

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-60863
Summary Calendar

ALVIN DUREL,

Plaintiff-Appellant,

VERSUS

WINN DIXIE LOUISIANA, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(1:93-CV-601)

(June 13, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:¹

Plaintiff Alvin Durel appeals the summary judgment granted in favor of Defendant Winn Dixie in his slip-and-fall case. We affirm.

To succeed in a slip-and-fall case under Mississippi law, a Plaintiff must show that the dangerous condition causing his injuries (in this case a puddle of clear liquid in the aisle) existed for a sufficient amount of time to establish the Defendant proprietor's constructive knowledge of the dangerous condition, or that the dangerous condition was caused by the proprietor's negligence. Munford, Inc. v. Fleming, 597 So.2d 1282, 1284 (Miss.

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

1992). Plaintiff has attempted to show both the proprietor's constructive knowledge and that the danger was caused by negligence of the store employees.

Regarding causation and negligence, Plaintiff shows that a one gallon jug of vinegar was found leaking on an adjacent shelf under which a puddle of vinegar had formed. He argues that a slit in that vinegar bottle is consistent with a cut from a small knife such as a box cutter. Plaintiff contends that a factfinder could infer that the bottle of vinegar was damaged by employees' opening the carton and that that bottle was the source of the liquid in the aisle. Thus Durel argues that this evidence raises a fact question whether the dangerous condition was caused by Winn Dixie negligence.

There was no evidence that the liquid in which Plaintiff slipped was vinegar or came from the bottle on the shelf. Because of the lack of any evidence suggesting a connection between the puddle where Plaintiff slipped and the bottle on the shelf, the inference that the puddle came from the bottle on the shelf is not reasonable. Moreover, Plaintiff introduced no evidence that box cutters were used by Winn Dixie to unpack vinegar bottles. To the contrary, when asked about how boxes were opened, two witnesses testified that such boxes can be pulled open "by hand" and neither one implied that box cutters were used. Plaintiff has failed to raise a factual question whether store employees caused the dangerous condition.

Plaintiff next argues that the store owner should have known of the danger. Constructive knowledge of a hazard is established with proof that the condition existed for such a length of time

that, in the exercise of reasonable care, the proprietor should have known of it. Waller v. Dixieland Food Stores, Inc., 492 So.2d 283, 285 (Miss. 1986). No one had any idea how long the puddle was on the floor before the Plaintiff fell. The undisputed summary judgment evidence established that the premises were inspected forty minutes before the accident and no hazard was detected. We agree with the district court that this evidence does not leave room for an inference that the condition was present for a sufficient period of time such that a Winn Dixie employee should have seen it. See Munford, 597 So.2d at 1285 (discussing cases wherein evidence has been insufficient to establish constructive knowledge). Plaintiff has failed to raise a fact issue regarding the store owner's constructive knowledge.²

Finally, Durel testified the display in the aisle where he fell obstructed his view of the floor and the puddle. This evidence does not present a factual question of causation or constructive knowledge. Finding no evidence that Winn Dixie either caused the danger or should have known of a dangerous condition, we affirm the district court's summary judgment in favor of Defendant.

AFFIRMED.

² Plaintiff alternatively argues that Winn Dixie should have known of the hazard because the aisle was negligently inspected. Plaintiff argues that he was precluded by the trial court's ruling from demonstrating the length of time it would take for three quarters of a gallon of vinegar to leak out the small slit. Because Durel has not produced any evidence connecting the puddle in the aisle with the damaged bottle, the question how long the bottle may have leaked is not material. We find no reasonable basis for an inference that the employee who inspected the area failed to see something she should have seen.