STATE OF MICHIGAN

COURT OF APPEALS

JOSIE BELL MOORE,

Plaintiff-Appellee,

v

SARAH CHRISTIAN and
WARREN CHRISTIAN,

Defendants-Appellants.

UNPUBLISHED
June 8, 1999

No. 206218
Wayne Circuit Court
LC No. 96-612461 NO

Before: Murphy, P.J., and Gage and Zahra, JJ.

PER CURIAM.

Defendants appeal as of right from an amended final judgment in favor of plaintiff following a jury trial in this premises liability action. We vacate the amended final judgment and remand for entry of a judgment of no cause of action.

Defendants first contend that the trial court erred in determining as a matter of law that plaintiff was an invitee when she fell in the basement of defendants' home. For purposes of this appeal, we need not address this issue. Even assuming arguendo that plaintiff occupied the status of an invitee on defendants' property, defendants are still entitled to summary disposition.

Defendants argue that the trial court erred in refusing to grant their motion for directed verdict because plaintiff failed to adduce evidence to establish that defendants knew or should have known of the existence of the alleged defects that caused plaintiff's fall. In deciding if the trial court erred in denying a motion for a directed verdict, we review the evidence and all legitimate inferences that may be drawn in a light most favorable to the nonmoving party. *Hunt v Freeman*, 217 Mich App 92, 98-99; 550 NW2d 817 (1996). Directed verdicts are generally viewed with disfavor in negligence cases. *Id*. at 99. If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury. *Id*.

In light of our assumption that plaintiff was an invitee on defendants' property at the time of her accident, the following discussion of premises liability is instructive:

> The occupier [of land] is not an insurer of the safety of invitees, and his duty is only to exercise reasonable care for their protection. He must not only warn the visitor of dangers of which he knows, but must also inspect the premises to discover possible defects. There is no liability, however, for harm resulting from conditions from which no unreasonable risk was to be anticipated, or those which the occupier did not know and could not have discovered with reasonable care. The mere existence of a defect or danger is not enough to establish liability, unless it is shown to be of such a character *or* of such duration that the jury may reasonably conclude that due care would have discovered it. [*Kroll v Katz*, 374 Mich 364, 373; 132 NW2d 27 (1965), quoting Prosser, Torts (2d ed), p 459 (emphasis in original).]

Here, there is no evidence that defendants knew or should have known of the existence of the defective floor tile at the time of plaintiff's accident. Plaintiff admitted that she did not notice the tile before she fell, and that she did not know how long the tile had been defective. Rather, she only noticed after she fell that the tile was loose, scattered in different pieces, and that the ends of the tile were chipped off. Because absolutely no evidence established the length of time that the tile had been defective, there was no basis for the jury to infer that the tile had been defective for a sufficient period of time to provide constructive notice of the defect to defendants. Moreover, there was nothing about the character of the defective tile to establish that defendants knew or should have known of its existence. Plaintiff presented no evidence, such as expert testimony, to establish that there was some correlation between the ease with which the tile slipped and the length of time that the tile had been loose. Also, contrary to plaintiff's suggestion, there was no evidence that a water problem in the basement caused the tile to deteriorate. It should be noted that plaintiff has also claimed that a plastic toy was involved in her fall and that the toy was a defect. There is, again, no evidence that defendants knew or should have known of the presence of the toy on the floor of the basement. Because plaintiff failed to present any evidence that defendants knew or should have known of the existence of the alleged defects, we conclude that the trial court erred in denying defendants' motion for directed verdict.

We also note briefly that plaintiff failed to present sufficient evidence to create a jury-submissible issue regarding causation.[1]

> [A]t a minimum, a causation theory must have some basis in established fact. However, a basis in only slight evidence is not enough. Nor is it sufficient to submit a causation theory that, while factually supported, is, at best, just as possible as another theory. Rather, the plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred. [*Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994).]

Plaintiff initially explained that she fell after she stepped on a toy. She then clarified, "When I put my feet down, the toy slipped and, you know, and the tile slipped, I did a split." However, plaintiff admitted that prior to her fall she saw neither the toy nor the allegedly defective tile, and acknowledged

she had no way of knowing on which tile the toy had been located when she encountered it. Plaintiff also failed to present any other witnesses who could offer testimony regarding the cause of plaintiff's accident. Because plaintiff did not see the tile before her fall and thus could not establish beyond mere speculation or conjecture that the tile played a part in her fall, we conclude that the trial court should have granted defendants' motion for JNOV on this basis. *Skinner*, *supra* at 164-170.

In light of our resolution of these issues, we need not address defendants' remaining arguments on appeal.

The amended final judgment is vacated and the case is remanded to the trial court for entry of a judgment of no cause of action.

/s/ Hilda R. Gage
/s/ Brian K. Zahra

[1] Defendants raised this issue in their motion for judgment notwithstanding the verdict (JNOV) and/or new trial. The standard of review for JNOV requires review of the evidence and all legitimate inferences in the light most favorable to the nonmoving party; only if the evidence fails to establish a claim as a matter of law should a motion for JNOV be granted. *Phinney v Perlmutter*, 222 Mich App 513, 524-525; 564 NW2d 532 (1997).