MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sharon Cutsinger,
Appellant-Plaintiff,

v.

Bartholomew County Public Hospital a/k/a Columbus Regional Hospital,
Appellee-Defendant,

July 22, 2021

Court of Appeals Case No. 20A-CT-2256

Appeal from the Bartholomew Superior Court

The Honorable Kathleen Tighe Coriden, Judge

Trial Court Cause No. 03D02-1902-CT-977

Robb, Judge.

Case Summary and Issue

[1] Sharon Cutsinger appeals the trial court's grant of summary judgment in favor of Bartholomew County Public Hospital, a/k/a Columbus Regional Hospital (the "Hospital"), on her claim of negligence. Cutsinger presents only one issue for our review: whether the trial court erred in granting the Hospital's motion for summary judgment. Concluding the trial court did not err in granting summary judgment, we affirm.

Facts and Procedural History

[2] On May 26, 2018, Cutsinger was visiting her mother who was a patient at the Hospital. At 3:07 p.m., while exiting the Hospital, Cutsinger slipped on a small puddle of liquid on the floor and fell on her knee and hip. Cutsinger testified at a deposition that the liquid she slipped on was water. *See* Appellant's Appendix, Volume 2 at 101. Cutsinger suffered bruising and swelling to her left knee and hip but no fractures. *See id.* at 102.

[3] Prior to Cutsinger's fall, at 2:57 p.m., a woman and a young girl walked down the stairs into the entrance lobby. Exhibits, Volume 3 at 2, Exhibit 5 (Video 2 at 14:57:52). The young girl was carrying two cups and while near the exit, she spilled something out of one of the cups. *Id.* (Video 2 at 14:58:23). The woman proceeded to take one of the cups from the girl but did not clean up the spill. While the pair were still standing near the spill, Misty Hunter, the Registration Coordinator, walked past them toward the registration desk near the entrance.

Id. (Video 2 at 14:58:44). As Hunter walked through the lobby, a second child ran past her and out the front entrance. Between the time of the spill and Cutsinger's fall multiple people walked past the spill, including a man who at 3:03 p.m. stepped in the spill while exiting, looked down at his shoe and the spill, and then proceeded out the door.[1] *Id.* (Video 2 at 15:03:33).

[4] Heidi Stagge and Sheeba Varghese were the employees working the front desk at the time of the spill and Cutsinger's fall. At 3:04 p.m., Hunter began a conversation with Stagge and Varghese that lasted until they noticed Cutsinger fall. *Id.* (Video 1 at 15:04:10). The front desk has a clear view of the exit doors and the area where the spill occurred. Stagge testified at her deposition that in the past when she witnessed a spill, she wiped it up with a paper towel and had a yellow "Caution when wet" sign placed in the area. *See* Appellant's App., Vol. 2 at 106. Generally, the employees at the front desk oversee registering patients who come into the Hospital and giving visitors information. But they also have work on the computer that precludes them from "always just scanning the floor." *Id.* at 108.

[5] On February 19, 2019, Cutsinger filed a complaint for damages alleging the Hospital was negligent in maintaining its premises. Subsequently, the Hospital filed a motion for summary judgment arguing it had no actual or constructive

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[1] The trial court stated that "it appears an older man may have slipped slightly but continued to exit at the main door without comment." Appealed Order at 2. However, after reviewing the security video, we do not believe that he slipped. Also, there is nothing in the record indicating that this was noticed by the employees.

knowledge of the alleged hazard and therefore committed no breach of any duty owed to Cutsinger. Following a hearing, the trial court issued an order granting the Hospital's motion. Cutsinger then filed a motion to correct error and requested a hearing upon the motion. A hearing was conducted and the motion to correct error was denied. Cutsinger now appeals.

Discussion and Decision

I. Standard of Review

[6] We review a summary judgment order with the same standard applied by the trial court. *City of Lawrence Util. Serv. Bd. v. Curry*, 68 N.E.3d 581, 585 (Ind. 2017). Summary judgment is appropriate only when "the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ind. Trial Rule 56(C). In the summary judgment context, we are not bound by the trial court's specific findings of fact and conclusions of law. *Rice v. Strunk*, 670 N.E.2d 1280, 1283 (Ind. 1996). The trial court's findings and conclusions merely aid our review by providing us with a statement of reasons for the trial court's actions. *Id.*

[7] Moreover, our review is limited to those facts designated to the trial court, T.R. 56(H), and we construe all facts and reasonable inferences drawn from those facts in favor of the non-moving party, *Meredith v. Pence*, 984 N.E.2d 1213, 1218 (Ind. 2013). On appeal, the non-moving party carries the burden of persuading us the grant of summary judgment was erroneous. *Hughley v. State*, 15 N.E.3d

1000, 1003 (Ind. 2014). A grant of summary judgment will be affirmed if it is sustainable upon any theory supported by the designated evidence. *Miller v. Danz*, 36 N.E.3d 455, 456 (Ind. 2015).

[8] Summary judgment is rarely appropriate in negligence cases because they are particularly fact-sensitive and are governed by a standard of the objective reasonable person, which is best applied by a jury after hearing all the evidence. *Kramer v. Cath. Charities of Diocese of Fort Wayne-S. Bend, Inc.*, 32 N.E.3d 227, 231 (Ind. 2015). However, where the facts are undisputed and lead to but a single inference or conclusion, the court as a matter of law may determine whether a breach of duty has occurred. *King v. Ne. Sec., Inc.*, 790 N.E.2d 474, 484 (Ind. 2003).

II. Premises Liability

[9] To prevail on a claim of negligence, Cutsinger must establish: (1) the Hospital owed a duty to Cutsinger; (2) the Hospital breached that duty by allowing its conduct to fall below the applicable standard of care; and (3) the Hospital's breach of duty proximately caused a compensable injury to Cutsinger. *Rhodes v. Wright*, 805 N.E.2d 382, 385 (Ind. 2004). A defendant is entitled to summary judgment by demonstrating that the undisputed material facts negate at least one element of the plaintiff's claim. *Countrymark Coop., Inc. v. Hammes*, 892 N.E.2d 683, 688 (Ind. Ct. App. 2008), *trans. denied*.

[10] Neither party disputes that, at the time of the incident, Cutsinger was a business invitee of the Hospital. Under Indiana premises liability law, a landowner owes

the highest duty to an invitee: the duty to exercise reasonable care for his protection while he is on the landowner's premises. *Burrell v. Meads*, 569 N.E.2d 637, 639 (Ind. 1991). Indiana has adopted the Restatement (Second) of Torts Section 343, which defines the scope of the duty a landowner owes to an invitee on its property as follows:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> > (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
> >
> > (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
> >
> > (c) fails to exercise reasonable care to protect them against the danger.

Converse v. Elkhart Gen. Hosp., Inc., 120 N.E.3d 621, 625 (Ind. Ct. App. 2019) (quoting Restatement (Second) of Torts Section 343).

[11] We have stated that allowing the existence of a hazardous substance on the floor of a business can be a breach of the duty to exercise reasonable care. *See Barsz v. Max Shapiro, Inc.*, 600 N.E.2d 151, 153 (Ind. Ct. App. 1992). However, while a landowner's duty to a business invitee includes a duty to exercise reasonable care to protect the invitee from foreseeable dangers on the premises, there is no duty to *insure* a business invitee's safety while on the

premises. *Schulz v. Kroger Co.*, 963 N.E.2d 1141, 1144 (Ind. Ct. App. 2012). A landowner is not the insurer of the invitee's safety, and before liability may be imposed on the landowner, it must have actual or constructive knowledge of the danger. *Carmichael v. Kroger Co.,* 654 N.E.2d 1188, 1191 (Ind. Ct. App. 1995), *trans. denied.* Cutsinger concedes that the Hospital did not have actual knowledge of the spill, *see* Brief of Appellant at 7, and therefore, she must show the Hospital had constructive knowledge.

[12] We have defined constructive knowledge as knowledge of a "condition [which] has existed for such a length of time and under such circumstances that it would have been discovered in time to have prevented injury if the [landowner, its] agents or employees had used ordinary care." *Wal-Mart Stores, Inc. v. Blaylock*, 591 N.E.2d 624, 628 (Ind. Ct. App. 1992) (citation omitted), *trans. denied*. In *Schulz*, the plaintiff slipped on a clear liquid resembling water in the back of a Kroger store. 963 N.E.2d at 1144. We observed that the window of time between an employee being present in the area where the plaintiff fell and the plaintiff's fall was ten minutes at most and that the floor was clean and dry ten minutes prior to her fall, and held that "[s]hort of imposing a strict liability standard or mandating an employee's presence in every aisle at all times, we conclude that there is no genuine issue of fact in the case before us that Kroger did not have constructive knowledge of the hazardous condition" *Id.* at 1145.

[13] Cutsinger attempts to distinguish the case at hand from *Schulz*. Specifically, Cutsinger argues that the Hospital failed to exercise reasonable care and should have discovered the hazardous condition because employees were "present at

the time the spill occurred and during the entire period before the fall happened."[2] Br. of Appellant at 9.

[14] Here, multiple employees were in the general vicinity of the spill when it occurred. Cutsinger contends that whether "the Hospital employees at the registration desk at least should have known that the spill occurred" is a disputed fact. Br. of Appellant at 19. However, while applying Indiana's premises liability law the 7th Circuit concluded:

> That any of [a list of potential] hazards and many others *could* occur at any given moment probably ought to be on the mind of a person charged with managing a store, but that does not automatically impute instantaneous knowledge of when those hazards come about. The law does "not hold [a storeowner] strictly liable for a fall occurring before [it] even had a chance to remove the foreign substance from the floor." *Barsz*, 600 N.E.2d at 153-54.

Austin v. Walgreen Co., 885 F.3d 1085, 1089 (7th Cir. 2018). We find this instructive. Although employees were in the general area of the spill, the record is clear that they did not witness it occur. Cutsinger must show that the

[2] Cutsinger seemingly attempts to support this argument by highlighting Stagge and Hunter's testimony that "they were vigilant and would take steps to correct a hazard[.]" *See* Br. of Appellant at 17. Stagge agreed that part of her job was to be vigilant and watch for hazards, Appellant App., Vol. 2 at 109, and Hunter testified that she had seen spills in the past and employees would "take ownership" and clean them up, *id.* at 118. However, this argument is moot. Neither party suggests that the Hospital did not owe Cutsinger a duty and the fact that the employees would take steps to mitigate a hazard they had actual knowledge of is not relevant to the determination of whether they had constructive knowledge in this instance.

Hospital acted unreasonably in allowing the hazard to remain. *See Barsz*, 600 N.E.2d at 153.

[15] In *Barsz,* the plaintiff was a patron at Shapiro's restaurant who slipped and fell on her way to the restroom. The plaintiff testified that she believed she slipped on "something that was like I was outside on ice." *Id.* at 152. Evidence indicated a water glass was found on the floor near where she fell. The issue, as a matter of premises liability, was "whether Shapiro's acted unreasonably in allowing the foreign substance to remain on the floor." *Id.* at 153. Because evidence also showed that spills frequently occurred at the restaurant, which conducted a high volume of business, and certain staff had been assigned to and were responsible for cleaning up those spills, we found a genuine issue of material fact as to whether Shapiro's acted unreasonably in allowing the substance to remain. *Id.* at 154.

[16] Here, a child spilled a small amount of liquid in the front lobby on the way to the exit. During the ten-minute window between the spill and Cutsinger's fall, multiple visitors walked through the area and none indicated to the employees at the front desk that there was liquid on the ground. Unlike the restaurant setting in *Barsz*, there is nothing in the record to suggest the lobby of the Hospital is an area where spills frequently occur. When asked whether she had seen spills occur before, Stagge could only remember one instance which occurred right at the front desk. *See* Appellant's App., Vol. 2 at 105-06.

[17] Soon after the spill, Hunter walked through the lobby. However, the child and an adult remained standing around the spill and a second child ran across her path and out the door. Therefore, we conclude that Hunter failing to notice the spill immediately after it occurred was not unreasonable. And while Stagge and Varghese were at the front desk during the ten-minute window, it was not unreasonable that they did not discover the spill prior to Cutsinger's fall. The spill constituted a small amount of liquid which Cutsinger testified was water and was therefore clear. The record suggests the spill was not overtly visible from a distance as it was not visible on the security recording. Stagge and Varghese testified as to the nature of their job responsibilities which keep them at the front desk. *See* Appellant's App., Vol. 2 at 108, 111. Further, Stagge testified that at the time of the accident she and Varghese were meeting with their supervisor Hunter. *See id.* at 107. Therefore, it was not unreasonable that Stagge and Varghese did not see the spill from their desk or unreasonable that they did not get up from the front desk during the ten-minute window and discover the hazard.

[18] We conclude that Cutsinger did not establish that the failure to discover the hazard, under these circumstances, was a breach of the Hospital's duty to exercise ordinary care. *See Schulz,* 963 N.E.2d at 1144.

Conclusion

[19] We conclude the trial court did not err in granting summary judgment to the Hospital. Accordingly, we affirm.

[20] Affirmed.

Bailey, J., and May, J., concur.