

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

KIMBERLY PICARD

NO. 2020 CW 0371

VERSUS

RALPH'S MARKET D/B/A RV
TROSCLAIR, L.L.C. AND STATE
FARM FIRE AND CASUALTY
COMPANY

SEPTEMBER 23, 2020

In Re: Ralph's Market and State Farm Fire and Casualty
Company, applying for supervisory writs, 23rd Judicial
District Court, Parish of Ascension, No. 116415.

BEFORE: McDONALD, THERIOT, AND CHUTZ, JJ.

WRIT DENIED.

MRT
WRC

McDonald, J. dissents and would grant the writ. It is undisputed that Kimberly Picard visited Ralph's Supermarket on a regular basis, parked in the same spot, and took the same route to the front doors nearly every visit. It is also undisputed that Ms. Picard had seen the water on her prior visits to the store, and she usually avoided the water. However, on the day of the accident, Ms. Picard saw the water and decided to walk through it. Despite plaintiff's position that Ms. Picard did not see the purported algae in the water, Ms. Picard acknowledged in her petition that "she slipped and fell in a wet algae looking substance which had accumulated onto the ground" and told her husband on the day of the accident that "she slipped in the green slime." Even if Ms. Picard did not learn of the presence of the purported algae until after she fell, the water varied in color in multiple places, which should place a pedestrian on notice that it could contain substances other than water. Therefore, given the open and obvious nature of the water and its variation in color, I cannot conclude that it presented an unreasonable risk of harm. See **Rodriguez v. Dolgencorp, LLC**, 2014-1725 (La. 11/14/14), 152 So.3d 871, 872 (per curiam) (In the absence of material issues of fact, a court may determine by summary judgment that a defect is open and obvious and, therefore, does not present an unreasonable risk of harm). Accordingly, I would grant the summary judgment and dismiss plaintiff's claims against the defendants.

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