STATE OF MICHIGAN

COURT OF APPEALS

DENNIS KENNEDY and LAURIE KENNEDY,

Plaintiffs-Appellants,

v

MEIJER COMPANIES, LTD.,

Defendant-Appellee.

UNPUBLISHED
November 20, 2001

No. 224751
Jackson Circuit Court
LC No. 98-088532-NO

Before: Fitzgerald, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

In this slip and fall case, plaintiffs alleged that as a result of defendant's negligence, plaintiff Dennis Kennedy (hereinafter "plaintiff") fell after stepping on a slippery substance on the floor in one of defendant's stores. After deliberations, the jury returned a verdict of no cause of action. Plaintiffs appeal as of right. We affirm.

Plaintiffs first argue that the trial court erred in denying plaintiffs' motion for new trial on the basis that the jury verdict was against the great weight of evidence. Specifically, plaintiffs contend that defendant presented no evidence to show the last time an employee had been in the area, such as when the aisles had been inspected last and when the shelves had been stocked last, and that there was doubt as to when the floors had been cleaned last on the basis of the amount of dirt and debris observed on plaintiff's jacket.

First, we note that plaintiffs have provided no legal support for their contention, and thus this issue is effectively abandoned. *Schellenberg v Rochester, Michigan, Lodge No 2225 of the Benev & Protective Order of Elks of the USA*, 228 Mich App 20, 49; 577 NW2d 163 (1998). Nonetheless, plaintiffs' argument is without merit. Plaintiffs' argument suggests that defendant had the burden to show that the aisles had been inspected within a reasonable time before the incident, that the spill had not been present for an unreasonable time, and that the floors had not been cleaned that day or within a reasonable time before the incident. Recently, in *Clark v K-Mart Corp*, __ Mich __, __; __ NW2d __ (2001) (Docket No. 117511, decided 10/23/01), our Supreme Court reiterated the duties of a storekeeper to customers regard dangerous conditions:

> The duties of a storekeeper to customers regarding dangerous conditions are well established and were set forth in *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968):

> "It is the duty of a storekeeper to provide reasonably safe aisles for customers and he is liable for injury resulting from an unsafe condition either caused by the active negligence of himself and his employees or, if otherwise caused, where known to the storekeeper or is of such a character or *has existed a sufficient length of time that he should have had knowledge of it*." [Quoting *Carpenter v Herpolsheimer's Co*, 278 Mich 697; 271 NW 575 (1937) (syllabus) (emphasis added by the *Serinto* Court).]

While plaintiffs in the present case focus on the established duties of a storekeeper, their argument misapprehends the burden of proof. In a negligence action, it is the plaintiff's burden to demonstrate that the storekeeper breached its duty, rather than for the storekeeper to show otherwise. *Berryman v K Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992); *Johnson v Bobbie's Party Store*, 189 Mich App 652, 659; 473 NW2d 796 (1991); *Winfrey v S S Kresge Co*, 6 Mich App 504, 507; 149 NW2d 470 (1967).

A trial court's determination that a verdict is not against the great weight of evidence should receive substantial deference from us and only be reversed if we find the trial court has abused its discretion. *Morinelli v Provident Life & Accident Ins Co*, 242 Mich App 255, 261; 617 NW2d 777 (2000). Upon review of the record, it is apparent that the evidence was sufficient to support the jury verdict, and thus the trial court did not abuse its discretion in denying plaintiffs' motion for a new trial.

Plaintiffs also argue that the manner in which the trial court answered a question from the jury, during deliberations, was improper and both influenced and prejudiced the jury. Hours after jury deliberations began, the jury sent out a note asking, "[d]oes 'reasonable care' of a retail possessor include the responsibility for all accidents that happen to an invitee while on premise?" Plaintiff contends that the trial court erred by making the following response to the jury: "A retailer is not responsible for 'all' accidents. It is responsible for those that could be prevented by the exercise of reasonable care, as set forth in [SJI2d] 10.02."

In situations where standard jury instructions may not be sufficient, the trial court has the discretion to give additional instructions. If given, the additional instructions must be "concise, understandable, conversational, unslanted, and nonargumentative," and they must be based on applicable law and accurately state the law. MCL 2.516(D)(4); *Chmielewski v Xermac, Inc*, 216 Mich App 707, 713-714; 550 NW2d 797 (1996), aff'd 457 Mich 593 (1998); *Wengel v Herfert*, 189 Mich App 427, 431; 473 NW2d 741 (1991). "A trial court's decisions regarding jury instructions are reviewed for an abuse of discretion." *Grow v WA Thomas Co*, 236 Mich App 696, 702; 601 NW2d 426 (1999). We will not reverse the trial court's decision in relation to the supplemental instruction unless failure to do so would be in conflict with substantial justice. *Id*.

Here, the supplemental instruction was warranted because it is apparent that the jury was unable to correctly understand the applicable law. Although the court should not lead the jury in one manner or another, before the jury can make an informed decision it first must possess the necessary knowledge to do so. Although the instruction given was not worded exactly how plaintiffs wanted, there was nothing incorrect or misleading about the instruction. Storekeepers are indeed only responsible for those accidents that reasonable care could have prevented. *Winfrey*, *supra* at 507. The role of the trial court is to provide the proper jury instructions so that

speculation as to the law does not occur. *McKine v Sydor*, 387 Mich 82, 89; 194 NW2d 841 (1972). That is what the court in this instance did.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Jane E. Markey