STATE OF MICHIGAN

COURT OF APPEALS

RENE DELOACH,

Plaintiff-Appellant,

v

K-MART CORPORATION,

Defendant-Appellee.

UNPUBLISHED
November 21, 1997

No. 198936
Oakland Circuit Court
LC No. 96-514328 NO

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

In this premises liability action arising from a slip and fall, plaintiff appeals by right summary disposition in favor of defendant under MCR 2.116(C)(10). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

While shopping for school supplies, plaintiff noted a number of small dark objects on the floor; the parties agree that these were beads from a broken necklace. Plaintiff did her best to step around these objects, and continued with her shopping. Approximately fifteen minutes later, plaintiff was in the next aisle when she stepped on a bead similar in size, shape, and color to those first encountered, losing her footing and sustaining serious personal injury.

No claim being made that defendant or its agents or employees had actual notice of the hazard or created it, the question presented is whether plaintiff has adduced sufficient circumstantial evidence of constructive notice to survive a motion for summary disposition. Given plaintiff's status as a business invitee, defendant would be liable, even where the hazard is not caused by itself or its agents or employees, if known to the storekeeper or of such character or in existence a sufficient length of time that the storekeeper should have had knowledge of it and taken appropriate steps to warn customers of the danger or to ameliorate or eliminate it. *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968); *McCune v Meijer, Inc*, 156 Mich App 561, 562; 402 NW2d 6 (1986).

Defendant concedes that a reasonable inference could be drawn that the bead on which plaintiff slipped and fell was from the same source as the beads she previously had observed in the neighboring aisle. Nonetheless, defendant contends that it is conjectural whether the bead which caused the fall was

on the floor a sufficient length of time for defendant or its agents or employees to have had the opportunity to espy it and remove it. Where two equally logical inferences may be drawn, and one supports negligence while the other negates it, summary disposition may appropriately be granted. *Walsh v Grand Trunk W R Co*, 363 Mich 522; 110 NW2d 799 (1961).

It would be an unusual coincidence for two different customers wearing or examining similar necklaces to have broken them in adjacent aisles on the same day less than fifteen minutes apart. It would be equally curious for only a single bead to have fallen on the floor from the breaking of the second such necklace. Far more logical is an inference that a customer, either wearing or buying a necklace, broke it in the first aisle, and that the beads were allowed to remain on the floor for a sufficient length of time to be rolled or kicked, facilitated by their spherical shape, into neighboring aisles. Fifteen minutes would seem to be sufficient time for a rational trier of fact to evaluate that a reasonably prudent storekeeper, through its agents or employees, would have, by patrolling its aisles, discovered such a hazard and eliminated it. *Ritter v Meijer, Inc*, 128 Mich App 783, 786-787; 341 NW2d 220 (1983). As the circumstantial inferences, viewed in a light most favorable to plaintiff, would permit a rational trier of fact to find that defendant was negligent in failing to inspect its customer service areas with sufficient regularity as to eliminate such a hazard within fifteen minutes, summary disposition was improperly granted. *Cummings v Grand Trunk W R Co*, 372 Mich 696, 697-698; 127 NW2d 842 (1964).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald
/s/ Robert P. Young, Jr.