IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

PATRICIA A. ROWAN,	)	
	)	C.A. No. 02C-06-021 JTV
Plaintiff,	)	
	)	
v.	)	
	)	
TOYS 'R' US, INC., a Delaware corporation,	)	
	)	
	)	
Defendant.	)	

Submitted: March 26, 2004
Decided: June 18, 2004

William D. Fletcher, Jr., Esq., Schmittinger & Rodriguez, Dover, Delaware. Attorney for Plaintiff.

Pamela J. Cholden, Esq., Wilmington, Delaware. Attorney for Defendant.

Upon Consideration of Defendant's
Motion for Summary Judgment
DENIED

VAUGHN, Resident Judge

Rowan v. Toys 'R' Us, Inc.
C.A. No. 02C-06-021
June 18, 2004

ORDER

Upon consideration of the defendant's motion for summary judgment, the plaintiff's response, and the record of the case, it appears that:

1. The defendant, Toys 'R' Us, Inc., has moved for summary judgment, contending that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. The plaintiff contends that there are genuine issues of material fact concerning the defendant's alleged negligence and that the motion for summary judgment should be denied.

2. The facts viewed in the light most favorable to the plaintiff, Patricia A. Rowan, are as follows. On June 29, 2000, at about 12:00 p.m., the plaintiff and a companion, Janice Zak, went into the Toys 'R' Us store in Dover. It had been raining that day. It was still misting when they walked from the parking lot into the store's entrance area. The defendant's incident report noted that it was "raining." Thus, for purposes of this motion, I will take as fact that it was still raining when the plaintiff and her companion entered the store. The store entrance consists of outer doors, a vestibule, and inner doors. The parking lot surface was wet and the pavement immediately adjacent to the store's entrance was wet. There was one mat in the vestibule between the outer and inner doors, upon which people could wipe their feet. There was no mat inside the inner doors (inside the store). The floor inside the store was tile.

As the plaintiff and her companion entered the store, the maintenance man, Philip, was washing the glass inner doors. He had a bucket which was on the floor.

There were no signs warning of any wet or slippery floor conditions, and he gave no verbal warning to the two women as they entered. The plaintiff went about eight feet after entering the store through the inner doors; and, while near some shopping carts, she felt a slipping sensation and fell to the floor, cutting and badly injuring her hand. She doesn't know why she slipped or what caused her to slip. Her companion, Ms. Zak, had lagged behind to look at a magazine, but upon realizing that her friend had fallen, went immediately to her assistance. Ms. Zak did not see anything on the floor other than the blood from the plaintiff's cut, and does not know what caused her to fall. Philip also responded to the plaintiff's fall. He didn't see any moisture on the floor. A few minutes later another store employee, Paul Kuras, also looked at the area where the plaintiff fell, including getting down on his hands and knees, and found the area from the inner doors to the place where the plaintiff fell to be free of sand or water. The manager, Ms. Mosely, and another employee, Ms. Palmonka, looked at the area after the fall and did not see any moisture, but they did not look at the floor until after Philip had mopped up the area to get blood off the floor.

The manager, Ms. Mosely, had inspected the premises at about 8:00 a.m. that morning, but had not done any inspection of the floors thereafter before the plaintiff fell. The store opened at 10:00 a.m. June is generally a busy month and customer traffic for that day, a Thursday, is busy at lunchtime.

Normally, on rainy days, the store manager will have Philip put out wet floor signs through the store, beginning at the entrance, letting customers know that the floor may be slippery because of people coming in with wet feet. There was also

normally a mat inside the inner doors. On the day of the plaintiff's fall, however, there were no signs and the mat that was normally inside the inner doors was not there.

3. Summary judgment should be rendered if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.[1] The facts must be viewed in the light most favorable to the non-moving party.[2] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.[3] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[4]

4. The plaintiff must establish that there was a dangerous or defective condition that caused her to fall and that the defendant, in the exercise of reasonable care, should have known about the condition and corrected it.[5] Negligence is never

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[1] Superior Court Civil Rule 56(c).

[2] *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super., 1995) *Figgs v. Bellevue Holding Co., 652 A.2d 1084, 1087 (Del. Super., 1994).*

[3] *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

[4] *Wooten v. Kiger*, 226 A.2d 238 (Del. 1967).

[5] *Howard v. Food Fair Stores*, 201 A.2d 638, 640 (Del. 1964).

presumed from the mere fact that a plaintiff has suffered an injury.[6] However, generally speaking, issues of negligence are not susceptible of summary adjudication.[7] It is only when the moving party establishes the absence of a genuine issue of any material fact respecting negligence that summary judgment may be entered.[8]

5. Under the applicable standard of review, I think the motion must be denied. While the plaintiff does not know what caused her to fall, there is evidence she felt a "slipping sensation." There is also evidence that ordinarily the store manager had signs placed at the store entrance when it was raining to warn that the floor may be slippery because of people coming in with wet feet. There is also evidence that a mat is ordinarily on the tile floor immediately adjacent to the store entrance. On the day in question, neither of these precautions were in place. Despite the apparent absence of any moisture on the floor itself where the plaintiff fell, the evidence permits inferences that the plaintiff's shoes were wet when she stepped into the store; that the contact of her shoes on the tile floor created a slickness which caused the fall; that the defendant was aware that the floor could be slippery at the entrance during periods of rainfall because of its usual practice of placing a warning sign and having a mat there; and that these precautions were not

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[6] *Wilson v. Derrickson*, 175 A.2d 400, 401 (1961).

[7] *Ebersole v. Lowengrub*, 180 A.2d 467, 468 (Del. 1962).

[8] *Id.*

taken on the day in question.

6. The plaintiff relies upon *Collier v. Acme Markets*[9] and *Kanoy v. Crothall American, Inc.*[10] However, neither of those cases involved a situation where a plaintiff slipped just after entering a store during a period of rainfall.

7. The defendant's motion for summary judgment is ***denied***.

IT IS SO ORDERED.

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Resident Judge

oc: Prothonotary
cc: Order Distribution
File

[9] 1995 Del. LEXIS 428.

[10] 1988 Del. Super. LEXIS 40.