

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-579

SARAH J. RODGERS,

Appellant,

v.

PUBLIX SUPER MARKETS, INC.,

Appellee.

On appeal from the Circuit Court for Escambia County.
Stephen A. Pitre, Judge.

November 20, 2020

PER CURIAM.

AFFIRMED. See *Encarnacion v. Lifemark Hosps. of Fla.*, 211 So. 3d 275, 278 (Fla. 3d DCA 2017) (noting that plaintiff's testimony that substance on the floor was "oily," "dirty" and "dark" was insufficient to create a jury issue absent additional facts "from which a jury [could] reasonably conclude that the substance was on the floor long enough to have become discolored without assuming other facts"); *Publix Super Mkts., Inc. v. Schmidt*, 509 So. 2d 977, 978 (Fla. 4th DCA 1987) (holding there was "no proof that Publix or its employees were at fault, or that the substance was on the floor for a sufficient length of time to put defendant on notice" and reversing jury's verdict that impermissibly relied on "inferences on top of inferences" to explain customer's fall); *Palavicini v. Wal-Mart Stores E., LP.*, 787 F. App'x 1007, 1012

(11th Cir. 2019) (finding testimony that liquid on the floor appeared to be “yellow” and “dirty” was not enough to establish constructive notice and noting lack of evidence of footprints, prior track marks, drying of liquid, etc. that would tend to show liquid had been on the floor for a sufficient amount of time).

MAKAR, OSTERHAUS, and M.K. THOMAS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Adrian R. Bridges and Marcus J. Michles II of Michles & Booth, P.A., Pensacola, for Appellant.

Diane G. DeWolf and Katherine E. Giddings of Akerman LLP, Tallahassee, for Appellee.