STATE OF MICHIGAN

COURT OF APPEALS

JOHN T. CARR,

Plaintiff-Appellant,

v

POLLY'S FOOD SERVICE, INC., KENCO INCORPORATED and COUNTRY MARKET,

Defendants-Appellees.

UNPUBLISHED
April 3, 1998

No. 196778
Lenawee Circuit Court
LC No. 95-006628-NO

Before: Saad, P.J., and Wahls and Gage, JJ.

PER CURIAM.

In this slip and fall case, plaintiff appeals as of right from the trial court's order of summary disposition in favor of defendants under MCR 2.116(C)(10). We affirm.

With respect to plaintiff's contention that the trial court applied erroneous legal principles and abused its discretion in denying plaintiff's motion for reconsideration, such questions are moot, as the substantive standard of review is nondeferential. That is, this Court must resolve de novo the issue of law whether sufficient evidence was presented to create a triable issue of fact. *Countrywalk Condos v Orchard Lake Village*, 221 Mich App 19, 21; 561 NW21d 405 (1997). Review is confined to the exhibits and documentary evidence submitted to the trial court prior to its adjudication of the motion for summary disposition. *Quinto v Cross & Peters*, 451 Mich 358, 367 n 5; 547 NW2d 314 (1996).

Plaintiff argues that the trial court erred in finding no genuine issue of material fact on the issue of notice. Plaintiff concedes a lack of direct evidence that the hazard in question, a puddle of water, was created by defendants or their employees, agents or servants. Accordingly, plaintiff relies on the theory of constructive notice which requires, inter alia, that the hazard existed long enough that defendants should have known of it. *Carpenter v Herpolsheimer's Co*, 278 Mich 697, 698; 271 NW 575 (1937). Our cases have not quantified the length of time required, recognizing instead that it varies with the facts and circumstances and the basis for liability claimed. *Torma v Montgomery Ward & Co*, 336 Mich 468, 486; 58 NW2d 149 (1953). In the usual case, constructive notice is not established

merely because the defect has existed for a certain length of time. *Hendershott v Grand Rapids*, 142 Mich 140, 143; 105 NW 140 (1905).

Here, there was no evidence regarding the source of the alleged puddle, nor was there any evidence that reflected the length of its existence. Thus, this case does not come within the category of situations in which evidence beyond mere existence of a hazard suggests that it has existed for a sufficient length of time as to establish constructive notice, such as skid marks, *Pollack v Oak Ofc Bldg*, 7 Mich App 173; 151 NW2d 353 (1967), dirt or mud mixed with the water, *Little v Borman Food Stores, Inc*, 33 Mich App 609; 190 NW2d 269 (1971), or other evidence of tracking, indicating that other invitees or employees have already encountered the hazard, *Ritter v Meijer, Inc*, 128 Mich App 783, 786-787; 341 NW2d 220 (1983). The fact that there was no customer ahead of plaintiff in the checkout lane from the time he approached it until he fell does not aid plaintiff's case. This evidence does nothing to establish the length of time the puddle existed; the puddle may have formed before, while, or after the last customer was in line. The suggestion in plaintiff's deposition that the cashier was in a position to see the hazard, when plaintiff himself did not see it when it was directly in front of him, was speculation; plaintiff never stood in the position of the cashier and did not describe the cashier's height or verify the cashier's line of sight. Thus, plaintiff failed to produce sufficient evidence to remove the case from the realm of conjecture, and summary disposition was properly granted. *McCune v Meijer, Inc*, 156 Mich App 561, 563; 402 NW2d 6 (1986); *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 8-10; 279 NW2d 318 (1979).

Affirmed.

/s/ Henry William Saad
/s/ Myron H. Wahls
/s/ Hilda Gage