

IN THE COURT OF APPEALS OF IOWA

No. 6-728 / 96-416

000353

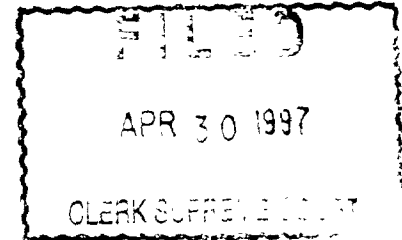
**MAURICE NAGGAR and
MINA NAGGAR,**

Plaintiffs-Appellants,

vs.

**ADVENTURE LANDS OF AMERICA, INC.
d/b/a ADVENTURELAND,**

Defendant-Appellee.



Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

The plaintiffs appeal from the district court's ruling granting the defendant
summary judgment in their negligence action. **AFFIRMED.**

John P. Roehrick of Roehrick, Hulting, Blumberg & Kirlin, P.C., Des Moines,
for appellants.

Guy R. Cook and Andrew D. Hall of Grefe & Sidney, P.C., Des Moines, for
appellee.

Considered by Sackett, P.J., Cady, and Vogel, JJ.

PER CURIAM

This is an appeal by plaintiffs claiming the district court should not have granted summary judgment to defendants in this negligence action based on premises liability for injuries sustained in a slip and fall. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On August 22, 1992, Maurice Naggar went to Adventureland with his wife and two grandchildren. While his grandchildren were waiting in line to ride the bumper cars, Naggar decided to walk to the exit area of the ride to meet them. He was walking across a grassy area when he slipped and fell. Naggar sustained injuries as a result of the fall.

Naggar and his wife filed suit against Adventureland, claiming it had negligently allowed a hazardous condition to exist on its premises. Adventureland filed a motion for summary judgment. The district court granted the motion, finding that Naggar was unable to identify any alleged dangerous condition which may have caused his fall. The court also noted Naggar had failed to produce evidence of any policy of defendant regarding the inspection of grounds. Naggar appeals the grant of summary judgment.

In assessing whether summary judgment is proper, the court looks to the pleadings, depositions, answers to interrogatories, and admissions to see if there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Woodroffe v. Hansenclever*, 540 N.W.2d 45, 46 (Iowa 1995).

Naggar contends summary judgment was inappropriate because there is a dispute of material fact concerning the causation of his fall. He believes the very mechanics of the fall gave rise to circumstantial evidence that there was a foreign substance which caused his fall. In his deposition Naggar testified, "I was walking and the next thing I knew I was in the air and had fallen."

Naggar also believes there was evidence of a foreign substance on his shoe. After he fell, he was taken to a nurse at Adventureland. He asked her to look at his shoe and stated, "Is it a banana?" From his testimony it appears he got a negative response. Naggar infers from this exchange that there was something worse than a banana on his shoe.

Plaintiffs had the burden to show the existence of a condition which posed an unreasonable risk of harm. *Wieseler v. Sisters of Mercy Health Corp.*, 540 N.W.2d 445, 450 (Iowa 1995). We find Naggar presented no evidence to show a dangerous condition existed. Naggar testified he never saw anything on the ground or on his shoe. He also admitted the nurse never said she saw anything on the bottom of his shoe. Naggar has presented merely speculation there was a foreign substance on the ground where he slipped and fell.

Naggar contends the district court incorrectly found there was no evidence of a policy regarding the inspection of the grounds. On appeal, he points to Adventureland's hospitality policy, which provides employees are to pick up litter in the streets, the grassy areas, and the ride lines. We determine this argument was

not properly presented for appeal because it was not raised before the trial court. *Podraza v. City of Carter Lake*, 524 N.W.2d 198, 202 (Iowa 1994). We find this issue was not properly preserved for our review. Naggar did not raise this argument in his resistance to the motion for summary judgment, or attempt to rely on the hospitality policy at that time. See *Marks v. Estate of Hartgerink*, 528 N.W.2d 539, 544 (Iowa 1995) (In order to successfully resist a motion for summary judgment, the resisting party may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine issue exists).

We affirm the grant of summary judgment to Adventureland. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.