STATE OF MICHIGAN

COURT OF APPEALS

EMMA SIEBERT,

Plaintiff-Appellant,

v

KMART, INC.,

Defendant-Appellee.

UNPUBLISHED
December 26, 2000

No. 215511
Oakland Circuit Court
LC No. 97-002598-NO

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff slipped and fell in a puddle of water in the vestibule of defendant's store. The evidence showed that it had stopped raining thirty minutes before the accident occurred. The water had apparently been tracked in by other customers. There were mats inside and outside the door, but not in the area where plaintiff fell.

The plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 712; 202 NW2d 727 (1972). The happening of an accident is not, in and of itself, evidence of negligence. The plaintiff must present some facts that either directly or circumstantially establish negligence. *Whitmore v Sears, Roebuck & Co,* 89 Mich App 3, 9; 279 NW2d 318 (1979).

A shopkeeper is liable to invitees for injuries incurred on his premises where the injury results from an unsafe condition caused by the active negligence of the owner or his employees. If the unsafe condition results from other causes, the shopkeeper is liable if the condition is known to him "or is of such a character or has existed a sufficient length of time that he should have knowledge of it." *Berryman v K Mart Corp,* 193 Mich App 88, 92; 483 NW2d 642 (1992), quoting *Serinto v Borman Food Stores,* 380 Mich 637, 640-641; 158 NW2d 485 (1968). An invitor "may be found negligent in failing to employ adequate slip-preventing devices in

* Circuit judge, sitting on the Court of Appeals by assignment.

connection with common areas that have become slippery as a result of foreseeable tracking or accumulation of water." *Perry v Hazel Park Harness Raceway*, 123 Mich App 542, 546; 332 NW2d 601 (1983); accord *Cornforth v Borman's, Inc*, 148 Mich App 469, 480; 385 NW2d 645 (1986).

In this case, it had stopped raining thirty minutes before plaintiff fell and there were large mats outside, so one could reasonably infer that the water had to have been tracked in while it was raining. A reasonably diligent shopkeeper might be expected to discover and remedy the condition in thirty minutes of time. Cf. *Torma v Montgomery Ward & Co*, 336 Mich 468, 482-483; 58 NW2d 149 (1953) (whether defendant's employees inspected vestibule at reasonable intervals and took necessary precautions to protect customers was a question of fact where evidence showed that condition had existed for forty-five minutes). Although defendant took alternate steps to protect its customers by placing mats inside the door, they were not in the area where plaintiff fell and it is not clear from the record how large the bare spot was and whether defendant could reasonably anticipate that an invitee would encounter it. Therefore, while the proofs are rather weak, the record is not such that reasonable minds could not differ in finding that no genuine issue of material fact existed, and thus the trial court erred in granting defendant's motion.

We reverse and remand for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber