

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA KING and RICHARD KING,

Plaintiffs-Appellants,

V

SHOWCASE CINEMAS-WESTLAND,

Defendant-Appellee.

UNPUBLISHED

October 5, 2001

No. 223992

Wayne Circuit Court

LC No. 98-805128-NO

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

Plaintiffs appeal by right from a judgment of no cause of action entered in this premises liability action. We affirm.

Plaintiff Pamela King slipped and fell because of a slippery substance on the floor of defendant's theater. She sought to prove that defendant had actual notice of the condition by testifying that after she fell, another patron remarked that she had almost fallen on a slippery substance and had notified the manager. The trial court ruled that the statements were inadmissible hearsay.

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made. Any error in the admission or exclusion of evidence does not require reversal unless a substantial right of the party is affected. [*Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999) (citations omitted).]

"Hearsay evidence is not admissible at trial unless it falls within an established exception" to the hearsay rule. *McCallum v Dep't of Corrections*, 197 Mich App 589, 603; 496 NW2d 361 (1992). Plaintiffs contend that the statement was admissible under MRE 803(1) and MRE 803(2).

Plaintiffs failed to preserve the issue of admissibility under MRE 803(1) because they have not cited any case law or other authority in support of their position. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993). That aside, the statement did not qualify as a present sense impression because it did not provide an explanation or description of the

perceived event. *People v Hendrickson*, 459 Mich 229, 236 (Kelly, J.), 242 (Boyle, J.); 586 NW2d 906 (1998). The statement was not admissible under MRE 803(2) because it did not relate to the circumstances of plaintiff's fall. *Berryman v Kmart Corp*, 193 Mich App 88, 100-101; 483 NW2d 642 (1992).

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper