STATE OF MICHIGAN

COURT OF APPEALS

JULIA JOUBRAN,

Plaintiff–Appellee,

v

K MART CORPORATION,

Defendant–Appellant.

UNPUBLISHED
July 30, 1996

No. 185816
LC No. 93-025859 NO

Before: Neff, P.J., and Fitzgerald and C. A. Nelson,* JJ.

PER CURIAM.

Following a bench trial, defendant appeals as of right from a judgment in the amount of $41,794.10 entered in favor of plaintiff in this premises liability action. We affirm.

Plaintiff and her granddaughter were shopping at Kessel's, a grocery store under the care and control of defendant. After they finished shopping, they exited the store. Plaintiff pushed the shopping cart down the ramp in the front of the store. Her granddaughter was on the right side of the cart with her hand on the cart. The wheel of the cart got caught in a crack and started to tip over onto plaintiff's granddaughter. Plaintiff attempted to push her granddaughter out of the way and fell, injuring her knee.

At trial, defendant brought a motion for directed verdict arguing that plaintiff failed to prove that defendant caused the alleged crack or that defendant had actual or constructive knowledge of the crack. The trial judge denied defendant's motion finding that based on common sense and the size of the crack, the crack could not have occurred overnight but instead developed over time. He concluded that this factor in conjunction with the fact that the crack was located in a highly trafficked area was sufficient to infer that defendant had constructive knowledge of the crack.

* Circuit judge, sitting on the Court of Appeals by assignment.

On appeal defendant challenges the denial of its motion for directed verdict. Defendant contends that in light of the case law in Michigan, plaintiff failed to establish that the alleged unsafe condition was of such a nature that defendant knew or should have known of its existence. We disagree.

In deciding whether the trial court erred in denying the motion for directed verdict, the appellate court reviews all of the evidence presented up to the time the motion is brought in a light most favorable to the nonmoving party to determine whether a question of fact existed. *Hatfield v St Mary's Medical Center*, 211 Mich App 321, 325; 535 NW2d 272 (1995)

A storekeeper is liable to a plaintiff, as a business invitee, for injury resulting from an unsafe condition either caused by the active negligence of defendant and its employees or, if otherwise caused, where the condition was known to the storekeeper or is of such a character or has existed for a sufficient length of time that he should have knowledge of it. *McCune v Meijer, Inc*, 156 Mich App 561, 562; 402 NW2d 6 (1986). Here, the crack was 2 1/2 inches long and was located directly outside the front door of the store. In addition, plaintiff's testimony that in her experience of owning property on which parking lots were located, the crack in question looked old, went unrebutted. Accordingly, we find that there was sufficient evidence presented to raise a question of fact with regard to whether defendant had constructive knowledge of the crack in the parking lot.

Defendant also claims that Michigan law does not allow plaintiff to prove constructive knowledge by inference because plaintiff's facts amounted to no more than mere speculation. We disagree. A prima facie case of negligence may be established by use of legitimate inferences as long as sufficient evidence is introduced to take the inferences out of the realm of mere conjecture. *Berry v K Mart*, 193 Mich App 88, 92; 483 NW2d 642 (1992). Notice may be inferred from the evidence that the unsafe condition existed for a length of time sufficient to have enabled a reasonably careful storekeeper to discover it. *Whitmore v Sears, Roebuck & Co*, 89 Mich App 3, 8; 279 NW2d 318 (1979).

Here, the facts presented took this case out of the realm of mere conjecture. As noted, testimony showed that the crack was of such a size as to have existed for some period of time, and that it was located directly outside the front of the store. In addition, plaintiff testified that the crack looked old. Finally, the seriousness of the crack was documented as the store manager indicated in his report that it was in need of repair. Therefore, the evidence supports an inference that defendant had constructive knowledge of the crack.

Finally, defendant argues that the trial judge was required to detail the amount of comparative negligence he attributed to each party. Defendant provides no authority for this proposition. A party may not leave it up to this Court to search for authority to sustain or reject its position. *Hover v Chrysler Corp*, 209 Mich App 314, 319; 530 NW2d 96 (1994). Nevertheless, this contention is not

supported by Michigan case law. Moreover, we find that the findings of fact and conclusions of law that the trial judge presented on the record relative to comparative negligence were sufficient in light of the issues raised by the parties.

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Charles A. Nelson