NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2009 CA 0032

BARBARA PRICE

VERSUS

WATERWORKS DISTRICT #1 AND TERREBONNE PARISH CONSOLIDATED GOVERNMENT

Judgment rendered September 11, 2009.

* * * * * *

Appealed from the
32nd Judicial District Court
in and for the Parish of Terrebonne, Louisiana
Trial Court No. 150,733
Honorable Randall L. Bethancourt, Judge

* * * * * *

KEVIN D. THOMPSON
HOUMA, LA

ATTORNEY FOR
PLAINTIFF-APPELLANT
BARBARA PRICE

DANNA E. SCHWAB
KATHRYN W. RICHARD
HOUMA, LA

ATTORNEYS FOR
DEFENDANTS-APPELLEES
WATERWORKS DISTRICT #1 and
TERREBONNE PARISH
CONSOLIDATED GOVERNMENT

* * * * * *

BEFORE: CARTER, C.J., GUIDRY, AND PETTIGREW, JJ.

PETTIGREW, J.

Plaintiff-appellant Barbara Price appeals from the trial court's grant of summary judgment in favor of defendants-appellees Consolidated Waterworks District #1 ("Waterworks") and Terrebonne Parish Consolidated Government ("TPCG") (collectively referred to as "defendants") that dismissed with prejudice all claims of Mrs. Price. For the reasons that follow, we affirm.

According to the record, Mrs. Price allegedly fell and injured her left leg and lower back when she slipped on water as she entered the Waterworks office on January 19, 2007, to pay her bill. Mrs. Price was later treated and released from Terrebonne Medical Center and ultimately sought treatment from Dr. Pat Haydel, who referred her to Clearview Imaging Center and Houma Orthopedic Clinic. As a result of the injuries she sustained in this accident, Mrs. Price filed suit in the 32nd Judicial District Court against the Waterworks and TPCG on March 8, 2007.

On February 13, 2008, defendants filed a motion for summary judgment seeking dismissal of the claims asserted by Mrs. Price. Following a hearing, the trial court signed a judgment granting defendants' motion for summary judgment on March 31, 2008. It is from this judgment that Mrs. Price has appealed and challenges the trial court's determination that the TPCG lacked actual or constructive notice of the presence of water on the floor of the Waterworks' building on the morning of her fall.

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. **Johnson v. Evan Hall Sugar Co-op, Inc.**, 2001-2956, p. 3 (La. App. 1 Cir. 12/30/02), 836 So.2d 484, 486. Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that mover is entitled to judgment as a matter of law. La. Code Civ. P. Art. 966(B). Summary judgment is favored and is designed to secure the just, speedy, and inexpensive determination of every action. La. Code Civ. P. art. 966(A)(2); **Thomas v. Fina Oil and Chemical Co.**, 2002-0338, pp. 4-5 (La. App. 1 Cir. 2/14/03), 845 So.2d 498, 501-502.

On a motion for summary judgment, the burden of proof is on the mover. If, however, the mover will not bear the burden of proof at trial on the matter that is before the court on the motion for summary judgment, the mover's burden on the motion does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. La. Code Civ. P. art. 966(C)(2); **Robles v. Exxonmobile**, 2002-0854, p. 4 (La. App. 1 Cir. 3/28/03), 844 So.2d 339, 341.

In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. **Allen v. State ex rel. Ernest N. Morial New Orleans Exhibition Hall Authority**, 2002-1072, p. 5 (La. 4/9/03), 842 So.2d 373, 377. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to this case. **Foreman v. Danos and Curole Marine Contractors, Inc.**, 97-2038, p. 7 (La. App. 1 Cir. 9/25/98), 722 So.2d 1, 4, writ denied, 98-2703 (La. 12/18/98), 734 So.2d 637.

In the instant case, defendants assert none of material facts that Mrs. Price claims to be in dispute are actually controverted; therefore, the trial court was correct in granting summary judgment. In their brief to this court, defendants point out Mrs. Price stated in her affidavit that it was raining on the day of the accident at the time she entered the Waterworks building. Defendants concede neither the Waterworks nor TPCG has claimed it was not raining. Secondly, defendants admit they did not have a written inspection policy regarding their floors. Third, defendants further admit there has been no allegation that wet floor warning signs were posted prior to Mrs. Price's fall. Fourth, defendants argue there is no conflict between the affidavits of Mrs. Price and that of Stephen

Hornsby, the general manager of the Waterworks. Mrs. Price further attested to the fact she fell in water upon entering the Waterworks building, that it was raining that morning, and that she did not see any warning signs. For his part, Mr. Hornsby stated simply that on the morning of the incident, no one reported there was water on the floor at the entrance of the building. Finally, defendants assert there is no evidence of actual or constructive notice on the part of the Waterworks or TPCG as required by La. R.S. 9:2800.

Louisiana Revised Statute 9:2800 is applicable to an interpretation of the legal responsibility of public entities such as the Waterworks and TPCG.[1] Said statute provides in pertinent part as follows:

> **§ 2800. Limitation of liability for public bodies**
>
> A. A public entity is responsible under Civil Code Article 2317 for damages caused by the condition of buildings within its care and custody.
>
> . . . .
>
> C. . . . [N]o person shall have a cause of action based solely upon liability imposed under Civil Code Article 2317 against a public entity for damages caused by the condition of things within its care and custody unless the public entity had actual or constructive notice of the particular vice or defect which caused the damage prior to the occurrence, and the public entity has had a reasonable opportunity to remedy the defect and has failed to do so.
>
> D. Constructive notice shall mean the existence of facts which infer actual knowledge.

In order for TPCG and the Waterworks to be liable in this case, it was incumbent upon Mrs. Price to show the Waterworks and TPCG had actual or constructive notice of the existence of water on the floor at the Waterworks' building prior to Mrs. Price's fall and thereafter failed to take corrective measures within a reasonable time.

In support of their motion for summary judgment, defendants attached an affidavit of Stephen Hornsby, the general manager of the Waterworks. In his affidavit, Mr. Hornsby stated he was familiar with the accident involving Mrs. Price, and that on the morning of the incident, no one reported there was water on the floor at the entrance of

---

[1] La. R.S. 9:2800(G)(1) provides in pertinent part, "Public entity" means and includes the state and any of its branches, departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, employees, and political subdivisions and the departments, offices, agencies, boards, commissions, instrumentalities, officers, officials, and employees of such political subdivisions.

the building. The Louisiana Supreme Court previously held in its opinion in **Jones v. Hawkins**, 98-1259, p. 6 (La. 3/19/99), 731 So.2d 216, 220, that the absence of a plan of inspection in no way shows or implies that an employee of the appropriate public entity has actual knowledge of a dangerous defect or condition. Having shown neither the Waterworks nor TPCG had actual notice of a defect, it became Mrs. Price's duty to show evidence of constructive notice.

In her brief to this court, Mrs. Price pointed to the fact it was raining on the day of her accident and the Waterworks did not have a written inspection policy regarding its floors. It is urged that these issues raise material issues of fact as to whether or not the Waterworks possessed constructive notice. Mrs. Price failed however to introduce evidence showing Waterworks employees had knowledge as to the presence of water on the floor during previous rainstorms or of prior slip and fall incidents at that location.

Due to the lack of evidence as to actual or constructive notice by defendants, we conclude the trial court was correct in its determination there existed no evidence of material fact that would preclude summary judgment.

For the above and foregoing reasons, the trial court's rendition of summary judgment in favor of defendants-appellees, the Waterworks and TPCG, that dismissed with prejudice all claims of plaintiff-appellant, Mrs. Price, is hereby affirmed. All costs associated with this appeal shall be assessed against plaintiff-appellant, Mrs. Price. We issue this memorandum opinion in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.1B.

AFFIRMED.