

STATE OF MICHIGAN
COURT OF APPEALS

DARIN B. PLAIT,

Plaintiff-Appellant,

v

HARTFIELD ENTERPRISES, INC., d/b/a
HARTFIELD LANES & LOUNGE,

Defendant-Appellee.

UNPUBLISHED

March 23, 2006

No. 265319

Oakland Circuit Court

LC No. 04-061538-NO

Before: Schuette, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from an August 17, 2005, order closing the case based on the issuance of a July 29, 2005, written opinion and order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). On appeal, plaintiff also takes issue with an August 29, 2005, opinion and order denying his motion for reconsideration. We affirm.

I. FACTS

At approximately 11:30 p.m. on April 15, 2004, plaintiff went on a "Hungry Howies" bowling outing to "Hartfield L&L," which was across the street from "Hungry Howies." Plaintiff brought his own bowling shoes and did not look at his shoes before he put the shoes on. Plaintiff stated that he has bowled for several years and did not notice anything unusual about the lane 13 and 14 approach areas that his group was bowling on during the night in question. Plaintiff was the first bowler in his group to bowl. Plaintiff took his normal delivery approach and slipped and fell. Plaintiff did not cross the foul line. Plaintiff's knee hurt, so he sat down and did not bowl for the rest of the night. Plaintiff did not examine the approach area after he fell. Plaintiff spoke with a "Hartfield L&L" employee, Dennis Collins (Collins), about his fall. Plaintiff told Collins that he did not know what caused him to fall. Collins told plaintiff that the league bowlers who had used the lane before plaintiff did not have any problems with the lane in question. Plaintiff's group continued to bowl in lanes 13 and 14 after plaintiff's fall. Plaintiff stated that Brian Mauer fell a couple of times on the approach area and Tom Buchanan fell once on the approach area. When plaintiff got home he noticed an oil spot on the buttocks area of his pants. Plaintiff believes that oil on the approach lane caused him to fall.

II. NEGLIGENCE

Plaintiff's first issue on appeal is that the trial court erred when it granted defendant's motion for summary disposition because plaintiff believes that he provided sufficient evidence to raise an inference that defendant was negligent in creating the dangerous condition that caused plaintiff to slip and fall, or that defendant had either actual or constructive notice of the dangerous condition that caused plaintiff to slip and fall. We disagree.

A. Standard of Review

When reviewing a claim that the trial court improperly granted summary disposition, this Court reviews de novo on appeal. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Review is limited to the evidence presented to the trial court at the time the motion was decided. *Peña v Ingham Co Road Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). When deciding a motion for summary disposition under MCR 2.116(C)(10), a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164; 645 NW2d 643 (2002). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *West v GMC*, 469 Mich 177, 183; 665 NW2d 468 (2003).

B. Analysis

To establish a negligence claim, a plaintiff must establish: (1) a duty owed by the defendant to the plaintiff, (2) breach of that duty, (3) injury suffered by the plaintiff, and (4) causation of that injury by the defendant's breach. *Phillips v Diehm*, 213 Mich App 389, 397; 541 NW2d 566 (1995). Generally, a premises possessor has a legal duty to business invitees to exercise reasonable care to protect them from an unreasonable risk of harm caused by a dangerous condition of the land which the premises possessor knows or should know the invitees will not discover, realize or protect themselves against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). In order to establish liability in a premises liability case, a plaintiff must prove that the defendant (or its employees) either caused the alleged dangerous condition through negligence, or that the alleged dangerous condition was known to the defendant (or its employees) or was of such character or existed for a length of time that the defendant (or its employees) should have known about the condition. *Hampton v Waste Management*, 236 Mich App 598, 604; 601 NW2d 172 (1999). When establishing a defendant's negligence in creating a dangerous condition, a plaintiff is not required to produce evidence that eliminates every other potential cause of the condition, but rather, need only produce evidence that establishes "a logical sequence of cause and effect, notwithstanding the existence of other plausible theories." *Wilson v Alpena Co Road Comm*, 263 Mich App 141, 150; 687 NW2d 380 (2004), quoting *Skinner v Square D Co*, 445 Mich 153, 159-160; 516 NW2d 475 (1994).

In regard to whether a defendant has constructive notice of a dangerous condition, notice may be inferred when the dangerous condition exists for a length of time sufficient to enable the reasonably careful premises possessor to discover it. *Whitmore v Sears Roebuck*, 89 Mich App 3, 8; 279 NW2d 318 (1979). In *Clark v Kmart Corp*, 465 Mich 416; 634 NW2d 347 (2001), our

Supreme Court found that where a plaintiff established that a check out lane closed at 2:30 a.m. and a plaintiff slipped an hour later on a grape in that particular check out lane, a jury could infer that the grapes were dropped by a customer who used the checkout lane when it was open, and an employee should have noticed the grapes during the closing of the checkout lane or at some point in time before the plaintiff fell and cleaned them up, and thus, the *Clark* Court ruled that summary disposition was inappropriate. *Id.* at 420-421.

Here, plaintiff failed to present evidence that establishes that the alleged dangerous condition that caused plaintiff to slip and fall was caused by the negligence of defendant or its employees. Plaintiff's negligence theory is that defendant's employee, Ken Peter (Peter), crossed the foul line and dragged oil from the bowling lane into the approach area when he was dry mopping the approach area. The only evidence plaintiff provided in support of his theory is that Peter testified that, in his 28 years of working at bowling alleys, it was possible that at some point in time his dry mop crossed over the foul line and dragged oil into the approach area. However, the evidence presented establishes that defendant did not create the alleged dangerous condition. Peter stated that he watched the mop so it would not cross the foul line and collect oil. Peter cleaned the approach area in question during the day. League bowlers bowled on the lane in question after Peter had cleaned the approach area, and the league bowlers did not report any problems with the condition of the approach area. Thus, we conclude that it is unlikely that defendant created the alleged dangerous condition, and more likely that a league bowler created the alleged dangerous condition by crossing the foul line and dragging oil into the approach area or dropping a ball in the approach area, or that plaintiff himself created the alleged dangerous condition by having oil on the shoes that he brought. In fact, plaintiff himself testified that he had no idea how the alleged dangerous condition was created. Thus, we conclude that plaintiff failed to produce evidence that establishes "a logical sequence of cause and effect," and thus, plaintiff's negligence theory is pure speculation, which cannot create a question of fact for a jury. *Skinner, supra* at 164-165; *Wilson, supra* at 150.

Furthermore, plaintiff failed to present evidence that establishes defendant knew about the alleged dangerous condition that caused plaintiff to slip and fall, or that the condition was of such character or existed for a length of time that defendant should have known about it. No evidence was presented that defendant had actual knowledge of the condition. Furthermore, the evidence presented does not establish that defendant had constructive notice of the alleged condition, but rather suggests that defendant did not have constructive notice of the alleged condition. League bowlers bowled on the lane in question from 6:36 p.m. to 9:52 p.m. and did not report any problems with the lane. Dennis Collins, who worked for defendant, testified that there were no complaints whatsoever about the approach area in question prior to plaintiff's slip and fall. Moreover, plaintiff himself testified that he did not see anything unusual in the approach area and there was nothing visibly different about the approach area in question compared with every other approach area plaintiff had encountered in his many years of bowling. Thus, we conclude that, given the non-visible character of the alleged condition (as opposed to the visible character of grapes in *Clark, supra*) and the fact that defendant did not receive any complaints from bowlers who bowled on the lane in question before plaintiff did, the evidence does not suggest that defendant should have known about the condition. Therefore, we conclude that the trial court did not err when it granted defendant's motion for summary disposition. *Veenstra, supra* at 164; *Hampton, supra* at 604.

III. MOTION FOR RECONSIDERATION

Plaintiff's final issue on appeal is that the trial court erred when it denied his motion for reconsideration. We disagree.

A. Standard of Review

When reviewing a trial court's decision regarding a motion for reconsideration, this Court reviews the trial court's decision for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). "An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion." *Id.*

B. Analysis

In order for the trial court to grant a motion for reconsideration, the moving party "must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." *Rickerson, supra* at 233; MCR 2.119(F)(3). If the moving party merely presents the same issues ruled on by the court, either expressly or by reasonable implication, the party's motion will not be granted. *Id.*; MCR 2.119(F)(3). Furthermore, a trial court does not abuse its discretion when it denies a motion for reconsideration on the basis that the motion rests on a legal theory and facts that could have been pled or argued prior to the trial court's original order. *Charbeneau v Wayne County General Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

Here, plaintiff's motion for reconsideration rests on the fact that defendant did not save the video footage of the condition of the lane in question prior to plaintiff's fall, and that defendant's actions amount to a spoliation of evidence which deprived plaintiff of "a fair playing field". Plaintiff believes that if the evidence was saved, he could have established that defendant had constructive notice of the condition that caused plaintiff to slip and fall. Jeff Hartfield testified that he did not save the video footage of the condition of the lane in question prior to plaintiff's fall. Therefore, plaintiff could have raised this argument prior to the trial court's issuance of its order granting defendant's motion for summary disposition, and thus, the trial court did not abuse its discretion when it denied plaintiff's motion for reconsideration. *Charbeneau, supra* at 733. As the trial court noted, "[t]o hold otherwise would only encourage parties to parse their arguments through many briefs and motions for reconsideration, heavily burden the court with having to sift through the many new and old arguments across various briefs and motions, improperly delay the adjudication of disputes, and needlessly drain the resources of the public in the administration of justice."

Affirmed.

/s/ Bill Schuette
/s/ Christopher M. Murray
/s/ Pat M. Donofrio