This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1152

Suzanne Krupp,
Appellant,

vs.

Supervalu, Inc., d/b/a Cub Foods
and Cub Foods,
Respondents.

Filed May 23, 2022
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CV-20-5933

Kyle P. Hahn, Lee A. Hutton, III, The Hutton Firm, PLLC, Minneapolis, Minnesota (for appellant)

Richard C. Scattergood, Kelly P. Magnus, Jessica C. Richardson, Tomsche, Sonnesyn & Tomsche, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the summary-judgment dismissal of her negligence claim against respondent grocery-store owners. We affirm.

FACTS

Appellant Suzanne Krupp claims to have injured herself in 2017, after slipping on one or more pistachio nuts on the floor of a store owned by respondents Supervalu, Inc., doing business as Cub Foods and Cub Foods (Cub Foods). The incident occurred in the produce department. Krupp sued, claiming that Cub Foods negligently failed to keep its floor safe and to warn of the dangerous condition caused by the pistachios on the floor.

In her complaint, Krupp claimed that Cub Foods sold loose pistachios from a display in its store and that she slipped on pistachios that had fallen from the display. However, in deposition testimony, she stated that she did not recall seeing bags of pistachios or loose pistachios sold in bulk where she fell and had "no idea" how the pistachios got on the floor.

Cub Foods moved for summary judgment. In support of its motion, Cub Foods pointed to deposition testimony from a store employee who said that the store did not sell loose pistachios in bulk. Cub Foods argued that it was entitled to judgment as a matter of law because there was no evidence that it had knowledge of the alleged dangerous condition, that is, the pistachios on the floor, and because such pistachios were an obvious danger.

In opposing the motion, Krupp presented evidence of a Cub Foods policy titled "Slip, Trip and Fall Accidents." The policy discussed the need for employees to clean debris from the floors, noted that wet and greasy floors posed a hazard, and required employees to wear slip-resistant footwear in certain departments.

The district court granted summary judgment to Cub Foods. Krupp appeals.

DECISION

Summary judgment is appropriate if the moving party shows that "there is no genuine issue as to any material fact" and that the moving party is "entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "We review a grant of summary judgment de novo." *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 190 (Minn. 2019). In conducting our review, we view the evidence in a light most favorable to the nonmoving party. *Id.* "Summary judgment is inappropriate when reasonable persons might draw different conclusions from the evidence presented." *Id.* (quotation omitted). But "[a] defendant is entitled to summary judgment as a matter of law when the record reflects a complete lack of proof on an essential element of the plaintiff's claim." *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

Negligence is the failure to exercise the level of care that an ordinary person would under similar circumstances. *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011). The elements of a negligence claim are "(1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) that the breach of the duty of care was a proximate cause of the injury." *Id.*

The existence of a duty of care is generally a threshold legal issue, subject to de novo review. *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 582 (Minn. 2012); *Larson v. Larson*, 373 N.W.2d 287, 289 (Minn. 1985); *Rinn v. Minn. State Agric. Soc'y*, 611 N.W.2d 361, 364 (Minn. App. 2000). A landowner has a duty to use reasonable care for the safety of persons invited upon the land. *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001). "Reasonable care includes the duty to inspect and repair the premises and, at a

minimum, to warn persons using the premises of unreasonable risks of harm." *Sullivan v. Farmers & Merchs. State Bank of New Ulm*, 398 N.W.2d 592, 594 (Minn. App. 1986), *rev. denied* (Minn. Mar. 13, 1987).

However, the duty of care owed by a landowner is not boundless; landowners are not insurers of safety. *Wolvert v. Gustafson*, 146 N.W.2d 172, 173 (Minn. 1966). Thus, if a landowner or its employees did not cause the dangerous condition, "the burden is on [the] plaintiff to establish that the operator of the premises had actual knowledge of the defect causing the injury or that it had existed for a sufficient period of time to charge the operator with constructive notice of its presence." *Id.*; *see also Rinn*, 611 N.W.2d at 365 (stating that a landowner must have "actual or constructive knowledge of the dangerous condition," unless the landowner or employees caused the condition). "[S]peculation as to who caused the dangerous condition, or how long it existed, warrants judgment for the landowner." *Rinn*, 611 N.W.2d at 365.

Cub Foods pointed to undisputed evidence that it did not sell loose pistachios in bulk and that it conducted frequent "safety sweeps" to locate objects on the floor. Krupp presented no evidence that Cub Foods caused or was aware of the pistachios on the floor where she slipped. In fact, in her deposition testimony, Krupp stated that she did not recall seeing bags of pistachios or bulk pistachios where she fell, did not know how the pistachios got on the floor, did not know how long they had been there, and did not see any Cub Foods employees in the area where she fell.

Although Krupp asserted in her complaint that Cub Foods sold loose pistachios, at oral argument to this court, she conceded that there is no evidence supporting that assertion.

When a party submits evidence in support of summary judgment, the opposing party may not simply rely on statements in the complaint. *Borom v. City of St. Paul*, 184 N.W.2d 595, 597 (Minn. 1971). The party opposing summary judgment must point to specific facts showing that there is a genuine issue for trial. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). "Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial." *Id.*

Krupp heavily relies on the Cub Foods policy requiring employees to wear slip-resistant footwear. She argues that Cub Foods "knew that its produce department floors could be hazardous, particularly when debris accrued upon them, so much so that it required its employees to wear slip-resistant shoes to work in the location." Krupp also argues that she offered evidence that the floor was "slippery" and that Cub Foods was aware of the slippery floor.

Krupp's reliance on Cub Foods's policy requiring employees to wear slip-resistant footwear is unavailing for two reasons. First, the policy addresses risks caused specifically by "[w]et and greasy floors," and neither of those conditions caused Krupp to fall. As Krupp testified in her deposition, "I slipped on what looked like a pistachio nut and slammed into the floor." Second, Krupp essentially argues that the policy gives rise to strict liability, but elevating a safety policy to a landowner duty in that manner is inconsistent with established law. *See Rinn*, 611 N.W.2d at 365 (stating that a landowner must have "actual or constructive knowledge of the dangerous condition," unless the landowner or employees caused the condition).

In sum, Krupp presented no evidence that Cub Foods caused or knew of the condition that allegedly caused her to slip and fall: pistachios on the floor. Thus, there is no genuine issue of material fact regarding the existence of a duty of care, which is a necessary element of Krupp's negligence claim. We therefore affirm the district court's grant of summary judgment.[1] *See id.* (affirming grant of summary judgment for landowner because there was no evidence that the landowner had actual or constructive notice of the dangerous condition).

Affirmed.

[1] Because we affirm on this ground, it is not necessary to address the parties' arguments regarding whether the pistachios presented an obvious danger. *See Baber v. Dill*, 531 N.W.2d 493, 495-96 (Minn. 1995) ("A possessor of land is not liable to his invitees for physical harm caused to them by any . . . condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." (quotation omitted)).