NOT DESIGNATED FOR PUBLICATION

ILEENE BROOKS	*	**NO. 2003-CA-0122**
VERSUS	*	**COURT OF APPEAL**
WINN-DIXIE LOUISIANA, INC.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2000-12199, DIVISION "A"
Honorable Carolyn Gill-Jefferson, Judge
* * * * * *
Judge Edwin A. Lombard
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Michael E. Kirby, Judge Edwin A. Lombard)

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AFFIRMED

The plaintiff, Ileene Brooks, appeals the district court's summary judgment in favor of the defendant, Winn Dixie Louisiana, Inc. ("Winn-Dixie"). After *de novo* review, we affirm the judgment.

On August 9, 2000, plaintiff/appellant filed suit against defendant/appellee, for injuries allegedly sustained in a slip and fall accident on July 16, 2002, in defendant's store on Bullard Avenue. The plaintiff alleged that she slipped in what appeared to be a puddle of grape juice. In its answer filed on September 8, 2000, defendant denied plaintiff's allegations. After discovery was completed, the defendant filed a motion for summary judgment on January 18, 2002, contending that summary judgment was appropriate because the plaintiff was unable to meet her burden of proof under La. Rev. Stat. 9:2800.6. After a hearing on the motion, the trial court rendered a written judgment on September 6, 2002, granting defendants' motion for summary judgment and dismissing plaintiff's case with prejudice. The plaintiff appeals this judgment.

After adequate discovery or after a case is set for trial, a motion that shows there is no genuine issue as to a material fact and the mover is entitled to judgment as a matter of law shall be granted. La. Code Civ. Proc. art. 966 (B). The burden of proof remains with the movant. La. Code Civ. Proc. art 966(C)(2) (West 2003). If the movant will not bear the burden of proof at trial, his or her burden on the motion does not require negation of all essential elements of the plaintiff's claim, but rather to point out that there is an absence of factual support for one or more elements essential to the claim. *Id*.; *Fairbanks v. Tulane University*, 98-1228 (La. App. 4 Cir. 3/31/99), 731 So.2d 983, 985. If the plaintiff fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. *Id.*

When reviewing a grant of summary judgment, an appellate court considers the evidence *de* novo, using the same criteria applied by the trial court to determine whether summary judgment is appropriate. *Smith v. Our Lady of the Lake Hosp., Inc*., 93-2512 (La. 7.5/94), 639 So. 2d 730. Moreover, all evidence and inferences drawn from the evidence must be construed in the light most favorable to the party opposing the motion; all allegations of the party opposing the motion must be taken as true and all doubt must be resolved in his or her favor. *Shroeder v. Board of Supervisors*,

591 So. 2d 342, 345 (La. 1991).

The governing substantive law, La. Rev. Stat. 9:2800.6, sets a heavy burden of proof on plaintiffs in slip-and-fall claims against merchants. That statute provides in pertinent part:

> B. In a negligence claim brought against a merchant by a person lawfully on the merchant's premises for damages as a result of an injury, death, or loss sustained because of a fall due to a condition existing in or on a merchant's premises, the claimant shall have the burden of proving, and in addition to all other elements of his cause of action, all of the following:
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> (1) The condition presented an unreasonable risk of harm to the claimant and that risk of harm was reasonably foreseeable.
> (2) The merchant either created or had actual or constructive notice of the condition, which caused the damage, prior to the occurrence.
> (3) The merchant failed to exercise reasonable care. In determining reasonable care, the absence of a written or verbal uniform cleanup or safety procedure is insufficient, alone, to prove failure to exercise reasonable care.
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> C. Definitions:
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> (1)"Constructive notice" means the claimant has proven that the condition existed for such a period of time that it would have been discovered if the merchant had exercised reasonable care. The presence of an employee of the merchant in the vicinity in which the condition exists does not, alone, constitute constructive notice, unless it is shown that the employee knew, or in the exercise of reasonable care should have known, of the condition.

La. Rev. Stat. 9:2800.6 (West 1997).

A claimant relying upon constructive notice under this statute must come forward with positive evidence showing not only that the damage-

causing condition existed for some period of time, but also that the time period was sufficient to place the merchant defendant on notice of the condition's existence. *White v. Wal-mart Stores, Inc.*, 97-393 (La. 9/9/97), 699 So.2d 1081. The claimant must make "a positive showing of the existence of the condition prior to the fall," but "a defendant merchant does not have to make a positive showing of the absence of the existence of the condition prior to the fall." 699 So. 2d at 1084. A claimant who simply shows that the condition existed without an additional showing that the condition existed for some time before the fall has not carried the burden of proving constructive notice as mandated by the statute." 699 So. 2d at 1084-1085.

In the present case, the defendant supported its motion for summary judgment with the plaintiff's deposition in which she testified that she realized that she had stepped in a puddle of juice while shopping, continued to move forward with her shopping basket, and fell after squatting down to retrieve an item from a shelf. The plaintiff stated that the juice appeared to be grape juice and did not have dirt, footprints, or shopping cart tracks in it. She acknowledged that none of the defendant’s employees were in the aisle where the accident occurred and that no one saw her accident.

In response to defendant’s motion for summary judgment, the plaintiff

submitted the deposition testimony of Leo A. Shaeffer, an assistant manager in the defendant's store, who stated that upon being advised by a customer that her child spilt some juice on the floor he immediately walked to the area of the spill where the plaintiff advised him of her fall. Mr. Shaeffer also stated that in accordance with defendant's procedures, periodic inspections were made every thirty minutes to insure that the aisles were free of safety hazards and that he had inspected the area in question at approximately 3 p.m.

On appeal, the plaintiff contends that because the accident occurred at approximately 3:30 p.m. and Mr. Shaeffer acknowledged that children often poked holes in the juice boxes, the defendant had actual or constructive knowledge of the spill. After *de novo* review of the record, we find that the plaintiff did not produce any evidence in opposition to the defendant's motion for summary judgment that the defendant had actual or constructive notice of the condition which caused the damage or that the defendant failed to exercise reasonable care. An acknowledgment that children shopping with their parents sometimes opened juice boxes does not constitute constructive notice of juice spilled on the floor of a grocery aisle. Accordingly, the plaintiff is unable to meet her burden of proof as required by La. Rev. Stat. 2800.6 and the trial court did not err when it granted the

defendants' motion for summary judgment.

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED.