[Cite as *Matthews v. Texas Roadhouse Mgt. Corp.*, 2020-Ohio-5229.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

BRENDA MATTHEWS, et al.,	:	
Appellants,	:	CASE NO. CA2020-03-037
	:	O P I N I O N
- vs -		11/9/2020
	:	
TEXAS ROADHOUSE MANAGEMENT CORPORATION,	:	
	:	
Appellee, et al.		

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2018-12-2695

Gregory S. Young Co., LPA, Jason M. Persinger, 600 Vine Street, Suite 402, Cincinnati, Ohio 45202, for appellants

Collins, Roche, Utley & Garner, LLC, Sunny L. Horacek, 655 Metro Place South, Suite 200, Dublin, Ohio 43017, for appellee

PIPER, J.

{¶1} Appellant, Brenda Matthews, appeals a decision of the Butler County Court of Common Pleas granting summary judgment in favor of appellee, Texas Roadhouse Management Corporation ("Texas Roadhouse").

{¶2} Matthews arrived at Texas Roadhouse for dinner around 5:00 p.m. and parked in a parking space adjacent to the restaurant's rear security door. Matthews exited

her car and stepped up onto the sidewalk, which she followed to enter the building without any issue. After dining, Matthews exited the building at approximately 7:00 p.m. and walked toward her car, using the same sidewalk she used to enter the building. While stepping down from the sidewalk onto the parking lot, Matthews slipped and fell, causing injury to her face and left knee. Matthews' clothing was wet with a substance she believed to be grease based upon its sheen and smell.

{¶3} Matthews filed suit against Texas Roadhouse, alleging that she slipped on grease and incurred personal injuries. After discovery, Texas Roadhouse filed a motion for summary judgment, which the trial court granted. Matthews now appeals the trial court's decision to grant summary judgment, raising several assignments of error. Each of Matthew's five assignments of error are interrelated and essentially assert that the trial court erred in granting summary judgment. Thus, we will address the assignments of error together for ease of discussion.

{¶4} We review a trial court's decision granting summary judgment de novo. *Estate of Mennett v. Stauffer Site Servs., L.L.C.*, 12th Dist. Warren Nos. CA2019-09-096 and CA2019-10-110, 2020-Ohio-4355. "De novo review means that this court uses the same standard that the trial court should have used, and we examine the evidence to determine whether as a matter of law no genuine issues exist for trial." *Morris v. Dobbins Nursing Home*, 12th Dist. Clermont No. CA2010-12-102, 2011-Ohio-3014, ¶ 14.

{¶5} Summary judgment is proper "if there are no genuine issues of material fact to be litigated, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party." *Drew v. Weather Stop Roofing Co., L.L.C.*, 12th Dist. Clermont No. CA2019-10-082, 2020-Ohio-2771, ¶ 10.

{¶6} The moving party bears the initial burden of informing the court of the basis

for the motion and demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St. 3d 280, 292 (1996). Once this burden is met, the nonmoving party may not rest upon the mere allegations or denials of the pleadings but must supply evidentiary materials setting forth specific facts showing there is a genuine issue of material fact for trial. *Anderson v. Jancoa*, 12th Dist. Butler No. CA2019-01-018, 2019-Ohio-3617, ¶ 23. Summary judgment is proper if the nonmoving party fails to set forth such facts. *Id.* In determining whether a genuine issue of material fact exists, the evidence must be construed in favor of the nonmoving party. *Palmer v. Mossbarger*, 12th Dist. Madison No. CA2014-04-011, 2015-Ohio-231.

{¶7} In a negligence action, the plaintiff must show (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached the duty of care, and (3) as a direct and proximate result of defendant's breach, plaintiff was injured. *Forste v. Oakview Constr., Inc.*, 12th Dist. Warren No. CA2009-05-054, 2009-Ohio-5516, ¶ 9. The owner or occupier of a business owes a duty of ordinary care to maintain the premises in a reasonably safe condition, so as to not expose business invitees to unreasonable or unnecessary dangers. *Paschal v. Rite Aid Pharmacy, Inc.*, 18 Ohio St.3d 203 (1985). While a business owner or occupier is not the insurer of its invitees' safety, it has a duty to warn invitees of latent or concealed dangers the owner knows of, or has reason to know of, that invitees would not expect to discover or protect against. *Baker v. Meijer Stores Ltd. Partnership*, 12th Dist. Warren No. CA2008-11-136, 2009-Ohio-4681, ¶ 27.

{¶8} "To establish negligence in a slip and fall case, it is incumbent upon the plaintiff to identify or explain the reason for the fall." *Stamper v. Middletown Hosp. Assn.*, 65 Ohio App. 3d 65, 67-68 (12th Dist.1989). "Where the plaintiff, either personally or by outside witnesses, cannot identify what caused the fall, a finding of negligence on the part of the defendant is precluded." *Id.* at 68.

{¶9} In addition, a plaintiff in a slip and fall case must introduce evidence demonstrating one of the following: (1) the defendant was responsible for placing or creating the hazard, (2) the defendant had actual notice of the hazard and failed to give the plaintiff adequate notice of its presence or remove it promptly, or (3) that the hazard had existed for a sufficient length of time as to warrant the imposition of constructive notice, i.e., the hazard should have been found by the defendant. *Baker* at ¶ 30.

{¶10} After reviewing the record, and construing the evidence in a light most favorable to Matthews, we find that Texas Roadhouse is entitled to judgment as a matter of law. First, the record contains no evidence that Texas Roadhouse created the hazard. While Matthews asks this court to make inferences that the substance she slipped on was grease and that the grease was spilled and left on the sidewalk, there is no evidence that any Texas Roadhouse employee took grease from inside the restaurant or used the sidewalk as a route on the way to dispose of any grease.[1]

{¶11} The uncontroverted testimony demonstrates that there is no evidence to establish employees used the rear security door to remove grease from the restaurant or that grease or trash was removed from the restaurant using the rear security door on the day Matthews fell. Thus, Matthews' suggestions on how grease could have been spilled on the sidewalk, including the possibility that a drainage issue occurred inside the restaurant that would have caused the grease to seep under the rear security door and onto the sidewalk, are mere speculation not supported by any facts of record.

{¶12} Nor is there evidence that Texas Roadhouse had actual or constructive notice of any hazard. No witnesses offered testimony that Texas Roadhouse was aware of any

1. During her deposition, Matthews answered "I was in water" when asked what she slipped on. However, she later opined that there was grease on the ground given its smell because she has a "very, very keen sense of smell." Viewing the evidence in a light most favorable to Matthews, we will assume that the substance was grease.

hazard prior to Matthews' fall. Instead, the evidence shows that Texas Roadhouse did not receive reports of any substances on the sidewalk or parking lot or that any employee spilled anything outside the rear security door.

{¶13} The surveillance video that captured Matthews' fall shows three Texas Roadhouse employees at different times walking in the area where Matthews fell. However, none of the three employees were affected by any substance on the sidewalk, nor did any of them hesitate or appear to notice any substance on the sidewalk. There is simply no evidence to support the proposition that Texas Roadhouse employees had actual knowledge of an existing hazard.

{¶14} Nor does the record establish an issue of fact regarding constructive notice. The surveillance video does not show how grease came to be on the sidewalk, or when grease was deposited on the sidewalk. Thus, Matthews asks this court to speculate that the substance was grease, that it was spilled by Texas Roadhouse employees, and that the grease had been deposited on the sidewalk sometime between 5:00 when she entered the restaurant and 7:00 when she left.

{¶15} At the least, Matthews suggests that the peculiar substance was deposited before the surveillance video captured the ten minutes before she fell. Matthews argues this would be sufficient time to place Texas Roadhouse on constructive notice. Yet, employees appeared to notice nothing unusual and there were no reports to create a concern. How the substance came to be present would require speculation to obtain the element of constructive notice. Unfortunately, the law does not permit such speculation.

{¶16} Absent proof of whether a hazard was created by Texas Roadhouse employees and when it was created, we cannot permit multiple inferences that the hazard *must have been* created sometime between the time when Matthews entered the restaurant and when she fell. *See Peterson v. Giant Eagle, Inc.*, 9th Dist. Summit No. 21772, 2004-

Ohio-1611, ¶ 15. (constructive notice "cannot be [proven] without a factual basis that the hazard existed for a sufficient time to enable the exercise of ordinary care").

{¶17} Even assuming that the substance was grease, as asserted by Matthews, there is no evidence to show how the grease was spilled on the sidewalk, who spilled the grease, or for how long the grease was on the sidewalk. Thus, after our de novo review of the matter, Matthews has failed to show that genuine issues of material fact remain for litigation.[2] Matthews' assignments of error are overruled.

{¶18} Judgment affirmed.

M. POWELL, P.J., and RINGLAND, J., concur.

2. Several of Matthews' arguments are specific to statements made within the trial court's written decision. However, this court reviews the record de novo, without deference to the trial court's findings or reasoning.