

United States Court of Appeals for the Fifth Circuit

No. 26-50098
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 29, 2026
Lyle W. Cayce
Clerk

FERNANDO RIOS,

Plaintiff—Appellant,

versus

WAL-MART STORES TEXAS, L.L.C., *doing business as* WAL-MART
STORE 7229,

Defendant—Appellee.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:24-CV-446

Before DAVIS, RICHMAN, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Plaintiff-Appellant Fernando Rios tripped while exiting a shopping-cart corral in the parking lot of Defendant-Appellee Wal-Mart Stores Texas, L.L.C. He sued, alleging the corral's misalignment created a trip hazard. The district court concluded Rios lacked evidence showing Wal-Mart had actual or constructive knowledge of the dangerous condition, so entered summary

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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judgment and dismissed the suit with prejudice. After our de novo review, we AFFIRM.

The evening of March 6, 2022, Rios went to Wal-Mart for groceries. After loading his bags in his car, Rios returned his shopping cart to a cart corral in the parking lot. He entered the corral without issue, but tripped over its threshold as he exited. Initially, Rios refused medical help but returned two days later to file an incident report with the store.

We include a photo of the corral in question in our appendix. It has two front posts connected at their base by a flat metal crossbar with a height of three-eighths of an inch. By design, the corral was not anchored in place. Because of that, the corral could shift from its original position—for example, if someone hit it with a shopping cart or an automobile.

At the time of Rios’s accident, the corral was situated in a parking space with a curb to its right. For reasons the record does not reveal, the corral’s front right post had shifted from the lot’s asphalt surface to a concrete extension of the curb, which sat somewhat higher than the asphalt. This misalignment caused the metal crossbar to lift slightly off the ground and Rios contends it was this rise that tripped him.¹ The record does not contain a measurement of the crossbar’s height differential but, as depicted in our appendix, it appears to have been minimal. A store manager testified that Rios’s was the first report of an injury due to the misalignment of a corral in her seven years at the store.

Wal-Mart sought summary judgment on two essential elements of a premises-liability claim under Texas law—whether it “had actual or

¹ Rios testified at deposition that the metal cross bar itself presented a trip hazard, even had the corral been positioned correctly. But his arguments on appeal are based exclusively on the crossbar’s skewed elevation.

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constructive knowledge of the condition causing” Rios’s injury and whether “the condition posed an unreasonable risk of harm[.]”² The district court found Rios’s evidence did not raise a genuine dispute as to Wal-Mart’s knowledge of the crossbar’s skewed position, so it granted summary judgment without reaching the second element. Rios appealed. Our review is de novo.³

Actual or constructive knowledge exists where: (1) the property owner created the dangerous condition, (2) the property owner actually knew of the dangerous condition, or (3) the hazard existed long enough to give the property owner a reasonable opportunity to discover it.⁴ Rios relies on the first and third methods of proof, and points to video showing an unidentified Wal-Mart employee in the corral three minutes before his accident. From that, Rios surmises the employee either created the condition by moving the corral or failed to notice and correct its positioning.

Neither theory overcomes summary judgment as to Wal-Mart’s knowledge. The creation theory fails because the video does not show the employee moved the corral, and there is no other evidence suggesting Wal-Mart was responsible for the corral’s displacement. The constructive-knowledge theory fails under Texas’s time-notice rule: an invitee must prove a dangerous condition existed long enough for a reasonable property owner to discover it.⁵ Rios, however, produced no temporal evidence at all.

² *McCarty v. Hillstone Rest. Grp., Inc.*, 864 F.3d 354, 358 (5th Cir. 2017) (quoting *Henkel v. Norman*, 441 S.W.3d 249, 251–52 (Tex. 2014) (per curiam)).

³ *See Johnson v. PRIDE Indus.*, 7 F.4th 392, 399 (5th Cir. 2021).

⁴ *See Wal-Mart Stores, Inc. v. Reece*, 81 S.W.3d 812, 814 (Tex. 2002).

⁵ *See H-E-B, LP v. Peterson*, 732 S.W.3d 541, 547 (Tex. 2026) (stating there can be no constructive notice “[a]bsent temporal evidence of the duration the danger existed”); *Reece*, 81 S.W.3d at 816 (“An employee’s proximity to a hazard, with no evidence indicating

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Rios invokes *Corbin v. Safeway Stores, Inc.* as another way to prove Wal-Mart's knowledge.⁶ *Corbin* was an "exceptional case,"⁷ which turned on Safeway's admission that it installed a self-evidently high-risk display in its store. Given the grocer's admission, the Texas Supreme Court held Safeway liable for the resulting condition that injured the plaintiff.⁸ *Corbin* thus applies "to conditions that are dangerous from the inception of their use, not to conditions that become dangerous over time, even if they frequently do become dangerous."⁹

This case falls squarely in the latter category. Rios argues Wal-Mart knew the corral would move as employees pushed carts in and out of the corral, and that such movement would push the corral up onto the higher ledge of the curb, creating a hazard. The record does not bear this out as a factual matter, but *Corbin* would not apply regardless: Rios produced no

how long the hazard was there, merely indicates that it was *possible* for the premises owner to discover the condition, not that the premises owner reasonably *should* have discovered it.").

⁶ 648 S.W.2d 292 (Tex 1983).

⁷ *Brookshire Grocery Co. v. Taylor*, 222 S.W.3d 406, 408 (Tex. 2006).

⁸ See *Corbin*, 648 S.W.2d at 296–97.

⁹ *Townson v. Wal-Mart Stores, Inc.*, 760 F. App'x 345, 349 (5th Cir. 2019) (per curiam) (finding *Corbin* inapposite where wind had "kicked up" a Wal-Mart floor mat three times the previous year and a handful of times on the date of injury (cleaned up)); see also *Albertsons, LLC v. Mohammadi*, 689 S.W.3d 313, 319–320 (Tex. 2024) (per curiam) (declining to apply *Corbin* where storing goods in a shopping cart was not dangerous from the outset); *Taylor*, 222 S.W.3d at 407–408 ("Ordinarily, an unreasonably dangerous condition for which a premises owner may be liable is the condition at the time and place injury occurs, not some antecedent situation that produced the condition."); *CMH Homes, Inc. v. Daenen*, 15 S.W.3d 97, 102 (Tex. 2000) (rejecting *Corbin* and holding an owner's knowledge that "premises will deteriorate over time does not equate to knowledge of a condition that presents an unreasonable risk of harm"); *City of S.A. v. Rodriguez*, 931 S.W.2d 535, 536 (Tex. 1996) (per curiam) ("The leaky roof was not itself a dangerous condition; it could only cause a dangerous condition.").

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evidence that the corral or Wal-Mart's original placement of it was inherently dangerous at the inception of its use. The district court's summary judgment is AFFIRMED.

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APPENDIX

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