

**SUPREME COURT OF LOUISIANA**

**00-C-0078**

**LEONARD J. BABIN**

**V.**

**WINN-DIXIE LOUISIANA, INC.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, PARISH  
OF LAFAYETTE**

**JOHNSON, J., dissenting.**

I disagree with the majority's decision denying plaintiff an opportunity to have his day in court. In this slip and fall case, the majority concludes that the defendant, Winn-Dixie, met its burden of showing an absence of factual support for an essential element of plaintiff's claim, constructive notice, under La. R.S. §9:2800.6. This determination is predicated upon one employee's affidavit that she did not observe the toothpicks, which caused plaintiff's injury. Thus, defendant did not have constructive notice as required by the statute.

There is evidence, however, that the toothpicks were on the floor of the grocery aisle for some time. Defendant's daily log, which include zone check times, indicate an inspection had been made more than twenty minutes before plaintiff's fall. Moreover, plaintiff has not had the opportunity to question defendant's employee, who may have been negligent about her duties in the grocery store. The majority concludes that "none of this evidence constitutes factual support sufficient to establish that plaintiff could satisfy his evidentiary burden of proving the toothpick boxes had been on the floor for some period of time." I disagree. These facts demonstrate that plaintiff produced sufficient factual support sufficient to establish that he would be able to satisfy his evidentiary burden of proof at trial.

I would affirm the ruling of the court of appeal and allow plaintiff to present his case to the jury.