STATE OF MICHIGAN

COURT OF APPEALS

MISTY LYNN DEWEY,

Plaintiff-Appellant,

v

MEIJER, INC.,

Defendant-Appellee.

UNPUBLISHED
July 7, 2000

No. 213867
Oakland Circuit Court
LC No. 97-002619-NO

Before: Jansen, P.J., and Hood and Saad, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order that granted summary disposition to defendant pursuant to MCR 2.116(C)(10) in this slip and fall case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff argues that summary disposition was improperly granted where genuine issues of material fact existed regarding the source of the banana peel and whether defendant should be charged with constructive notice of the defective condition of its parking lot. We disagree. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), this Court reviews the entire record de novo to determine whether a genuine issue of material fact exists precluding judgment for the moving party as a matter of law. *Hampton v Waste Management of Michigan, Inc*, 236 Mich App 598, 602; 601 NW2d 172 (1999).

As an invitee, plaintiff was entitled to the highest level of protection under premises liability law. *Id.* at 603. That is, defendant would be liable for injury resulting from an unsafe condition caused by its own or an employee's active negligence, or, if otherwise caused, where defendant had actual notice of the condition or should be charged with constructive notice given the length of time that the condition existed. *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968); *Berryman v K Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992). Here, while a reasonable inference may be drawn that the banana peel deteriorated to its "black" and "mushy" state while on defendant's pavement, no reasonable inference can be drawn as to the source of the peel or the length of time it was there before plaintiff slipped on it. Plaintiff presented no evidence regarding who or how

the peel was deposited on defendant's parking lot. Plaintiff presented no evidence regarding who deposited or how the peel was deposited on defendant's parking lot.

We further find plaintiff's reliance on *Ritter v Meijer, Inc,* 128 Mich App 783; 341 NW2d 220 (1983), to be misplaced. In that case, the plaintiff slipped and fell on a grape that was on the floor of the defendant's produce department. This Court affirmed the trial court's denial of summary disposition to the defendant, finding that an issue of fact existed whether the defendant had actual or constructive notice of the slippery condition given the evidence that the grape had previously been stepped on. This Court found the defendant's contention that it was possible for the grape to be dropped on the floor and stepped on immediately prior to the plaintiff's fall to be "pure conjecture." *Id.* at 786-787. The present case is factually distinguishable from *Ritter*. The grape in that case was on the floor of the defendant's produce department, which the defendant had a duty to inspect regularly for such foreseeable things as fallen fruit or wet spots. As this Court stated, *id.* at 786: "[A] stomped upon grape is sufficient evidence to prove constructive notice of a slippery condition." To the contrary, no reasonable inference of constructive notice can be drawn from the mere existence, without more, of a deteriorated banana peel in defendant's gas station parking lot. Here, it is plaintiff's claim, not defendant's, that is based on pure conjecture. Accordingly, summary disposition was properly granted.

Affirmed.

/s/ Kathleen Jansen
/s/ Harold Hood
/s/ Henry William Saad