STATE OF MICHIGAN

COURT OF APPEALS

NANCY DUNCAN, Plaintiff-Appellant,	UNPUBLISHED November 12, 2013
v	No. 313952 Livingston Circuit Court
MEIJER, INC, Defendant-Appellee.	LC No. 12-026614-NO

Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals as of right an order granting defendant's motion for summary disposition under MCR 2.116(C)(10), holding that plaintiff had not established a genuine issue of material fact. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff was shopping in the produce department at a Meijer store when she slipped and fell, injuring herself. Plaintiff alleged that she slipped on grapes that had fallen onto a floor mat in front of a display. She did not see grapes on the floor mat before falling. There was no evidence establishing that employees of defendant actually knew that there were grapes on the floor. Moreover, while there was evidence that some grapes were inside holes in the mat beneath the grape display and some of the grape residue was brown, it was not established how long the grapes had been there. An employee of defendant testified that defendant's policy was to have an employee check the floors hourly for debris, and that all employees are trained to look for and pick up debris.

Plaintiff sued defendant under a premises liability theory. Defendant moved the trial court for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). The trial court granted defendant's motion and dismissed the case, holding that there was not enough evidence as to the timing or origin of the allegedly unsafe condition to create a genuine issue of material fact regarding constructive notice. This appeal followed.

II. STANDARD OF REVIEW

A trial court's order granting summary disposition is reviewed de novo on appeal. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868, reh den 481 Mich 882 (2008).

Motions granted under MCR 2.116(C)(10) require this Court to consider "the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id*., citing *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). If no genuine issue of any material fact exists, the "moving party is entitled to judgment as a matter of law." *Id*.

III. DISCUSSION

Storekeepers have a duty to provide reasonably safe aisles at their stores and will be held liable for injury caused by an unsafe condition when (1) it was caused by the storekeeper's active negligence, (2) the storekeeper knew about the unsafe condition, or (3) it was of such a character or had existed a sufficient length of time that he should have had knowledge of it. *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001) (citations and quotation marks omitted).

Plaintiff argues, under the third prong of this test, that there was sufficient evidence to give rise to an inference of constructive notice. The trial court held that to prove constructive notice, plaintiff had to produce evidence that the condition had existed for a considerable time, and that plaintiff did not present evidence to allow for such an inference.

Constructive notice can be supported by reasonable inferences drawn from the evidence, but such inferences must amount to more than speculation and conjecture. See *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 8; 279 NW2d 318 (1979). "There may be 2 or more plausible explanations as to how an event happened or what produced it; yet, if the evidence is without selective application to any 1 of them, they remain conjectures only." *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994) (citation and quotation marks omitted).

Plaintiff first argues that constructive notice can be inferred when there is evidence that a grape on a grocery store's floor had been smashed prior to a slip and fall, as held in *Ritter v Meijer, Inc*, 128 Mich App 783; 341 NW2d 220 (1983). Assuming, arguendo, that there was circumstantial evidence that the grapes were smashed before the fall as opposed to being smashed by plaintiff, this Court has rejected the holding in *Ritter* that a smashed grape, by itself, is sufficient to prove constructive notice of a slippery condition. See *Clark v Kmart Corp* (*On Remand*), 249 Mich App 141, 149; 640 NW2d 892 (2002) (noting that our Supreme Court, in remanding the case, "left undistributed the portion of our opinion rejecting *Ritter*"). Moreover, the mere fact that there were grapes smashed into the holes in the mat after the incident does nothing to show that the grapes were smashed prior to the incident or had existed in that state for a considerable length of time.

Plaintiff argues, however, that additional evidence demonstrated that the condition had been present for a considerable time. Specifically, apart from evidence that the grapes were smashed into the mat, there was evidence that some of the grape residue was brown.[1] However,

[1] Plaintiff also suggests that past instances of grapes falling from the grape display gave rise to an inference of constructive notice. However, evidence that defendant's personnel knew that

the fact that some of the grapes on the floor were brown after the fall does not demonstrate that the condition was present for a considerable time. While it is conceivable that the grapes were brown because they had been on the floor for a period of time prior to the fall so as to make them brown, it is equally likely that the grapes were brown before they fell; arguably, brown grapes would be the grapes most likely to fall off of a stem and roll to the ground. Since these alternative explanations are at best equally plausible, a finder of fact would have to speculate as to which represented the actual state of affairs.

For this reason, plaintiff was unable to present evidence – other than that which calls for speculation – to allow a jury to infer that the grapes were on the floor for a sufficient length of time prior to her fall to constitute constructive notice. Since there was no evidence to show that the condition had existed for a considerable time, summary disposition in favor of defendant was proper. *Derbabian v S&C Snowplowing, Inc*, 249 Mich App 695, 706-707; 644 NW2d 779 (2002); *Whitmore*, 89 Mich App at 9.

The trial court did not err in granting defendant's motion for summary disposition as to constructive notice. Given our disposition of this issue, we need not address plaintiff's argument regarding the open and obvious doctrine.

Affirmed.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra

grapes had fallen in the past would not establish that they knew or should have known that these grapes had fallen on this particular occasion.