

Court of Appeals, State of Michigan

ORDER

Maderia Porter v D&F Retail Inc

Docket No. 331784

LC No. 15-001377-NO

Kurtis T. Wilder
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that the Wayne Circuit Court's February 10, 2016 order is REVERSED. The evidence establishes that although plaintiff did not see the wet floor before she fell, the danger was open and obvious and did not contain special aspects. See *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 712; 737 NW2d 179 (2007). The surveillance video shows puddles and rain in the parking lot and a wet floor warning sign near the entryway where plaintiff slipped. It also contradicts plaintiff's claim that she watched her step as she entered the store. See *Scott v Harris*, 550 US 372, 380-381; 127 S Ct 1769; 167 L Ed 2d 686 (2007) (a conflict between testimony and objective video evidence does not create an issue of fact). It was for this reason that *after* falling plaintiff observed a puddle of water in the area around and under the metal grate, which she also admitted was wet. Plaintiff even admitted she was unable to stand because her hands were "soaking wet" in "puddles of water." Her clothes and entire back were wet, too. In view of these facts, plaintiff should have noticed the danger upon casual inspection before her fall. *Price v Kroger Co of Mich*, 284 Mich App 496, 501; 773 NW2d 739 (2009) (a danger is open and obvious if an average person of ordinary intelligence would discover the danger and the risk it presented on casual inspection); see also *Slaughter v Blarney Castle Oil Co*, 281 Mich App 474, 483; 760 NW2d 287 (2008) (a danger may also be open and obvious if other indicia of potentially hazardous conditions would alert an average person to discover the danger on casual inspection). Her failure to do so does not impute liability to defendant. The denial of defendant's motion for summary disposition was erroneous.

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 27 2016

Date

Chief Clerk