Circuit Court for Charles County
Case No. C-08-CV-23-000835

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1441

September Term, 2024

ZORALIS SOTO MENDEZ

v.

WALMART INC. AND WALMART STORES EAST LP

Nazarian,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: November 19, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

When a third party creates a dangerous condition on a storekeeper's premises, a customer who suffers an injury from that danger must produce facts that either establish or support a rational inference that the storekeeper had or should have had notice of it. After finding that Zoralis Soto Mendez hadn't produced evidence to establish the property owner's knowledge of the condition that caused her to fall, Walmart, Inc. and Walmart Stores East, LP (together, "Walmart") moved for summary judgment and the Circuit Court for Charles County granted Walmart's motion. Ms. Soto Mendez appeals that decision and we affirm.

I. BACKGROUND

Walmart operates and manages a retail store located at 40 Drury Drive in La Plata. In response to the COVID-19 pandemic, Walmart offered sanitation wipes to customers at the store's front entrance. On March 12, 2021, while shopping at the store, Ms. Soto Mendez slipped and fell on some wipes that had been left on the floor and hurt her right knee. She sued Walmart for negligence.

Ms. Soto Mendez alleged in her complaint that "the sanitation wipes were on the floor near the cash registers for a sufficient amount of time for Walmart's employees to discover them and clean them up prior to" her fall. She claimed that Walmart had breached its duty to customers (and thus to her) by failing "to maintain the floor of its store in safe condition," failing to warn her "of the wipes on the tiled floor in front of the registers," and by offering wipes to customers that ended up on the floor. In its answer, Walmart didn't dispute that it owes customers a duty to "exercise reasonable care to maintain [the store]

premises free from known dangerous conditions." But it denied having actual or constructive knowledge of the wipes on the floor that Ms. Soto Mendez slipped on and denied that it had breached its duty to her.

At her deposition, Ms. Soto Mendez testified that she went to Walmart on March 12 with her mom, aunt, sister, and cousin. She arrived around 2:00 p.m. and shopped for about an hour-and-a-half. She saw a canister at the front store entrance that offered wipes, but she didn't take one and didn't remember seeing other customers take them. She walked down the main aisle in the front of the store, next to the checkout area, and didn't see anything on the floor. After she finished shopping, she walked down the main aisle again, toward the checkout area, and still didn't see anything on the floor. After a few minutes in the checkout area, her sister realized that she had picked up the wrong bed linens, and Ms. Soto Mendez volunteered to walk back and get the right sheets. When she walked back down the main aisle, she slipped and fell on the floor. She hadn't seen any foreign objects on the floor before she fell.

Ms. Soto Mendez testified that she couldn't get up because her foot kept sliding and that her sister, who came over after she fell, pointed out that there were wipes under her foot. At that point, she saw "around three" white wipes. She said the wipes were visible on the floor because the color of the floor was "white-ish" and "a little bit more tan than . . . the white of the wipe," and she surmised that the wipes blended with the floor and were less visible from farther away. She didn't know where the wipes came from, who dropped them, or how long they had been there, and she didn't see any other debris on the floor where she

fell. She testified that a Walmart associate had been behind a cash register about six feet away, but she didn't know if the associate had seen the wipes on the floor before she fell. The area was well lit, she didn't have trouble seeing, and she was looking at the ground and her surroundings when she slipped. After she fell, she saw a person she believed to be a Walmart associate walking toward her, but then they turned and walked away. She didn't know whether they had seen the wipe on the floor, and she didn't see what they were doing or what direction they were looking in the moments before her fall.

Ms. Soto Mendez deposed Walmart's assistant manager, Jamie Hoffman, who had worked at the store since 2005. According to Ms. Hoffman, Walmart started offering wipes to customers during the COVID-19 pandemic to comply with county requirements, and the store had a wipe station at the front entrance near the cart corral. There was one wipe station with a thirteen-gallon trash can where customers could throw their wipes away. Each tub contained three hundred and fifty wipes and Walmart used anywhere between six and ten tubs daily, meaning that customers used at least two thousand wipes each day. There "were a lot of wipes in the store at that time" and Walmart associates had picked up wipes from the floor of the store before, but no customer had ever slipped and fallen from one. Walmart didn't have a sign at the front entrance that directed customers to throw wipes into the trash can and all other trash cans were located behind the cash registers and at the customer service desk.

Ms. Hoffman testified about Walmart's strategic maintenance policy of monitoring the aisles in the store. Under that policy, staff must ensure that areas are "free of debris,

any spills, any trash, any dust or debris on the floors that could cause a potential hazard." Walmart has designated maintenance staff that conduct a continuous safety sweep "throughout the whole entire building," then "start back at where they started from [as part of] a continuous process." At any given time, there are at least a hundred maintenance staff in the building that monitor the store for spills or broken items. Staff are responsible for removing foreign objects on the floor or, if they can't be removed, for standing nearby and guarding the spill until another associate can come and clear the area of debris. Walmart staff has safety meetings, daily store meetings, and follow a strategic maintenance plan to ensure that spill stations are stocked and that safety sweeps are done across all three store shifts. Safety sweeps occur every one to two hours. Ms. Hoffman responded to the scene of the fall but didn't see any wipes on the floor and didn't recognize the person that walked toward and away from Ms. Soto Mendez as a store employee.

Samuel Taylor of CED Technologies, Inc., prepared an expert report on Ms. Soto Mendez's behalf. According to his report, there were no witnesses to her fall and Walmart's surveillance video didn't identify who discarded the wipe or when it was dropped on the floor. From the limited evidence, he couldn't confirm what safety sweeps Walmart had performed on March 12 near the site of the incident:

> The surveillance video does not clearly show [Walmart's] employees conducting a safety/sanitation sweep in the vicinity of the incident site. Jamie Hoffman testified that the store's surveillance was limited to one hour prior to the incident as well as one hour following the incident. Further, the list of employees working on the date of the incident and their individual cleaning assignments was not retained. Thus, it is impossible to determine with a reasonable degree of

> engineering certainty when the last safety sweep occurred in the vicinity of the incident site.

Mr. Taylor concluded that Walmart's inaction and lack of sufficient control measures had allowed the wipe to exist on the floor in the area where Ms. Soto Mendez slipped and fell and that had created a hazardous condition.

Walmart moved for summary judgment and argued that Ms. Soto Mendez hadn't produced evidence that any of its associates caused or knew about the wipes on the floor or any evidence of how long the wipes had been on the floor before she fell. Without this evidence, Walmart contended, Ms. Soto Mendez couldn't establish that it had breached any duty to her. In her opposition, Ms. Soto Mendez argued that Walmart knew that customers "were dropping . . . wipes on the floor of its store" and breached its duty to take reasonable steps to protect customers when it didn't provide more trash cans, put up signs that asked customers to throw wipes away, post warning signs to look out for wipes on the floor, or conduct continuous sweeps of the store. In these respects, she argued, Walmart created the dangerous condition that led to her slip and fall on March 12. She contended further that Walmart could have prevented her fall and that the case should proceed to a jury.

The parties appeared before the circuit court for a hearing on Walmart's motion. The court found that Ms. Soto Mendez's chief argument—that Walmart's operations had created the dangerous condition that led to her injury—stated, in essence, a "mode-of-operation" theory of liability that this Court rejected in *Maans v. Giant of Md., L.L.C.*, 161 Md. App. 620 (2005). The court concluded that Ms. Soto Mendez hadn't

produced evidence that Walmart had actual or constructive notice of the wipes on the floor that caused her injury. The court found as well that she hadn't generated evidence of how long before her fall the wipes had been on the floor. Because there was no evidence that Walmart had time to remedy the condition and prevent her injury, and where *Maans* rejected the reasoning on which she relied, the circuit court granted summary judgment for Walmart. Ms. Soto Mendez noted a timely appeal.

II. DISCUSSION

On appeal, Ms. Soto Mendez asks whether the circuit court erred in ruling that she hadn't established a *prima facie* case of negligence against Walmart and that there were no disputes of material fact that justified allowing the case to go to trial.[1] We hold that the court granted summary judgment properly because Ms. Soto Mendez failed to generate evidence that Walmart had actual or constructive knowledge of the wipes that caused her injury, a material fact in a premises liability claim.

Reviewing courts focus on whether a decision to grant summary judgment was legally correct. *Richardson v. Nwadiuko*, 184 Md. App. 481, 488 (2009) (*citing Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152–53 (2008)); *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 176 (2015). We reach that conclusion after reviewing the full

[1] Walmart lists two Questions Presented in its brief:

1. Whether the trial court properly granted summary judgment on the grounds that there was no genuine dispute of material fact.
2. Whether the trial court properly concluded that Walmart had no actual or constructive notice of the wipes that Appellant claims caused her fall.

record "'in the light most favorable to the non-moving party,'" *Richardson*, 184 Md. App. at 488 (*quoting Chesek v. Jones*, 406 Md. 446, 458 (2008)), and after construing any reasonable inferences from the facts against the movant. *Williams v. Mayor of Balt. City*, 245 Md. App. 428, 442 (2020) (*citing Kennedy Krieger Institute, Inc. v. Partlow*, 460 Md. 607, 632–33 (2018)). Our first step is to determine whether there is a dispute of material fact; if there isn't, then we decide whether the movant is entitled to judgment as a matter of law. *Id.* (*citing Colbert v. Mayor & City Council of Balt.*, 235 Md. App. 581, 587 (2018)).

Ms. Soto Mendez asserts that her evidence gave rise to reasonable inferences that Walmart had introduced large quantities of wipes into the store, knew that customers sometimes dropped wipes on the floor, yet provided few trash cans where customers could throw wipes away safely and didn't warn customers about the risk of wipes on the floor or direct them to use the trash can. She argues that her evidence and expert testimony established that the wipes matched the color of the predominant floor tile and were a foreseeable slipping hazard. And she maintains that Mr. Taylor's conclusion that Walmart's insufficient control measures caused her injury was enough to generate a genuine dispute of material fact on whether Walmart was negligent.

In response, Walmart contends that there is no evidence that its associates dropped the wipes on the floor or that it had actual knowledge that the wipes were on the floor before Ms. Soto Mendez fell. Walmart argues that she failed also to produce evidence of how long the wipes were on the floor, a fact essential to creating a genuine dispute as to whether it had constructive notice, or evidence that it had failed to take necessary

precautions that could have discovered the wipes and prevented the incident. Walmart concludes that this lack of evidence is fatal to Ms. Soto Mendez's ability to prove that it breached its duty to keep the premises reasonably safe and makes summary judgment appropriate as a matter of law. Further, Walmart adds that her argument relies essentially on the "mode of operation" rule that this Court rejected in *Maans*.

Summary judgment is appropriate when there is "no genuine dispute as to any material fact" such that the moving party is "entitled to judgment as a matter of law." Md. Rule 2-501(a). To survive a summary judgment motion, the plaintiff's claim "'must be supported by more than a scintilla of evidence, as there must be evidence upon which [a] jury could reasonably find for [them].'" *Zilichikhis*, 223 Md. App. at 176 (*quoting Blackburn Limited Partnership v. Paul*, 438 Md. 100, 107–08 (2014)). If the non-moving party fails to carry their burden of proving an essential element of the claim, then summary judgment is warranted. *Id.* at 186 (*citing Central Truck Center, Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 386 (2010)).

In a negligence action, the plaintiff must prove facts demonstrating that "(1) the defendant was under a duty to protect [them] from injury, (2) the defendant breached that duty, (3) the plaintiff suffered actual injury or loss, and (4) the loss or injury proximately resulted from the defendant's breach of the duty." 16 M.L.E. *Negligence* § 1 (2022). Storekeepers, like Walmart, owe business invitees, like Ms. Soto Mendez, "a duty of ordinary care to maintain their premises in a reasonably safe condition." *Giant Food, Inc.*

v. Mitchell, 334 Md. 633, 636 (1994).[2] What constitutes "ordinary care" varies from one situation to the next. *Id.* (*citing Dickey v. Hochschild, Kohn & Co.*, 157 Md. 448, 451 (1929)). Taking reasonable care to maintain the safety of a premises means care in its "original construction," in the activities of the storekeeper or its employees that can affect the condition of the premises, and in "inspection to discover [its] actual condition and any latent defects, followed by such repair, safeguards, or warning as may be reasonably necessary for [the invitee's] protection under the circumstances." Restatement (Second) of Torts § 343 cmt. b (A.L.I. 1965).

A storekeeper whose conduct "falls below the standard of care owed" breaches its duty to an invitee who sustains an injury on the premises, 16 M.L.E. *Negligence* § 10 (2025), but a presumption of negligence doesn't follow from the mere fact that an injury occurred because storeowners "are not insurers of their customers' safety." *Mitchell*, 334 Md. at 636. The invitee must prove that a dangerous condition existed *and* that the defendant had actual or constructive knowledge of it with enough time to resolve the condition or warn the plaintiff about it. *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 315 (2007) (*citing Rehn v. Westfield Am.*, 153 Md. App. 586, 593 (2003)); *Rawls v. Hochschild, Kohn & Co.*, 207 Md. 113, 122 (1955) (case should be submitted to jury if "it might reasonably be decided that the storekeeper could have discovered the dangerous condition by the exercise of reasonable care"). To prove constructive knowledge, it is essential that the customer "'show how long the dangerous condition existed.'" *Zilichikhis*,

[2] The parties agree that Ms. Soto Mendez was Walmart's invitee on March 12.

223 Md. App. at 187 (*quoting Joseph*, 173 Md. App. at 316). And a storekeeper is entitled to summary judgment "if it neither created nor actually knew of the hazard, and if there is no evidence showing that the hazardous condition existed long enough for [the storekeeper] to remedy the hazard or warn of its existence." *Id.*

In this case, the circuit court found that Ms. Soto Mendez had failed to produce evidence that Walmart had or should have had notice of the wipes that caused her injury. Without a genuine dispute that there had been a breach of Walmart's duty, the court concluded, Walmart was entitled to summary judgment as a matter of law. The court's ruling was legally correct.

Ms. Soto Mendez suggests that Walmart breached its duty to exercise ordinary care to keep the premises reasonably safe when it didn't place trash cans throughout the store, put up warning signs to look out for wipes on the floor, or post signs that asked customers to throw wipes away, even though it knew that customers had dropped wipes on the floor before and that wipes on the floor were difficult to see. But Walmart's general knowledge that customers had dropped wipes on the floor in the past does not amount to actual or constructive notice that on March 12, someone had dropped wipes on the area of the floor where Ms. Soto Mendez slipped and fell. A business invitee must produce evidence that the storekeeper knew about the particular danger that caused the invitee's injury. *Zilichikhis*, 223 Md. App. at 189 (summary judgment appropriate because evidence that garage was always dirty and rife with "oil stains, slicks, and puddles" and that defendant hadn't done daily inspections to find hazards wasn't "sufficient to show that any of the

defendants had constructive knowledge of the motor oil spill that caused [plaintiff's] fall"); *Williams*, 245 Md. App. at 446 ("'there must be actual or constructive notice of [a] particular defect or obstruction'" (*quoting Weisner v. Mayor and Council of Rockville*, 245 Md. 225, 229 (1967))); *id.* at 444 (even though there was a volume of evidence that city-defendant knew about a faulty fire hydrant, summary judgment for city was proper where plaintiff didn't produce evidence supporting an inference that city had constructive knowledge of the watery roadway that allegedly caused her injury); *Burkowske v. Church Hosp. Corp.*, 50 Md. App. 515, 522–23 (1982) ("[t]hat one bench is splintered is not evidence that another is in danger of collapse, much less that [defendant] was or should have been aware of such a danger"), *disapproved on other grounds by B&K Rentals and Sales Co., Inc. v. Universal Leaf Tobacco Co.*, 324 Md. 147, 154 (1991); *Maans*, 161 Md. App. at 637–38 (rejecting theory of negligence liability that "looks to a business's choice of a particular mode-of-operation [rather than] events surrounding the plaintiff's accident."). Ms. Soto Mendez's complaint alleged that the wipes were on the floor long enough for Walmart to discover them before she fell and that Walmart failed to maintain the floor in a safe condition, but she hasn't met her burden of producing evidence that could create a question of fact in support of her allegations.

First, Ms. Soto Mendez hasn't established any facts from which a jury could infer reasonably that Walmart associates saw the wipes on the floor before she slipped on them. At her deposition, she testified to falling in the main aisle about six feet from a Walmart associate that was working behind the cash register but she didn't know if the associate had

seen the wipes beforehand. The record doesn't contain any facts about the associate's ability to view the wipes from behind the cash register or about what they were doing during the incident. Ms. Soto Mendez testified that she didn't see any Walmart associate in the main aisle of the store until after she had fallen. At that point, she said a person whom she thought was an employee walked in her direction and then turned and walked away. She said they were walking from the farthest area of the cash registers, she didn't know if they had seen the wipes on the floor, and she didn't know where the person was before she fell. Those facts, combined with Ms. Soto Mendez's testimony that she could see the wipes on the floor only up close, when it was "too late," but that they probably "blend[ed] from afar," doesn't demonstrate or support a rational inference that on March 12 Walmart's associates had actual knowledge of the wipes on the floor from which she slipped and fell.

Second, without any evidence of when the wipes fell to the floor, there is no basis from which a jury could infer reasonably that Walmart had an opportunity to clear the wipes or warn Ms. Soto Mendez about them. *Williams*, 245 Md. App. at 444 ("although we resolve all inferences in favor of the party opposing summary judgment, 'those inferences must be reasonable ones'" (*quoting Hamilton v. Kirson*, 439 Md. 501, 523 (2014))); *Rawls*, 207 Md. at 120 ("the customer cannot recover unless . . . it is shown that the condition existed for a length of time sufficient to permit [the storekeeper] to discover it if [they] had exercised ordinary care . . . ."). Ms. Soto Mendez didn't recall seeing wipes on the floor when she first entered the store and walked down the main aisle or when she walked through the main aisle on her way to the self-checkout kiosk. From there, she said

it was only a minute or two before she walked ten feet from self-checkout back to the main aisle and fell. Because there isn't evidence of when the wipes met the floor, there is no timeframe that can support a rational inference regarding whether Walmart failed to exercise due care in discovering the wipes.

Third, Ms. Soto Mendez hasn't established facts that demonstrate what specific actions Walmart took or failed to take on March 12 that would have prevented her injury. *See Burkowske*, 50 Md. App. at 522–23 (under § 343 of the Second Restatement of Torts, plaintiff bears the burden of producing admissible evidence that defendant failed to conduct reasonable periodic inspections and that "had it made such reasonable inspections, it would have discovered a dangerous condition"). She didn't generate a dispute of the fact that Walmart has designated maintenance staff that conduct safety sweeps throughout the entire store on a continuous loop across three shifts each day, or that these sweeps occur every one to two hours. The record indicates that a March 12 surveillance video shows a Walmart associate sweeping in the self-checkout area at approximately 2:53 p.m., Ms. Soto Mendez falling around 3:25 p.m., and a customer kicking away something on the floor where she fell at 3:28 p.m.[3] The record doesn't offer insight on where the associate swept relative to the site of the fall, whether the wipes were on the floor at that time, and, if they were, whether the associate saw or could have seen them.[4] Mr. Taylor's report tells us that there

[3] According to the record, the surveillance footage did not capture clearly the item the customer kicked away.

[4] The record contains a hyperlink to the surveillance video but the link isn't functional.

were no witnesses to the fall, that the March 12 surveillance video didn't identify who discarded the wipe or when it was dropped on the floor, and that it was impossible to determine with reasonable certainty when the last safety sweep occurred at site of the fall. Ms. Soto Mendez carries the burden of disputing material facts with precision to avoid summary judgment, *Williams*, 245 Md. App. at 444, and on this record, any inference that Walmart knew or should have known about the wipes in time to prevent her injury would require a jury to draw from "'pure conjecture.'" *Moulden v. Greenbelt Consumer Serv.*, 239 Md. 229, 233 (1965) (*quoting Orum v. Safeway Stores, Inc.*, 138 A.2d 665, 666 (D.C. 1958)).

Ms. Soto Mendez's arguments on appeal don't counter this evidentiary void. She points out that the lack of prior customer falls from wipes is not dispositive of whether there was negligence and that Walmart isn't relieved of liability because customers, rather than its associates, dropped the wipes. But the circuit court didn't rely on either ground when it granted Walmart's summary judgment motion. *See Williams*, 245 Md. App. at 442–43 (we limit our review to the grounds relied on by the circuit court). We understand why the court found that Ms. Soto Mendez's "sequence of events" argument aligns effectively with the "mode of operation" rule in *Maans*, as both try to reach constructive knowledge through general operational conditions rather than the specific danger that caused the harm at issue. Also, Ms. Soto Mendez cites *Eyerly v. Baker*, 168 Md. 599 (1935), for the proposition that storekeepers have an affirmative duty to protect customers from dangerous conditions caused by the negligent acts of other customers that a

reasonable person should have anticipated. But this appeal isn't about whether Walmart owed her a duty: it's about her inability to produce evidence that Walmart breached its duty to protect her from the wipes that fell on the floor on March 12. And her brief still hasn't identified specific facts from which a jury could infer reasonably that Walmart knew or should have known that those wipes had fallen to the floor on that day.

For these reasons, we hold that summary judgment was appropriate because Ms. Soto Mendez failed to create a genuine dispute as to whether Walmart knew about the wipes on the floor that caused her fall.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. APPELLANT TO PAY COSTS.