STATE OF MICHIGAN

COURT OF APPEALS

MARIE T. MARBURGER and LEO H. MARBURGER

Plaintiffs-Appellees,

v

MEIJER, INC.,

Defendant-Appellant.

UNPUBLISHED
May 17, 1996

No. 169494
LC No. 92-04217-NO

Before: Jansen, P.J., and McDonald and D. C. Kolenda, * JJ.

PER CURIAM.

Defendant appeals by leave granted from an August 27, 1993, order denying its motions for summary disposition pursuant to MCR 2.116(C)(10) in this slip and fall negligence action. We reverse.

Plaintiff, Marie Marburger , an elderly woman, slipped and fell while in a Meijer store. Plaintiff brought suit for her resulting personal injuries. At her deposition plaintiff testified she was wearing low-heeled shows when she came to Meijer to buy just two items. She first went to the produce section where she noticed an employee with a mop and spray bottle. Anticipating the floor might be slippery where the employee was working, she carefully avoided getting close to him staying approximately six to ten feet away. She picked up a head of lettuce and headed to another department. Some distance away, about two aisles or fifteen to twenty-five feet past the produce department, plaintiff suddenly lost her footing and fell. Plaintiff failed to examine the soles of her shoes at the time of the fall and does not claim to have observed any foreign substance on the floor or on her shoes.

Plaintiff contends she is unable to ascertain what substance was contained in the spray bottle being used by the employee she observed mopping the floor, but speculates it might have been wax which became slippery only when it dried and that some of it must have been picked up on the bottom of her shoe.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Even assuming the bottle contained wax, plaintiff has failed to produce any evidence to support her theory that she must have walked through a recently waxed area and that the wax attached to her shoe and dried some distance away causing her to eventually fall. Conjecture and speculative theories are insufficient opposition to a party's motion for summary disposition. *Libralter Plastics v Chubb Group Ins Co*, 199 Mich App 482; 502 NW2d 742 (1993). Plaintiff presented insufficient evidence to take the case out of the realm of conjecture or otherwise to meet her requirement of making it rational for a trier of fact to conclude it was more probable than not that defendant was somehow at fault in the occurrence of plaintiff's injury. *McCune v Meyer*, 156 Mich App 561; 402 NW2d 6 (1986). The trial court erred in failing to grant defendant's motion for summary disposition.

Reversed.

/s/ Kathleen Jansen
/s/ Gary R. McDonald
/s/ Dennis C. Kolenda