STATE OF MICHIGAN

COURT OF APPEALS

DORTHY N. WALKER,

Plaintiff-Appellant,

v

K MART CORPORATION,

Defendant-Appellee.

UNPUBLISHED
February 23, 1999

No. 202069
Genesee Circuit Court
LC No. 95-042042 NO

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

MEMORANDUM.

Plaintiff appeals of right from the circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was shopping in defendant's store when she slipped on lotion that had spilled onto the floor and sustained injuries to her knee. When a store employee came to her assistance, she remarked that someone should be called to mop up the spill. Plaintiff reported the incident, and when she and the assistant manager returned to the location, the spill had been eliminated.

Plaintiff filed suit alleging that defendant negligently failed to maintain the shopping aisles in a safe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff argued that summary disposition was inappropriate because defendant had destroyed evidence. The circuit court granted the motion, finding that defendant's act of cleaning up the spill was reasonable in light of the fact that it was a dangerous condition.

This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

On appeal, plaintiff argues that the circuit court erred by granting defendant's motion for summary disposition. Pursuant to SJI2d 6.01, a party's failure to produce evidence under its control gives rise to an inference that the evidence would have been adverse to that party. Here, plaintiff argues that defendant had no reasonable excuse for destroying evidence crucial to her case.

We disagree and affirm the circuit court's decision. Generally, when a party fails to produce or destroys evidence, a court will presume that the evidence would have been harmful to that party. SJI2d 6.01; *Hamann v Ridge Tool Co*, 213 Mich App 252, 255; 539 NW2d 753 (1995). The presumption is made in the absence of a reasonable excuse for withholding or destroying the evidence. SJI2d 6.01(c); *Trupiano v Cully*, 349 Mich 568, 570-571; 84 NW2d 747 (1957). Defendant mopped up, and thus destroyed, evidence in this case. Plaintiff acknowledged that she requested that defendant do so. Reasonable minds could not disagree on whether defendant had a legitimate excuse for acting in a manner that destroyed the evidence. Defendant did so in order to eliminate an unsafe condition on its premises.

The presumption on which plaintiff relies, even if operational, does not relieve the claimant of the obligation of meeting the applicable burden of proof. In a premises liability action, a plaintiff must show either that the defendant created the unsafe condition, or that the defendant knew or should have known of the unsafe condition. Such knowledge may be inferred from evidence that the condition existed for a sufficient length of time for the defendant to have discovered it. *Berryman v K Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992). Plaintiff presented no evidence to create an issue of fact as to whether defendant created the unsafe condition or knew of its existence prior to her fall.

Affirmed.

/s/ William B. Murphy
/s/ Barbara B. MacKenzie
/s/ Michael J. Talbot