

Court of Appeals, State of Michigan

ORDER

Che-lin Aldrige v Grand Van Dyke LLC

Docket No. 335710

LC No. 15-013603-NO

Christopher M. Murray
Presiding Judge

Karen M. Fort Hood

Michael J. Riordan
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that the trial court's October 26, 2016 order denying defendant's motion for summary disposition 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). Indeed, both plaintiff and her father could see the colorless liquid after plaintiff fell, plaintiff's clothes were wet after the fall, and nothing prevented plaintiff from observing the floor before she slipped or from avoiding the liquid. Plaintiff even pointed out the presence of the liquid to one of the store's employees after she fell. Accordingly, the trial court's reliance on *Watts v Michigan Multi-King, Inc*, 291 Mich App 98, 103; 804 NW2d 569 (2010) (holding that the open and obvious doctrine did not apply where the floor did not look shiny or wet before or after the plaintiff fell, the floor's appearance was not out of the ordinary, and the plaintiff observed the floor before she slipped) was misplaced. Further, because plaintiff failed to properly allege the elements of a nuisance (public or private) and because it is speculative that another person fell an hour before plaintiff, the trial court should have dismissed plaintiff's nuisance claim as well. *Capitol Properties Group, LLC v 1247 Ctr St, LLC*, 283 Mich App 422, 427-428; 770 NW2d 105 (2009); see also *Bank of America, NA v Fidelity Nat'l Title Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2016) ("a litigant who raised an issue below should not be punished for the trial court's failure to address the issue") (citation omitted).

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



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

FEB 23 2017

Date

Chief Clerk