STATE OF MICHIGAN

COURT OF APPEALS

EDNA TERRY,

Plaintiff-Appellant,

v

BORMAN'S, INC.,

Defendant-Appellee.

UNPUBLISHED
July 23, 2002

No. 232278
Wayne Circuit Court
LC No. 00-002994-NO

Before: Talbot, P.J., and Cooper and D.P. Ryan*, JJ.

MEMORANDUM.

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

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiff was an invitee in that she was on defendant's premises which were held open for a commercial purpose. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 604; 614 NW2d 88 (2000). A store owner 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 store owner 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 Kmart 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).

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

Plaintiff presented no evidence that defendant caused the puddle of water to be on the floor. Plaintiff presented no evidence of the source of the water and thus one cannot reasonably infer from the size of the puddle that it had existed long enough to enable defendant to discover it. Finally, plaintiff presented no evidence regarding the length of time the puddle had been there or other evidence from which one might infer that it had existed long enough to enable defendant to discover it. See *Clark v Kmart Corp*, 465 Mich 416, 420; 634 NW2d 347 (2001). In the absence of evidence from which a rational trier of fact could reasonably conclude that defendant had breached its duty to provide safe premises, the trial court did not err in granting defendant's motion.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan