

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

IMOGENE RUPPEL,) CIVIL ACTION NO. 3:99CV00115
Plaintiff,)
v.) MEMORANDUM OPINION
THE KROGER COMPANY,)
Defendant.) JUDGE JAMES H. MICHAEL, JR.

This slip-and-fall case comes before the court on the defendant's motion for summary judgment. On September 12, 2000, the presiding United States Magistrate Judge filed his Report and Recommendation. He reported that genuine issues of material fact exist in the case, and recommended that the court deny the defendant's motion. The defendant filed timely objections pursuant to Federal Rule of Civil Procedure 72(b).

The court reviews *de novo* those portions of the report or specified proposed findings or recommendations to which objection was made. See 28 U.S.C.A. § 636(b)(1) (West 1993 & Supp. 2000). Summary judgment may be granted only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). All facts and inferences shall be drawn in the light most favorable to the non-moving party. See *Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc.*, 202 F.3d 223, 227 (4th Cir. 2000).

The Supreme Court of Virginia recited the well-settled rules applicable to slip-and-fall cases in *Winn-Dixie Stores, Inc. v. Parker*, 396 S.E.2d 649 (Va. 1990):

The [store owner] owed the [customer] the duty to exercise ordinary care toward her as its invitee upon its premises. In carrying out this duty it was required to have the premises in a reasonably safe condition for her visit; to remove, within a reasonable time, foreign objects from its floors which it may have placed there or which it knew, or should have known, that other persons had placed there; to warn the [customer] of the unsafe condition if it was unknown to her, but was, or should have been, known to the [store owner].

Id. at 650 (quoting *Colonial Stores, Inc. v. Pulley*, 125 S.E.2d 188, 190 (Va. 1962)).

Actual notice is not required; constructive notice may do. *See Memco Stores, Inc. v. Yeatman*, 348 S.E.2d 228, 231 (Va. 1986) (“If an ordinarily prudent person, given the facts and circumstances [the store owner] knew or should have known, could have foreseen the risk of danger resulting from such circumstances, [the store owner] had a duty to exercise reasonable care to avoid the genesis of the danger.”).

In twenty pages of objections, the defendant essentially advances one point: that there is no evidence of water on the ground where the plaintiff fell, aside from her testimony that shortly after the fall she felt that her pant legs were wet. Based on this point, the defendant contends that the plaintiff’s case is speculative, and that she cannot establish it had notice of unsafe conditions, breached its duty to her, or caused her fall by its negligence.

Ample evidence exists in the record from which a reasonable jury could find that there was water on the ground when the plaintiff fell. The plaintiff testified at her

deposition that when she was lying on her back after the fall, she noticed that the cuffs of her pants and her right calf were wet, and that she was “positive” that they were not wet before the fall. (Pl.’s Dep. at 52-57.) One of the defendant’s employees testified that it is “a common occurrence” for a “trail of water” to leak from carts used to transport frozen items to the aisles, (White Dep. at 41), that he brought a cart to the aisle in question prior to the accident, and that he was in the process of restocking the frozen food shelves when she fell. (See White Dep. at 21-23, 50-54.) When he inspected the accident site after the fall, he “did not check for water.” (White Dep. at 49.) Another employee said that “condensation” or “frost” can collect on frozen food boxes. (Godsey Dep. at 17.) The plaintiff testified she saw “frozen items sitting on the floor,” (Pl.’s Dep. at 15), and the employee who was restocking the shelves said he “could have” set frozen boxes on the aisle floor during the restocking process. (See White Dep. at 23.)

From this evidence a reasonable jury could conclude that the defendant’s employees transported a frozen food cart to the aisle in which the plaintiff slipped, that they knew that doing so commonly left water on the floor, that water in fact was left on the floor by transporting the cart and by leaving frozen items on the floor, and that because the plaintiff’s pants were not wet prior to the accident but were wet immediately thereafter, that water on the floor caused her injuries. Therefore, as the Magistrate Judge correctly found, this evidence creates a genuine dispute of material fact as to whether there was water on the floor, whether the defendant was on notice

of such, and whether its negligence caused the plaintiff's injuries. The cases the defendant cites in support of its position are factually inapposite.

For these reasons and those expressed in the Magistrate Judge's sound opinion, the defendant's motion for summary judgment shall be denied.

An appropriate Order this day shall issue.

Senior United States District Judge

Date

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THE KROGER COMPANY,)
Defendant.) JUDGE JAMES H. MICHAEL, JR.

Before the court are the defendant's objections to the presiding United States Magistrate Judge's September 12, 2000 Report and Recommendation. For the reasons stated in the accompanying Memorandum Opinion, it is accordingly this day

ADJUDGED, ORDERED, AND DECREED

as follows:

1. The defendant's objections shall be, and they hereby are, OVERRULED;
2. The proposed findings and recommendations of the September 12, 2000 Report and Recommendation shall be, and they hereby are, ACCEPTED;
3. The defendant's motion for summary judgment, filed July 26, 2000, shall be, and the same hereby is, DENIED.

ENTERED: _____
Senior United States District Judge

Date