

SUPREME COURT OF LOUISIANA

NO. 2019-CC-1999

SHEILA M. GUIDRY

V.

BROOKSHIRE GROCERY COMPANY, ET AL.

ON SUPERVISORY WRITS TO THE COURT OF APPEAL,  
THIRD CIRCUIT, PARISH OF LAFAYETTE

PER CURIAM

Plaintiff filed suit against defendant, alleging she slipped and fell on a puddle of clear liquid on the floor of defendant's supermarket. Plaintiff filed a motion for summary judgment on the issue of liability, which the district court granted. Defendant applied for supervisory review of this ruling. The court of appeal denied the writ with one judge dissenting. This application followed.

In a negligence claim against a merchant, La. R.S. 9:2800(B) provides a plaintiff must prove several elements, including establishing the "merchant either created or had actual or constructive notice of the condition which caused the damage, prior to the occurrence." To establish constructive notice, La. R.S. 9:2800(C)(1) requires the claimant to prove "the condition existed for such a period of time that it would have been discovered if the merchant had exercised reasonable care." We have explained this statute provides the "claimant must make a positive showing of the existence of the condition prior to the fall." *White v. Wal-Mart Stores, Inc.*, 97-0393 (La. 9/9/97), 699 So.2d 1081, 1084.

In the case at bar, plaintiff conceded she did not know how long the puddle had been on the store's floor prior to her fall. However, she relies on a store security video which shows the area of the accident for a period of seventy minutes prior to her fall. Plaintiff does not argue this video shows the puddle where she slipped, but

instead contends the video establishes no other customer spilled liquid on the floor during the course of the video. Therefore, plaintiff infers the puddle must have already been on the floor for at least seventy minutes prior to her fall.

Mere speculation that a dangerous condition could have existed for some period of time “falls far short of the factual support required to establish that plaintiff will be able to satisfy his evidentiary burden of proof at trial.” *Babin v. Winn-Dixie Louisiana, Inc.*, 2000-0078 (La. 6/30/00), 764 So.2d 37, 40. While the video does not show anyone creating the puddle, it does not constitute positive evidence which would establish the puddle was actually on the floor for any period of time prior to plaintiff’s fall. As noted by the dissenting judge in the court of appeal, the video shows “two separate families with buggies, stop, shop, and leave, with no issues or seeming awareness of liquid on the ground, from the exact area where Plaintiff would fall a mere seven to eight minutes later.”

Moreover, the testimony of plaintiff and a witness to the accident establish the puddle was clear and odorless, with no dirt or debris mixed in and with no indication of footprints or buggy tracks. This condition is at odds with the suggestion the puddle could have remained on the floor for over an hour without becoming dirty or disturbed as the result of the passage of other shoppers and carts.

We review a summary judgment de novo, using the same criteria that govern the trial court’s determination of whether summary judgment is appropriate -- i.e., whether there is any genuine issue of material fact, and whether the movant is entitled to judgment as a matter of law. *Murphy v. Savannah*, 2018-0991 (La. 5/8/19), 282 So.3d 1034, 1038. Based upon our de novo review, we conclude there are genuine issues of material fact concerning whether the puddle which caused plaintiff’s fall existed for such a period of time that it would have been discovered if the merchant

had exercised reasonable care. The district court erred in granting summary judgment on the issue of liability in favor of plaintiff.

### **DECREE**

For the reasons assigned, the writ is granted and made peremptory. The judgment of the district court granting summary judgment on the issue of liability in favor of plaintiff, Sheila M. Guidry, is reversed. The case is remanded to the district court for further proceedings.