted as active camouflage.” Tina insists that “hazardous pools of water on Corso’s retail floor are not inherent, nor are they typically present on the freshly squeegeed areas of the floor.” Yet Tina’s sister’s photos show obvious and easily distinguishable water puddles away from where Tina lay on the concrete floor. One water puddle was a distinct distance, about two feet, from where Tina lay on the ground, and the other water puddle was even further from Tina, about a body length away. Tina did not lie in any water.

{¶ 20} Specifically, Tina argues that a material fact exists where Ms. Munson testified in her deposition that she had prior knowledge of the south-wall water seepage that pools, was specific trained to identify it, and was responsible to remove those hazards, yet testified she did not see any water where Tina lay despite “specifically looking at the area where the hazard existed [and] failed to see the water upon direct approach.” We are not persuaded, as the water puddles were discernible distances from where Tina lay, and the surveillance video shows she slid directly down and fell directly where she slipped.

{¶ 21} Ultimately Tina does not point to any evidence that any other reasonable person who patronized the Corso greenhouse that day was prevented from seeing the water puddles shown in her sister’s photos. The surveillance video shows Tina’s sister, who was walking adjacent to and about two steps ahead of Tina, did not have any difficulty walking across the same section of concrete floor. Tina merely argues that the attractive plant displays, or hanging baskets, were the distraction.

{¶ 22} Tina does not point to any evidence that she actually stepped into a water puddle, regardless of the source of the puddle and regardless of the underlying color of the concrete. Tina did not lie in any water after she fell.

{¶ 23} Nevertheless, in support of her second assignment of error Tina urges us to find attendant circumstances for three reasons: “(1) the mottled, multi-colored floor that actively camouflaged the transparent water; (2) the hanging basket displays that Appellees intentionally designed to draw customer attention upward; (3) the large, two-tiered nursery cart that obstructed Mrs. Schemmer’s view of the floor.”

{¶ 24} Tina argues:

Here, the trial court failed to conduct the requisite fact-intensive analysis. Had it done so, it would have recognized that the specific characteristics of this hazard--the transparency of the water against a mottled concrete backdrop, the distraction of eye-level merchandise, and the visual obstruction of a large nursery cart--create a genuine issue of fact precluding summary judgment.

{¶ 25} We disagree. The facts are undisputed that Tina was not distracted by an unreasonable circumstance of August’s making. Tina knew she was at a garden center with the intention of buying live plants, which she and her sister placed on a see-through wire mesh cart to take to the checkout register. Tina’s decision of where and how to approach the hanging baskets, or plant displays, on her way to the checkout register, was well within her control, and had she looked, she would have seen the open-and-obvious water hazards and the warning signs. Deb’s photos clearly show two distinct water puddles, which were not camouflaged by the concrete floor. Further, neither Deb’s photos nor the surveillance video confirmed Tina was pushing a cart at the time of her

fall. Instead, the photos show no cart, and the video shows that Tina was walking down an open aisle alongside her sister, who was pushing the see-through, two-tier wire cart with about four plants on each tier. The concrete floor is visible through the wire mesh of the cart, failing to make the cart a water-hazard-camouflaging device. Deb was walking ahead of Tina and passed over the concrete floor without any difficulty. Then seconds later, as Tina walked next to Deb's cart in the open aisle, she suddenly slid straight to the ground on her behind.

{¶ 26} Tina proffers speculation, rather than evidence, of attendant circumstances. Speculation does not present a jury question as to whether the hazards might be deemed unreasonable or insubstantial. The evidence in the record indicates that Tina “simply missed seeing a hazard that was clearly visible until after she fell.” *Black v. Discount Drug Mart, Inc.*, 2007-Ohio-2027, ¶ 18 (6th Dist.). We do not find that Tina met her burden to create any issues of fact that were both genuine and material to establish any exceptions to the application of the open-and-obvious doctrine because there are no attendant circumstances factors contributing to Tina's fall beyond her control.

{¶ 27} Upon de novo review we find that August is entitled to judgment as a matter of law after viewing the evidence most strongly in favor of Tina. Reasonable minds can only come to one conclusion, and that is adverse to Tina. The trial court properly granted summary judgment to August because August did not owe Tina a duty of care for an open-and-obvious condition as a matter of law.

{¶ 28} Tina's first and second assignments of error are not well-taken.

III. Conclusion

{¶ 29} On consideration whereof, this court finds that there remain no genuine issues of material fact and, after construing all the evidence most strongly in favor of appellants, appellees are entitled to summary judgment as a matter of law. The judgment of the Erie County Court of Common Pleas is affirmed. Appellants are 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.

Thomas J. Osowik, P.J.

JUDGE

Myron C. Duhart, J.

JUDGE

Charles E. Sulek, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.
