

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00507-CV

Kerri Housour, Appellant

v.

Burt-Watts Industries, Inc., Appellee

**FROM COUNTY COURT AT LAW NO. 2 OF TRAVIS COUNTY
NO. C-1-CV-12-005449, HONORABLE TODD T. WONG, JUDGE PRESIDING**

MEMORANDUM OPINION

Kerri Housour appeals the trial court's summary judgment in favor of Burt-Watts Industries, Inc., dismissing her premises-liability lawsuit for personal injuries she sustained when she tripped and fell onto the floor of her employer's building, which was being remodeled by Burt-Watts. For the following reasons, we will affirm the trial court's final summary judgment.

BACKGROUND¹

Housour filed this lawsuit against Burt-Watts after she sustained personal injuries as a result of tripping and falling in the lobby of her employer's building, which was being remodeled by Burt-Watts. Her petition alleged that Burt-Watts had covered the lobby floors with masonite

¹ The parties are familiar with the facts, procedural history, and applicable standards of review and we, accordingly, dispense with a lengthy recitation of them except as necessary to explain the basic reasons for our determination. *See* Tex. R. App. P. 47.4.

boards, secured on the edges by blue painter's tape, to protect the floors while other portions of the building were being remodeled and that her sandal got caught on the edge of one of the masonite boards where the painter's tape had become worn and split, causing the edge of the board to lift up and create a trip hazard. After a sufficient time for discovery had passed, Burt-Watts filed both traditional and no-evidence motions for summary judgment, to which Housour responded. The trial court granted both of Burt-Watts's motions, and Housour appeals the trial court's order granting Burt-Watts's no-evidence summary-judgment motion and dismissing the entirety of her claims.

DISCUSSION

In its no-evidence summary-judgment motion, Burt-Watts challenged the existence of evidence supporting the following elements of Housour's premises-liability claim: (1) that a condition on the premises posed an unreasonable risk of harm; (2) that Burt-Watts had actual or constructive knowledge of such condition; and (3) that Burt-Watts had a duty to reduce or eliminate the risk of harm because of its actual or constructive knowledge of such condition. *See Del Lago Partners v. Smith*, 307 S.W.3d 762, 767 (Tex. 2010). If Housour failed to present evidence creating a genuine issue of material fact on any of these elements, summary judgment in favor of Burt-Watts was proper. *See Tex. R. Civ. P. 166a(i); Mack Trucks, Inc. v. Tamez*, 206 S.W.3d 572, 582 (Tex. 2006).

We first address the element of whether Burt-Watts had actual or constructive knowledge of the alleged unreasonably dangerous condition.² To prove actual or constructive

² For the sole purpose of the analysis of actual or constructive knowledge, we assume *arguendo* that Housour presented sufficient evidence to support the element of an unreasonably dangerous condition.

knowledge of an unreasonably dangerous condition, a plaintiff must prove at least one of the following: (1) defendant's employees caused the harmful condition; (2) defendant's employees either saw or were told of the harmful condition prior to the plaintiff's injury; or (3) the harmful condition was present for so long that it should have been discovered in the exercise of reasonable care. *See Wal-Mart Stores, Inc. v. Reece*, 81 S.W.3d 812, 814 (Tex. 2002); *Keetch v. Kroger Co.*, 845 S.W.2d 262, 265 (Tex. 1992). The third of these avenues is known as the "time-notice rule," and it requires "some proof of how long the hazard was there before liability can be imposed on the premises owner for failing to discover and rectify, or warn of, the dangerous condition." *Reece*, 81 S.W.3d at 816 (holding that where there was "no evidence indicating when or how the spill came to be on the floor," evidence was legally insufficient to support constructive-notice element of plaintiff's slip-and-fall claim).

The time-notice rule protects against imposing strict liability upon premises owners, which approach the supreme court has "clearly rejected," and "is based on the premise that temporal evidence best indicates whether the owner had a reasonable opportunity to discovery and remedy a dangerous condition." *Id.* "Without some temporal evidence, there is no basis upon which the factfinder can reasonably assess the opportunity the premises owner had to discover the dangerous condition." *Id.* Evidence that establishes only the possibility that a dangerous condition existed long enough to give the defendant an opportunity to discover it does not prove constructive knowledge. *See Wal-Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934, 938 (Tex. 1998).

Our review of the record leads us to conclude that Housour did not present any evidence about how long the blue tape had been allegedly worn or split before she encountered

it—or even that the tape was in fact worn or split before she encountered it—or any evidence indicating that any Burt-Watts employees knew of the alleged condition or were present in close proximity to the condition prior to her fall such that a factfinder could assess whether the employees should reasonably have discovered it. *See Reece*, 81 S.W.3d at 816 (noting that proximity evidence will often be relevant to analysis of whether owner should reasonably have discovered hazard, but only after plaintiff has presented evidence of how long hazard had been present).

There is also no evidence that Burt-Watts had actual knowledge of the condition or had caused it, nor any evidence of how the condition was created, except for Housour’s speculation that the tape had “gotten worn from, you know, stuff rolling across” it. Considering the evidence in the light most favorable to Housour, we hold that there is no evidence to support a finding that Burt-Watts had actual or constructive notice of the allegedly dangerous condition, and the trial court accordingly properly granted Burt-Watts’s no-evidence summary-judgment motion. *See id.* at 816–17. We therefore need not address the other challenged elements of Housour’s claims. *See* Tex. R. Civ. P. 166a(i); *see also* Tex. R. App. P. 47.1.

CONCLUSION

Because Housour did not present evidence creating a genuine issue of material fact on an essential element of her claim, the trial court properly granted summary judgment, and we affirm its judgment.

David Puryear, Justice

Before Justices Puryear, Pemberton, and Goodwin

Affirmed

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