Bisson v. Wal-Mart Stores, Inc. (AC 39965)

Brief Summary: Plaintiff slipped and fell on a puddle in an aisle of the defendant's store. An employee of the defendant inspected the aisle forty seconds prior to the fall and did not notice any water on the ground. The court held that forty seconds was insufficient as a matter of law to establish that the defendant had constructive notice of the unsafe condition.

The plaintiff, Rebecca Bisson, was injured when she slipped and fell while walking in the main aisle of the defendant's store. She slipped on an accumulation of water. The plaintiff claimed that her fall was caused by the defendant's negligence and carelessness in: (1) creating the dangerous and hazardous condition on the floor; (2) failing to remedy the condition; (3) failing to warn the plaintiff of the condition; (4) failing to properly inspect its premises to detect and correct the condition; and (5) failing to exercise reasonable care under the circumstances. The defendant field a motion for summary judgment. It argued that the plaintiff's claim fails as a matter of law because there is no factual basis upon which a reasonable jury could conclude that the defendant had actual or constructive notice of the alleged defect at issue. In supports of the motion, the defendant submitted an affidavit from an employee, Jennifer Card. The affidavit stated that the fall occurred in the exact area Card performed a safety sweep forty seconds prior. Further, that Card did not observe any water, or other liquid, on the area of the floor where the plaintiff fell during her safety sweep. The court reviewed a surveillance video and stated that it showed Card traverse the area where the plaintiff fell approximately forty to forty-two or forty-three seconds prior to the fall. The court granted summary judgment in favor of the defendant, concluding that the defendant met its burden of demonstrating that there was no genuine issue of material fact that they did not have constructive notice of the water on the floor.

The issue on appeal was whether there was a genuine issue of material fact that the defendant had constructive notice of the water on the floor.

The court held that the defendant did not have constructive notice of the water on the floor, consequently, affirming the judgment of the trial court.

Summary judgment is appropriate if the pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A material fact is a fact that has an impact on the outcome of the case. The moving party has the burden of demonstrating the nonexistence of such issues. The opposing party must recite specific facts which contradict those stated in the movant's affidavits and documents. The material fact in this case was whether the defendant had actual or constructive notice of the defect. It is a material fact because in order for the defendant to be liable for injuries to a business invitee (like the plaintiff) the plaintiff must prove: (1) the existence of a defect; (2) that the defendant knew or in the exercise of reasonable care should have known about the defect and (3) that such defect had existed for such a length of time that the defendant should, in the exercise of reasonable care, have discovered it in time to remedy it. Accordingly, the defendant is not liable unless it had actual or constructive notice of the danger in the aisle. Constructive notice means that the defendant should have known of the dangerous condition.

First, the plaintiff argued that Card's affidavit was insufficient to demonstrate that no genuine issue of material fact existed. The court rejected her argument. It noted that the affidavit established a forty second maximum period between the creation of the defect and the fall. Furthermore, under Connecticut case law a forty second window constitutes an insufficient period for a business owner to discover and remedy a small puddle of water on the floor in

exercise of due care. In *White v. E & F Construction Co*., 151 Conn. 110, 111–12, 193 A.2d 716 (1963), two minutes before the plaintiff fell, her employer noticed that the steps were wet. The Supreme Court of Connecticut held that the condition being present for no more than two minutes was insufficient to support a finding that the condition existed for a sufficient length of time to charge the defendant with constructive notice of it. Additionally, in *Hellamns v. Yale-New Haven Hospital, Inc.*, supra, 147 Conn. App. 411–14, the court held that a janitor walking past a puddle of water just before the fall was insufficient to establish constructive notice. Based on the above cases, the court concluded that the brief period in which the defect could have existed in this case does not create a genuine issue of material fact with respect to constructive notice.

Next, the plaintiff argued that Card's deposition indicates that the time that elapsed from the safety sweep was inconsistent, varying from forty seconds to five minutes to ten minutes. The court rejected this argument because the deposition read as a whole indicates that her view was that the fall occurred forty seconds after she performed the safety sweep. Further, the forty second period was confirmed by the video recording. Thus, the court concluded that the plaintiff failed to set forth any evidence demonstrating a genuine issue of material fact regarding the issue of constructive notice. Accordingly, holding that the trial court properly granted the defendant's motion for summary judgment.

The key takeaway from this case is that forty seconds is not long enough for a dangerous condition to be present to establish that a business owner had constructive notice for premise liability purposes. Thus, one who falls in a business, like the plaintiff here, must put forth evidence demonstrating that the condition was present long enough to survive summary judgment.