STATE OF MINNESOTA
IN COURT OF APPEALS
A10-831

Pamela Smith,
Appellant,

vs.

Target Corporation,
Respondent.

Filed January 25, 2011
Reversed and remanded
Klaphake, Judge

Hennepin County District Court
File No. 27-CV-09-15906

Steven K. Marden, Marden Law Office, St. Paul, Minnesota (for appellant)

William L. Davidson, Peter L. Gregory, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Klaphake, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

The district court granted summary judgment to respondent Target Corporation on appellant Pamela Smith's negligence action involving injuries she sustained in a slip-and-fall accident while she was patronizing a Richfield Target store. We conclude that there was sufficient evidence that respondent had actual or constructive knowledge of a

hazardous condition occasioned by a wet area on the store's floor. Because that knowledge would create a duty on the part of respondent to rectify that hazardous condition, we reverse.

D E C I S I O N

An appellate court "review[s] a summary judgment de novo," "determin[ing] whether the district court properly applied the law and whether there are any genuine issues of material fact that preclude summary judgment." *Riverview Muir Doran, LLC v. JADT Dev. Group, LLC*, 790 N.W.2d 167, 170 (Minn. 2010); Minn. R. Civ. P. 56.03. "On appeal, [the court] must review the facts in the light most favorable to the party against whom summary judgment was granted." *J.E.B. v. Danks*, 785 N.W.2d 741, 745 (Minn. 2010) (quotation omitted). A prima facie case of negligence includes a duty owed, breach of that duty, causation, and damages. *Foss v. Kincade*, 766 N.W.2d 317, 320 (Minn. 2009). Summary judgment is appropriate if evidence to support one of these elements is lacking. *Id.*

Generally, "[a] shopkeeper is not an insurer of the safety of business invitees, but . . . owes those expressly or impliedly invited upon his premises the duty to keep and maintain his premises in a reasonably safe condition." *Wolvert v. Gustafson*, 275 Minn. 239, 241, 146 N.W.2d 172, 173 (1966). When a shopkeeper has not caused a dangerous condition, the plaintiff must "establish that the operator of the premises had actual knowledge of the defect causing the injury or that it had existed for a sufficient period of time to charge the operator with constructive notice of its presence." *Id.* Under such circumstances, the shopkeeper is negligent "if its employees failed to rectify the

dangerous condition after they knew, or in the exercise of reasonable care should have known, that the condition existed." *Messner v. Red Owl Stores*, 238 Minn. 411, 413, 57 N.W.2d 659, 661 (1953).

Here, the record includes evidence that the accident occurred on September 29, 2008, which was a dry day. A few steps after appellant walked into the store, she slipped on the floor, which was "visibly wet." She did not observe the wet area before she slipped, and an employee who had been through the area prior to the incident reported that she "did not notice any spill." However, that same employee also stated that she "did not notice any spill although there was a caution slip sign in that area," and another employee who saw the incident noted, "[t]here was a wet floor sign post in that same area." When asked to describe the condition in a guest incident report, appellant wrote, "Wet floor. Wet floor sign 10 feet away in the other direction."

Here, the placement of the warning sign in the vicinity of the wet area is circumstantial evidence that respondent knew of the unsafe condition or constructively acknowledged the unsafe condition. The presence of the sign may demonstrate that the wet area had been on the floor long enough for one of respondent's employees to observe the hazardous condition and respond to it by placing a warning sign nearby. *See Anderson v. St. Thomas More Newman Ctr.*, 287 Minn. 251, 253-54, 178 N.W.2d 242, 243-44 (1970) (stating that proof that hazardous condition continued for period of time may establish constructive notice of the condition). At this juncture of the proceedings, we conclude that the record evidence includes genuine issues of material fact that preclude a grant of summary judgment. *See Corwine v. Crow Wing County*, 309 Minn.

345, 356, 244 N.W.2d 482, 491 (1976) ("Summary judgment is not a trial of issues of fact. It is a proceeding designed to determine if issues of fact exist."). Questions involving the proximity of the sign to the wet area, the placement of the sign in relation to the wet area, and the credibility of various witnesses on these questions are for the factfinder. *See Jonathan v. Kvaal*, 403 N.W.2d 256, 259 (Minn. App. 1987) ("Appellate courts do not resolve or decide issues of fact but only determine whether there are issues of fact to be tried"), *review denied* (Minn. May 20, 1987); *see also Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that determination of witness credibility is for factfinder).

Reversed and remanded.