

STATE OF MICHIGAN
COURT OF APPEALS

ETHEL ASHBAUGH,

Plaintiff–Appellant,

v

L & L SHOP-RITE, INC. d/b/a L & L FOOD
CENTER,

Defendant–Appellee.

UNPUBLISHED

December 20, 1996

No. 180000

Oakland County

LC No. 93-462501

Before: Reilly, P.J., and White, and P.D. Schaefer,* JJ.

PER CURIAM.

Plaintiff appeals as of right a circuit court order granting defendant’s motion for a directed verdict and dismissing this premises liability case with prejudice. We affirm.

This case arose out of plaintiff’s slip and fall in defendant’s grocery store. Plaintiff went to defendant’s store to purchase some coffee. After making her selection, plaintiff proceeded down the main aisle of the store where she observed some water near the ham case. The puddle of water was approximately the size of a hot dog. Plaintiff walked to the meat counter and informed a store employee of the water. The employee went with plaintiff to inspect the spot and then left to get a mop. In the meantime, plaintiff walked past the lobster tank towards the meat counter when she slipped and fell in a large puddle of water and was unable to get up. A store employee wiped up the water around plaintiff with paper towel. Plaintiff was taken to the hospital as a result of her fall. Plaintiff’s theory was that because plaintiff fell near a freezer and a lobster tank, it was highly probable that the puddle of water was caused by a leak in the tank or the freezer.

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

Plaintiff argues that the trial court erred in directing a verdict in favor of defendant. In reviewing a trial court's decision regarding a motion for a directed verdict, this Court views the

evidence presented up to the time the motion was made to decide whether a question of fact existed. In doing so, we review the evidence in the light most favorable to the nonmoving party, grant that party every reasonable inference, and resolve any conflict in the evidence in that party's favor. *Hatfield v St Mary's Med Cen*, 211 Mich App 321, 325; 535 NW2d 272 (1995).

To the extent that the court granted defendant's motion based on plaintiff's credibility, the court erred. A trial judge must not base his grant or denial of defendant's motion for a directed verdict on the witnesses' credibility. See *Taylor v Wyeth Laboratories*, 139 Mich App 389; 362 NW2d 293 (1985). However, because plaintiff failed to prove a prima facie case of negligence, we conclude that the trial court reached the right result even if it did so for the wrong reason, and reversal is not required. *Gray v Pann*, 203 Mich App 4461, 464; 513 NW2d 154 (1994).

To establish a prima facie case of negligence, plaintiff must prove: 1) the existence of a legal duty by defendant toward plaintiff; 2) the breach of such duty; 3) the proximate causal relation between the breach of such duty and an injury to the plaintiff; and 4) damages. *Gross v General Motors*, 448 Mich 147, 162; 528 NW2d 707 (1995).

Plaintiff failed to show that defendant breached its duty to plaintiff to maintain reasonably safe aisles. It is the duty of storekeepers to provide reasonably safe aisles for customers. *Berryman v K mart*, 193 Mich App 88, 92; 483 NW2d 642 (1992). A storekeeper is liable for injury resulting from an unsafe condition either caused by the active negligence of himself or his employees or, if otherwise caused, where known to the storekeeper, or if the condition is of such a character or has existed a sufficient length of time that he should have knowledge of it. *Id.* Plaintiff suggests that the water in which she slipped and fell was a product of a leaky freezer or lobster tank. However, proof of this assertion did not rise beyond the level of conjecture. Furthermore, there was no evidence that defendant's employees knew of the puddle nor was there evidence to support an inference that the water was on the floor for such time that defendant should have known of its presence. Viewed in a light most favorable to the nonmoving party, the evidence failed to establish a breach of duty. Therefore, the grant of defendant's motion for a directed verdict was proper.

Plaintiff argues that defendant was negligent in inspecting the freezers. However, there was insufficient evidence to create an inference that defendant's alleged negligence in maintaining the drainage system caused the water puddle. Defendant's motion for the directed verdict was therefore properly granted because there was no nexus between the water puddle and defendant's inspection of the freezers.

Plaintiff's final claim is that the trial court abused its discretion in excluding proposed expert testimony from plaintiff's husband, Harry Ashbaugh, regarding the standard for inspecting the drainage systems in the industry. We disagree.

Plaintiff's counsel indicated that Ashbaugh would testify generally regarding his knowledge of drainage systems underlying freezers and that it was proper to inspect these freezers every two months, rather than every year as defendant claimed. Because there was inadequate

evidence linking the alleged water puddle to the freezer, Ashbaugh's testimony was irrelevant, and the trial court did not abuse its discretion by excluding it.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Philip D. Schaefer