Circuit Court for Allegany County
Case No. 01-C-16-44418-G

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 637

September Term, 2017

BRENDA WARREN

v.

SHEETZ, INC.

Arthur,
Leahy,
Beachley,

JJ.

Opinion by Leahy, J.

Filed: May 10, 2018

Appellant, Ms. Brenda Warren ("Ms. Warren"), tripped and fell on a rug while exiting a convenience store owned by Appellee, Sheetz, Inc. ("Sheetz"). Roughly three years after the incident, Ms. Warren filed a negligence action against Sheetz in the Circuit Court for Allegany County and requested a jury trial. Ms. Warren, in an answer to interrogatories posed by Sheetz, stated that after she fell, one of Sheetz's employees said that the rug was "up a little bit[.]" Ms. Warren was unable to demonstrate what condition the rug was in prior to the fall. Sheetz then moved for summary judgment, arguing that the evidence presented by Ms. Warren was not sufficient to prove knowledge—either actual or constructive—that the rug was a hazard and that Sheetz should not be held liable. The trial court granted Sheetz's motion in a written order and Ms. Warren filed a timely notice of appeal.

Ms. Warren presents one question on appeal:

"Did the Trial Court Err in Granting Appellee Defendant Summary Judgment?"

We find no error in the trial court's decision to grant Sheetz's motion for summary judgment and hold that because Ms. Warren was unable to provide any evidence of the condition of the rug prior to her fall, she would be unable to demonstrate that Sheetz had actual or constructive knowledge of the hazard in time to adequately remedy it.

BACKGROUND

A. The Incident

The facts surrounding this case are not in dispute. Around mid-day on September 12, 2013, Ms. Warren entered a Sheetz convenience store in Corrigansville, Maryland, to

order some food and purchase gasoline. After ordering her food from the Made-to-Order ("MTO") counter, Ms. Warren made her way toward the exit to put gasoline in her vehicle. On the way out of the door, Ms. Warren's "foot caught the rubbed edge of a rug which was upturned" causing her to fall and sustain injuries. After her fall, a Sheetz employee standing behind the MTO counter noted that Ms. Warren was bleeding, and, according to Ms. Warren, told her that the rug was "up a little bit[.]"[1] Nearly three years later, on August 31, 2016, Ms. Warren filed a negligence action against Sheetz—stating she was severely injured and claiming $500,000 in damages.

B. Discovery Disputes

On October 12, 2016, Sheetz filed an answer denying Ms. Warren's claims, and filed a notice of service of discovery requesting answers to interrogatories and production of documents. Two days later, the circuit court issued a scheduling order, set trial for May 9-10, 2017, and ordered that discovery be completed no later than 90 days before trial. The court also set a pretrial conference for April 4, 2017. By early December of 2016, having not received any discovery from Ms. Warren, Sheetz sent two letters—dated December 9 and December 22—to Ms. Warren's counsel requesting the production of discovery

[1] Ms. Warren also asserted in her interrogatory responses that a male customer observed the incident at Sheetz, but she did not know his identity. She failed to answer, however, interrogatory No. 6 requesting that she "[i]dentify and describe, to the best of your knowledge, the rug which you alleged caused you to trip and/or fall, including its approximate size (length, width, height) and color[.] . . . If you contend that a defect or hazardous condition existed prior to the occurrence, which caused or contributed to your alleged injuries, identify with particularity the defect or hazardous condition which you[] contend existed and, state the length of time which you[] contend such defect or condition existed."

documents and answers to interrogatories. In the December 22 letter, Sheetz's counsel advised Ms. Warren's counsel that if the discovery documents were not received by January 5, 2017, "I will be forced to file a motion to compel with the court." On January 5, Ms. Warren's counsel contacted Sheetz's counsel and requested an extension until January 12, which Sheetz's counsel consented to.

On January 23, 2017, having received none of the requested documents from Ms. Warren, Sheetz filed a motion to compel discovery responses, or alternatively, a motion for sanctions. The circuit court granted Sheetz's motion to compel on February 13 and ordered Ms. Warren to "serve complete and executed discovery responses to all discovery propounded by [Sheetz] within fifteen (15) days" and added that "any further failure by [Ms. Warren] to serve discovery responses shall entitle [Sheetz] to petition this Court for immediate sanctions, including, but not limited to, dismissal[.]" On March 3, 2017, roughly 18 days after the court's order, Sheetz filed a motion for sanctions against Ms. Warren and moved that the court dismiss the suit for non-compliance with the discovery order. Then, on March 17, Ms. Warren filed a notice informing the court that the requested discovery documents had been mailed to Sheetz. In response, Sheetz filed a motion *in limine* to prohibit introduction of "untimely expert evidence and all medical evidence[,]" citing Ms. Warren's "untimely and delayed disclosure of any medical records" as "severely prejudice[ial.]"

On April 4, 2017, Ms. Warren requested a continuation of the trial date to allow the parties to conduct discovery on the same day that the parties appeared for a hearing to

address Sheetz's motion for sanctions. During the hearing, Sheetz argued that due to Ms. Warren's "shockingly deficient" answers to interrogatories as well as several documents referenced in those answers, which were ultimately not produced, dismissal of the claim was proper. Moreover, Sheetz averred that delay of the trial date would severely prejudice its ability to present a defense because it had been nearly "four years [since] the actual occurrence" and asserted that based on Ms. Warren's past failures to adequately participate in discovery, "[t]here [are] absolutely no assurances that can be made . . . that [Ms. Warren] is prepared to prosecute her claim." At the close of arguments, the court granted Sheetz's motion for sanctions and made the following ruling:[2]

> [W]hat I'm going to do is I am going to grant the Motion for Sanctions and the sanction is going to be that [Ms. Warren] is going to be limited in the evidence that, that she will be able to enter in her case in chief in this to the, that information which was provided in the Answers to Interrogatories and any documents which were attached thereto. [Ms. Warren] is not going to be permitted to enter evidence, documents that have, were not provided with the Answers to Interrogatories specifically as a sanction for the failure to respond to the request for production of documents. With that in mind, this case is going to, and the trial date that we have for this case is going to continue unless I make [] a ruling to the contrary once I see the Motion for Continuance.[3]

C. Motion for Summary Judgment

On April 10, 2017, Sheetz filed a motion for summary judgment,[4] arguing that due

[2] For ease of reading, we have redacted all instances where "um" or "ah" appear in the record.

[3] Ms. Warren's motion to postpone the trial date was denied in a written order on April 12, 2017.

[4] Neither party requested a hearing on Sheetz's motion for summary judgment.

to the court's April 4 ruling, Ms. Warren would be unable to "meet her burden of proving that [Sheetz] either created a hazardous condition, or was on actual or constructive notice of a hazard with sufficient time to remove the hazard or warn [Ms. Warren]." Additionally, Sheetz contended that summary judgment was appropriate because Ms. Warren had "failed to establish that any Sheetz employees in the store actually saw the hazardous condition or actually knew of its existence at any time before [Ms. Warren]'s fall" and that at no point had Ms. Warren stated the length of time that the alleged hazard existed, which would effectively prevent her from demonstrating that Sheetz was on constructive notice of the hazard.

In response, Ms. Warren argued that she was a business invitee at the time of the incident,[5] and that although "there [was] no evidence in the record that [Sheetz] knew of the dangerous condition of the rug[,]" the circumstances were sufficient to deduce that Sheetz had constructive notice of the hazardous condition of the rug given "the nature and location of the defect, the ease with which it could be discovered, the obviousness to the property owner that such a rug defect would occur and the central location of the defect[.]" Moreover, Ms. Warren advocated that "such a condition should have been readily apparent to [Sheetz]" and suggested that employees for Sheetz should have been "inspecting the rugs constantly[.]"

On May 3, 2017, approximately one week before trial was scheduled to begin, the

[5] At a pre-trial conference on April 20, 2017, Sheetz stipulated that Ms. Warren was a business invitee at the time of the incident.

circuit court granted Sheetz's motion for summary judgment. In a written memorandum issued by the court, the judge noted that he "does not agree with [Ms. Warren]'s position that the duty of care under these facts requires [Sheetz] to constantly monitor the rug at the doorway." The trial court then cited to this Court's decision in *Carter v. Shoppers Food Warehouse*, 126 Md. App. 147, 164 (1999), analogizing that decision to grant summary judgment with the facts presented in the instant case:

> The only evidence appellant presented that was not conjecture was that she fell on the carpet. Whether the carpet was turned up prior to her fall and if so, the length of time it was turned up[,] [we]re matters of [mere] speculation. Even if we assume the carpet was turned up, we also would have to assume that appellee had actual or constructive knowledge of the carpet's condition in order for there to be a dispute of material fact. Absent evidence of appellee's knowledge of the condition, the court was legally correct in granting summary judgment[to appellee].

The court then concluded that "[t]here is no dispute of facts in this case. [Ms. Warren] can introduce evidence that she fell on the rug. As to any other element, fact or condition there is no evidence, only speculation."

Ms. Warren then filed a timely notice of appeal to this Court. Additional facts will be supplied in the discussion as necessary.

DISCUSSION

Ms. Warren contends that the trial court improperly granted Sheetz's motion for summary judgment. She argues that had the case proceeded to trial, she would have presented sufficient evidence—pursuant to "ample Maryland precedent"—to "allow a jury (as the fact-finder) to infer that the store owner in fact had constructive knowledge of the

defect."[6] Moreover, Ms. Warren avers that Sheetz had a duty to exercise reasonable care to regularly inspect the rug that caused her fall and concludes that a jury could infer that Sheetz had constructive knowledge.

In response, Sheetz argues summary judgment was appropriate because Ms. Warren's failure to establish "how long the rug was protruding upward" effectively precluded Ms. Warren from "inviting the jury to speculate as to the same[.]" The primary thrust of Sheetz's argument is that Maryland law "rejects that a store owner has a duty to continuously inspect its premises, especially when the crux of a plaintiff's argument, as it is here, amounts to making the owner of the premises the insurer of the safety of the plaintiff." Additionally, Sheetz contends that the MTO employee's statement that the rug was turned "up a little bit"—even if true—was made after Ms. Warren fell, which creates no inference that Sheetz should have possessed knowledge of this defect prior to the fall. Ms. Warren's inability to demonstrate how long the rug was upturned, according to Sheetz, is wholly "fatal to her claim."

In *Dashiell v. Meeks*, 396 Md. 149 (2006), the Court of Appeals defined our standard of review for a grant of summary judgment:

> With respect to the trial court's grant of a motion for summary judgment, the standard of review is *de novo.* Prior to determining whether the trial court was legally correct, an appellate court must first determine whether there is any genuine dispute of material facts. Any factual dispute is resolved in favor of the non-moving party. Only when there is an absence of a genuine dispute

[6] Ms. Warren does not contest that Sheetz did not have actual knowledge of the upturned rug. Rather, her argument is constrained solely to the issue of constructive knowledge of the defect.

> of material fact will the appellate court determine whether the trial court was correct as a matter of law.

Id. at 163 (internal citations omitted). In this case, Ms. Warren concedes that "there was no dispute of fact" between the parties. Therefore, our inquiry is narrowly constrained to whether the trial court's decision to grant summary judgment in favor of Sheetz on the issue of constructive knowledge was correct as a matter of law, a question which we consider *de novo*.

In premises liability cases in Maryland, the Court of Appeals has adopted the general rule contained in Restatement (Second) of Torts § 343 (1965). *Deering Woods Condo. Ass'n v. Spoon*, 377 Md. 250, 262-63 (2003). Section 343 provides the following:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) fails to exercise reasonable care to protect them against the danger.

While a property owner "owe[s] a duty to exercise ordinary care to keep the premises in a reasonably safe condition[,]" *Lexington Mkt. Auth. v. Zappala*, 233 Md. 444, 445 (1964), he or she "is not the insurer of the invitee's safety." *Maans v. Giant of Md., L.L.C.*, 161 Md. App. 620, 627 (2005). Nor is the owner obligated to constantly patrol the property to discover potential hazards. *Deering Woods, supra*, 377 Md. at 270. The burden falls on the invitee-plaintiff "to produce admissible evidence that (1) [the property owner]

failed in its duty to make *reasonable periodic inspections* of [the property], and (2) had it made such reasonable inspections, it would have discovered a dangerous condition." *Maans*, 161 Md. App. at 627 (citation and quotations omitted) (emphasis altered). A plaintiff must also demonstrate that the property owner "created the dangerous condition or had actual or constructive knowledge of its existence" prior to the injury. *Lexington Mkt. Auth.*, 233 Md. at 446 (citations omitted). Moreover, a plaintiff cannot maintain a negligence suit "merely from a showing that an injury was sustained in [the defendant's] store." *Moulden v. Greenbelt Consumer Servs., Inc.*, 239 Md. 229, 232 (1965). Rather, the plaintiff must demonstrate that the hazardous condition was present prior to the injury, and that it was present for a period of time sufficient for the property owner to adequately remedy it. *Id.* at 233.

As previously explained, a plaintiff need not demonstrate that a property owner actually knew of the alleged hazard. If a clamant can demonstrate that the owner had constructive knowledge of the hazard, he or she may maintain a negligence action. The Court of Appeals in *Deering Woods*, *supra*, explained:

> "It is not necessary that there be proof that the inviter had actual knowledge of the conditions creating the peril; it is enough if it appear that it could have discovered them by the exercise of ordinary care, so that, if it is shown that the *conditions have existed for a time sufficient to permit one, under a duty to know of them, to discover them*, had he exercised reasonable care, his failure to discover them may in itself be evidence of negligence sufficient to charge him with knowledge of them. What will amount to sufficient time depends upon the circumstances of the particular case, and involves consideration of the nature of the danger, the number of persons likely to be affected by it, the diligence required to discover or prevent it, opportunities and means of knowledge, the foresight which a person of ordinary care and

> prudence would be expected to exercise under the circumstances, and the foreseeable consequences of the conditions."

377 Md. at 264 (emphasis added) (quoting *Moore v. Am. Stores Co.*, 169 Md. 541, 551 (1936)).

This Court considered a set of facts nearly identical to those on appeal in *Carter v. Shoppers Food*, *supra*, when a shopper slipped and fell on a rubber mat in the produce section of a grocery store. 126 Md. App. at 152. The shopper initiated a negligence action against the grocery store, claiming that the store had failed to adequately inspect the area in which the accident occurred. *Id.* at 150. In response, the store filed a motion for summary judgment, which the trial court granted. *Id.* at 154. On appeal, the shopper argued that the produce section was cleaned too infrequently, and that if the store had exercised reasonable care in cleaning the produce area, it would have discovered and remedied the hazardous condition of the mat. *Id.* at 161. This Court disagreed, and noted that

> [e]ven if there was uncertainty surrounding the time that elapsed between the last produce area sweep and appellant's accident, the court was legally correct in granting summary judgment. Assuming the carpet was turned up, appellant failed to present evidence either that appellee had actual or constructive knowledge of the carpet or that the knowledge was gained in sufficient time for appellee's employees to have the opportunity to remove it or to warn appellant or other shoppers.

Id. at 161. Moreover, the Court stated that based on the record before it, "it is uncertain for what period, if at all, the carpet was turned up prior to the fall." *Id.* at 162. Further, the Court declined to "charge appellee with constructive knowledge of a hazard which may or may not have existed and which appellee, even though the exercise of reasonable care, may

not have been capable of preventing." *Id.* Ultimately, this Court affirmed the decision to grant summary judgment in favor of the store, citing the fact that there "was no evidence in the instant case as to how long the carpet had been turned up" prior to the fall. *Id.* at 164. Any consideration as to how long the carpet had been turned up, or the store's knowledge of the possible hazard, would constitute "mere speculation" by the jury, which the Court refused to endorse. *Id.* at 164-65. *See also Moulden*, 239 Md. at 233 (affirming grant of summary judgment where no evidence demonstrated how long a string bean had been on the floor before plaintiff slipped on it); *Maans*, 161 Md. App. at 636 (noting that allowing "the jury [to] engage[] in raw speculation or conjecture" as to how long water was on the floor of a supermarket "is forbidden.").

Just as in *Carter*, Ms. Warren was unable to demonstrate how long, if at all, the rug was upturned prior to her injury. For all that she demonstrated, the rug could have been turned up by another customer just seconds before she tripped on it, or her own foot could have caused the rug to become turned up. Contrary to Ms. Warren's position, Sheetz was not obligated to constantly monitor the rug in front of the exit. *See Deering Woods*, *supra*, 377 Md. at 270. Ms. Warren's inability to demonstrate for what period of time the rug remained in a hazardous condition is fatal to her argument. *See Maans*, 161 Md. App. at 632. All that Ms. Warren was able to show was that the MTO employee remarked that the rug was "up a little bit[.]" This statement—even if we were to assume that the MTO employee observed the rug and actually admitted that it was "up"—does not provide any evidence of the condition of the rug ***before*** Ms. Warren tripped on it. And therefore, the

court's decision to grant summary judgment—thereby circumventing submission of the issue of constructive knowledge to the jury—was correct, as any consideration of how long the rug remained in a hazardous condition, as well as Sheetz's duty to remedy it, would be sed on mere conjecture and speculation. *See id.* at 636. Therefore, for the foregoing reasons, we determine no error in the circuit court's decision to grant Sheetz's motion for summary judgment.

JUDGMENT OF THE CIRCUIT COURT FOR ALLEGANY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.