STATE OF MICHIGAN

COURT OF APPEALS

JOHN COOPER,

Plaintiff-Appellant,

v

MEIJER, INC.,

Defendant-Appellee.

UNPUBLISHED
February 23, 2001

No. 220288
Macomb Circuit Court
LC No. 98-000833-NO

Before: Meter, P.J., and Neff and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's 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 walking through a closed checkout lane in defendant's store when he slipped on the remnants of cole slaw that had spilled onto the floor. Plaintiff filed suit alleging that defendant failed to maintain the premises in a reasonably safe condition, and failed to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff could not establish a prima facie case of negligence because he could not show that the spill was caused by defendant, or that defendant had actual or constructive knowledge of the spill. The trial court agreed with defendant and granted its motion for summary disposition.

We review de novo a trial court's grant or denial of a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court considers the affidavits, pleadings, depositions, admissions, and documentary evidence in the light most favorable to the nonmoving party. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion for summary disposition under MCR 2.116(C)(10) is proper if no genuine issue of material fact exists, thereby entitling the moving party to judgment as a matter of law. *Id.*

A storekeeper must provide reasonably safe premises for customers. In a premises liability action, the plaintiff must show either that the defendant caused 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

storekeeper to have discovered it. *Clark v K-Mart Corp*, 242 Mich App 137, 140; 617 NW2d 729 (2000); *Berryman v K-Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992). To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman*, *supra* at 91-92.

Plaintiff argues that the trial court erred in granting defendant's motion for summary disposition. We disagree. Plaintiff admitted that he did not know how the remnants of cole slaw came to be on the floor, how long the condition had existed, or if defendant knew of the condition prior to his fall. Plaintiff's assertion that evidence that a customer purchased a wet container of cole slaw from the cashier working in an adjacent lane created an issue of fact as to defendant's knowledge of the condition is without merit. Evidence that defendant knew that the container was slightly wet, apparently from condensation, does not support an inference that defendant knew or should have known that cole slaw had spilled onto the floor, especially in light of the cashier's testimony that the container was not broken or leaking. Plaintiff's assertion that defendant knew or should have known of the condition is based on impermissible conjecture. *Clark*, *supra* at 142. 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 his fall. The grant of summary disposition was proper.

Affirmed.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell