STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA VANNATTER and
EDWARD VANNATTER,

Plaintiffs-Appellants,

v

KMART CORPORATION and
RAMCO-GERSHENSON, INC.,

Defendants-Appellees.

UNPUBLISHED
July 7, 1998

No. 201377
Wayne Circuit Court
LC No. 96-606882-NO

Before: Jansen, P.J., and Kelly and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by of right an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm.

On June 5, 1993, Patricia Vannatter was leaving defendants' property when she slipped on an oil spot in defendants' parking lot, fell and was injured. Plaintiffs sued alleging defendants breached their duty to provide reasonably safe premises by allowing an oil spot to accumulate and soak into the parking lot thereby creating an unreasonably dangerous condition.

On appeal, plaintiffs content that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because genuine issues of material fact existed. We disagree. This Court reviews the trial court's grant of summary disposition de novo to determine if the movant was entitled to judgment as a matter of law. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995); *Phillips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995). The initial burden is on the moving party to, by affidavits, depositions, admissions, or other documentary evidence, specifically identify the matters that present no disputed factual issues. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994); *Phillips*, *supra*. Then, the party opposing summary disposition must establish that a genuine issue of material fact does exist. *Skinner v Square D Co*, 445 Mich 153, 160-161; 516 NW2d 475 (1994). "The opposing party may not rest upon mere allegations or denials in the pleadings but must, by affidavit or other documentary evidence,

set forth specific facts showing that there is a genuine issue for trial." *Allen v Comprehensive Health Services*, 222 Mich App 426, 433-434; 564 NW2d 914 (1997). All inferences are to be drawn in favor of the nonmoving party. *Phillips*, *supra; Dagen v Hastings Mutual Ins Co*, 166 Mich App 225, 229; 420 NW2d 111 (1987).

Defendants argue that there was no evidence as to the length of time the oil spot had existed before Patricia Vannatter's fall that would permit the trier of fact to conclude that defendants had acted unreasonably. See *Berryman v Kmart Corp*, 193 Mich App 88, 92-93; 483 NW2d 642 (1992), citing *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 5, 10; 279 NW2d 318 (1979) (existence of an oily spot in the defendant's parking lot where the plaintiff fell was insufficient to support the inference that the defendant's employee's caused the spill at that point or that the defendant had actual or constructive knowledge of the spot). We agree.

In Whitmore, *supra*, at 7-8, this Court observed that when dealing with business invitees such as plaintiff Patricia Vannatter, a storekeeper is liable for injuries resulting from an unsafe condition where the condition existed for a sufficient length of time that the storekeeper or its agents knew or should have known about it. "Notice may be inferred from evidence that the unsafe condition has existed for a length of time sufficient to have enabled a reasonably careful storekeeper to discover it." *Id.* "Where there is no evidence to show that the condition had existed for a considerable time, however, a directed verdict in favor of the storekeeper is proper." *Id.* Plaintiff Patricia Vannatter's deposition testimony did not support the assertion that the oil spill existed for very long before plaintiff's fall. Moreover, nothing in the record addresses this critical fact. Without this evidence, we cannot conclude that defendants had actual or constructive knowledge of the oil spill. *Id.*

Plaintiffs failed to submit to the trial court as required any documentary evidence regarding this dispositive issue. MCR 2.116(G)(4); *Comprehensive Health Services*, 222 Mich App 433, 434; 564 NW2d 914 (1997); *Whitmore*, *supra*. Critically, although plaintiffs attached to their brief on appeal an accident report and deposition testimony of Kathleen Miller, those documents were not part of the lower court record. We will not consider them because a party is precluded from expanding the record on appeal. *Trail Clinic, PC v Bloch*, 114 Mich App 700, 713; 319 NW2d 638 (1982).

Because plaintiffs failed to set forth specific facts showing a genuine issue of material fact for the jury, the trial court properly granted defendants' motion for summary disposition on this issue under MCR 2.116(C)(10). See *Patterson*, *supra* at 432.[1]

We affirm.

/s/ Kathleen Jansen
/s/ Michael J. Kelly
/s/ Jane E. Markey

[1] If the proofs could establish that the oil spill had existed in that location for some time, the result in this case might be different. In the absence of such evidence, however, we find no genuine issue of this fact.