

IN THE COURT OF APPEALS OF IOWA

No. 3-393 / 93-213



JUDY A. PERKINS and DOUGLAS K. PERKINS,

Appellants,

vs.

WAL-MART STORES, INC., STORE NO. 753, d/b/a WAL-MART
DISCOUNT CITY,

Appellee.

Appeal from the Iowa District Court for Black Hawk
County, Roger F. Peterson, Judge.

The Perkins appeal the district court's grant of
summary judgment to defendant in their slip-and-fall suit.

AFFIRMED.

John T. McCoy of Lindeman, Yagla, McCoy & Riley,
Waterloo, for appellant.

Stephen J. Powell and Samuel L. Anderson of Swisher &
Cohrt, Waterloo, for appellee.

Considered by Donielson, C.J., and Hayden and Habhab,
JJ.

DONIELSON, C.J.

On November 11, 1989, Judy and Douglas Perkins went to dinner with another couple, the Muchmores, at Greenstreets in Cedar Falls, Iowa. Judy had one drink, a Bloody Mary, with her dinner.

After dinner, Judy and Pat Muchmore went across the street to Wal-Mart Discount City to get some craft supplies and hair spray. They went in the front doors, proceeding to the back of the store to the craft department. They then turned back and walked towards the front of the store. Pat was walking in front of Judy. As they passed a display of Russel Stover candy, Judy fell forward. Judy stated her legs just suddenly went out from under her. Neither woman saw anything unusual about the condition of the floor. Pat did not see Judy fall, but did see her lying on the floor. When Judy got up she had a light dust over the front of her. She dusted herself off, the women made their purchases and left the store.

Douglas stated he could see dust on Judy when she got home. Judy reported the incident to Wal-Mart the next day.

The accident occurred on a Saturday. The general policy for all Wal-Mart stores was to sweep the aisles three times each day on weekdays and Saturdays. However, employees of this particular Wal-Mart testified no one was assigned to sweep the floors during the hours the store was open on Saturdays. On that day, employees would only sweep or pick up debris they happened to see on the floor.

The Perkins filed suit against Wal-Mart, alleging Judy slipped and fell on slippery substances at the store and that Wal-Mart was negligent in failing to remove the substances or warn Judy of the potential hazard. They claimed Judy sustained injuries in the fall. Douglas claimed loss of spousal consortium.

Wal-Mart filed a motion for summary judgment. The district court granted the motion. The court concluded Judy was unable to establish any reason why she fell that was attributable to defendant. The court stated:

However, she could not say that she observed anything on the floor which caused her to fall. The plaintiff argues that the failure of the defendant to comply with their sweeping requirements is sufficient evidence to defeat the motion. However, the Court believes that there should still be some showing that debris that had not been swept up was the cause of the plaintiff, Judy Perkin's [sic], fall.

The district court denied plaintiffs' posttrial motion. Plaintiffs appeal.

Under Iowa Rule of Civil Procedure 237, summary judgment is appropriate only when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. On appeal of a summary judgment ruling, we must decide whether a genuine issue of material fact exists and if the law was correctly applied. Ottumwa Housing Authority v. State Farm Fire & Casualty Co., 495 N.W.2d 723, 726 (Iowa 1993).

The party moving for summary judgment has the burden of showing the nonexistence of a genuine issue of material fact. Hofco, Inc. v. National Union Fire Insurance Co., 482 N.W.2d 397, 400 (Iowa 1992). The resisting party should be afforded every legitimate inference that can reasonably be deduced from the evidence. Id.

Plaintiffs contend the district court should not have granted Wal-Mart's motion for summary judgment. They claim the fact Judy had dust or dirt on her after she got off the floor showed there was an accumulation of dirt on the floor. Plaintiffs believe this evidence is sufficient to generate a jury issue on the questions of whether there was an accumulation of dirt on the floor and whether the accumulation of dirt caused Judy to fall.

The occupier of land is under a duty of reasonable care to keep the premises in a reasonably safe condition for business invitees. Schnoor v. Deitchler, 482 N.W.2d 913, 916-917 (Iowa 1992). An invitee is a person who enters or remains on land open to the public by invitation or permission and is owed the highest standard of care. Morgan v. Perlowski, 508 N.W.2d 724, 727 (Iowa 1993). Judy was an invitee at Wal-Mart.

A store owner is liable for injury to an invitee caused by a condition of the property if the store owner (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 an invitee, and (b) should

suspect that an invitee will not discover or realize the danger, or will fail to protect himself or herself from it. Byers v. Contemporary Industries Midwest, Inc., 419 N.W.2d 396, 397 (Iowa 1988) (citing Restatement (Second) of Torts §§ 343, 343A(1)).

This means that in order for a store owner to be liable for an injury to an invitee, the invitee must show the injury was caused by a condition on the property which presented an unreasonable risk of harm. Id. We agree with the district court that plaintiffs failed to show that an accumulation of dirt on the floor was the cause of Judy's fall. In her deposition Judy testified she did not know how she fell. Pat testified she did not see the fall. Judy and Pat both testified they did not see an accumulation of dirt on the floor. We conclude plaintiffs have presented no evidence to show Judy's injuries were caused by an accumulation of dirt on the Wal-Mart floor.

Where a defendant files a motion for summary judgment, it has the burden of proving that no material fact is in dispute. Shaw v. Soo Line Railroad Co., 463 N.W.2d 51, 53 (Iowa 1990). However, this does not relieve plaintiffs' burden to make a showing sufficient to establish the existence of all elements essential to their case. Id. Plaintiffs' burden of proof must be considered in determining whether they have met their burden of resisting defendant's motion for summary judgment. Id. at 53-54. If the evidence before the court requires a directed verdict

for defendant, a motion for summary judgment should be sustained. Id. at 54.

Here, plaintiffs failed to make a showing sufficient to establish the element of causation. We conclude summary judgment for Wal-Mart was appropriate. We affirm the decision of the district court. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.