

**STATE OF LOUISIANA  
COURT OF APPEAL, THIRD CIRCUIT**

**09-44**

**AQUILINE ARNOLD**

**VERSUS**

**BROOKSHIRE GROCERY COMPANY, ET AL**

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**APPEAL FROM THE  
SIXTEENTH JUDICIAL DISTRICT COURT  
PARISH OF IBERIA, NO. 109982-F  
HONORABLE EDWARD LEONARD JR., DISTRICT JUDGE**

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**ELIZABETH A. PICKETT  
JUDGE**

\*\*\*\*\*

Court composed of John D. Saunders, Michael G. Sullivan, and Elizabeth A. Pickett,  
Judges.

**AFFIRMED.**

**Charles J. Foret  
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Brookshire Grocery Company**

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Aquiline Arnold**

1 **PICKETT, J.**

2 The plaintiff, Aquiline Arnold, appeals a judgment of the trial court dismissing  
3 her suit against the defendant, Brookshire Grocery Company (d/b/a Super One Foods  
4 and hereinafter referred to as Brookshire's), with prejudice, at her costs. We affirm  
5 the judgment of the trial court.

6 **FACTS**

7 This case arises out of a slip and fall which happened at the Brookshire's store  
8 in New Iberia on June 21, 2006. The plaintiff filed suit on June 19, 2007, basing her  
9 claim on La.R.S. 9:2800.6 which covers actions causing injury, death, or loss  
10 "because of a fall due to a condition existing in or on a merchant's premises." In due  
11 course, on January 28, 2007, the defendant filed a motion for summary judgment. A  
12 hearing on the defendant's motion was set for March 14, 2008, but upon motion filed  
13 by the plaintiff was continued until May 30, 2008. Thereafter, on May 22, 2008, the  
14 plaintiff filed a supplemental and amending petition, which for the first time raised  
15 the issue of spoliation.

16 The defendant's motion for summary judgment was heard on May 30, 2008.  
17 A judgment sustaining the motion, dismissing the plaintiff's claims under La.R.S.  
18 9:2800.6, was signed June 11, 2008, and a hearing on the claim of spoliation, raised  
19 by the plaintiff's supplemental and amending petition, was set for July 23, 2008.

20 Subsequently, the defendant filed an exception of no cause of action and  
21 requested a continuance of the July 23, 2008 hearing until August 28, 2008. The  
22 continuance was granted without opposition, and, following the August 28, 2008  
23 hearing, the defendant's exception was sustained and the plaintiff's suit dismissed  
24 with prejudice at her costs. The plaintiff appeals.



1 clean-up of the mess did not impair the plaintiff's cause of action under La.R.S.  
2 9:2800.6. The following is well settled: "Imposition of liability under the theory of  
3 spoliation of evidence is inappropriate when the record reveals no intentional  
4 destruction of evidence for the purpose of depriving the opposing party of its use.  
5 *Randolph v. General Motors Corp.*, 93-1983 (La.App. 1 Cir. 11/10/94), 646 So.2d  
6 1019; *writ denied*, 95-0194 (La.3/17/95), 651 So.2d 176." *Gordon v. State Farm Ins.*  
7 *Co.*, 97-270, p. 6 (La.App. 5 Cir. 9/30/97), 700 So.2d 1117, 1120.

8 Accordingly, for the reasons stated, the judgment of the trial court is affirmed.  
9 All costs of this appeal are assessed against the plaintiff/appellant, Aquiline Arnold.

10 **AFFIRMED.**