IN THE SUPREME COURT OF TEXAS

NO. 03-0408

BROOKSHIRE GROCERY COMPANY,
D/B/A BROOKSHIRE FOOD STORES, PETITIONER

V.

MARY FRANCIS TAYLOR, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SIXTH DISTRICT OF TEXAS

JUSTICE HECHT delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE WAINWRIGHT, JUSTICE BRISTER, JUSTICE GREEN, JUSTICE JOHNSON, and JUSTICE WILLETT joined.

JUSTICE JOHNSON filed a concurring opinion.

JUSTICE O'NEILL filed a dissenting opinion, in which JUSTICE MEDINA joined.

Respondent Mary Francis Taylor sued petitioner Brookshire Grocery Co. for injuries she suffered to her knee when she slipped and fell on a piece of partially melted ice on a tile floor in front of a self-service soft drink dispenser in petitioner's grocery store. The trial court denied Brookshire's motion for summary judgment, granted partial summary judgment for Taylor on premises liability, and rendered judgment for Taylor for damages found by the jury. The court of

appeals affirmed.[1] We address two questions: was the dispenser itself an unreasonably dangerous condition, or only the ice on the floor on which Taylor slipped, and if the latter, was there any evidence that Brookshire was or should have been aware of that condition? We reverse and render judgment for Brookshire.

A Brookshire employee testified that ice fell to the floor from the soft drink dispenser on a daily basis, that users were prone to spill ice from time to time, and that ice on the floor was a hazard to customers and had to be cleaned up regularly. There were three mats around the front of the dispenser, but they did not completely cover the tile floor, and Taylor slipped where the floor was bare. The Brookshire employee admitted that more mats could have been used and warning signs posted.

Brookshire was obliged to use reasonable care to protect Taylor, its invitee, from any unreasonably dangerous condition in its store of which it had actual or constructive knowledge.[2] Taylor argues that the dispenser itself, not just the particular piece of ice on which Taylor slipped, was an unreasonably dangerous condition, and that Brookshire was well aware of the risks the dispenser posed to customers. Brookshire argues that the ice on which Taylor slipped was the only unreasonably dangerous condition, and that there is no evidence it had actual or constructive knowledge that the ice was there. The trial court and court of appeals appear to have agreed with

---

[1] 102 S.W.3d 816 (Tex. App.—Texarkana 2003).

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

Taylor, although the court of appeals conceded that there was no evidence that Brookshire had actual or constructive knowledge of the ice on which Taylor slipped.[3]

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. Thus, for example, in *CMH Homes, Inc. v. Daenen*, we rejected the argument that stairs were unreasonably dangerous merely because the premises owner knew they would eventually become unstable with use.[4]

> There may be situations in which the deterioration of a structure or fixture is so rapid that there is an unreasonable risk of harm from the outset of its construction or installation, but this is not such a case.
>
> There is no evidence that the step and platform unit on which [injury occurred] was a dangerous condition from the inception of its use.[5]

Likewise, in *City of San Antonio v. Rodriguez*, we held that water on the floor of a basketball court could be an unreasonably dangerous condition, but not the leaky roof that would eventually allow water to drip onto the floor if it rained.[6]

> The leaky roof was not itself a dangerous condition; it could only cause a dangerous condition. The [owner] was not required to warn of leaks in the roof or repair them; it was required only to prevent the water that leaked through the roof from causing a dangerous condition.[7]

---

[3] 102 S.W.3d at 824.

[4] 15 S.W.3d 97, 100-101 (Tex. 2000).

[5] *Id*. at 101.

[6] 931 S.W.2d 535, 536-537 (Tex. 1996) (per curiam).

[7] *Id*. at 536.

And in *H.E. Butt Grocery Co. v. Resendez*, we held that a grocery store's self-service display of loose grapes in a recessed bowl on a rimmed table standing on a non-skid floor and surrounded by mats and warning cones was not an unreasonably dangerous condition; rather, the grape on which the plaintiff slipped was the dangerous condition.[8]

An exceptional case was *Corbin v. Safeway Stores, Inc.*, where the Court held that a grocery store's self-service display of loose green grapes in an open, slanted bin above a bare, green linoleum floor was an unreasonably dangerous condition for which the store owner could be liable, even if it had no actual or constructive knowledge that a grape was on the floor where the plaintiff slipped.[9] What made the situation in *Corbin* different from *Resendez* was that because the store in *Corbin* admitted there was an "unusually high risk associated with its grape display",[10] a jury could have found that the display itself was a dangerous condition.

This case is not like *Corbin*. As we said in *Resendez*, "the mere fact that a store has a customer sampling display cannot, without more, be evidence of a condition on the premises that poses an unreasonable risk of harm."[11] No evidence suggests that the soft drink dispenser was set up in such a way that ice on the floor was a greater danger than one would ordinarily encounter with such dispensers, or that customers, though prone to spills, were any more prone around this dispenser. Taylor's arguments that there should have been more mats and warning signs are relevant

---

[8] 988 S.W.2d 218, 218-219 (Tex. 1999) (per curiam).

[9] 648 S.W.2d 292, 295-297 (Tex. 1983).

[10] *Id*. at 296.

[11] *Resendez*, 988 S.W.2d at 219.

to her contention that Brookshire did not exercise reasonable care, but they are not evidence that the dispenser itself was unreasonably dangerous.[12] Otherwise, similar evidence could be used to show that the entire grocery store was unreasonably dangerous, since it is almost always the case that something more could have been done to prevent a customer from being struck by an article falling off a shelf or from slipping on the floor. A condition is not unreasonably dangerous simply because it is not foolproof.[13]

The only unreasonably dangerous condition in this case was the ice on the floor. Brookshire did not have actual knowledge of the ice on which Taylor slipped, and we agree with the court of appeals that there is no evidence that the condition had existed long enough, the ice not having fully melted, for Brookshire to have constructive notice.[14]

> The rule requiring proof that a dangerous condition existed for some length of time before a premises owner may be charged with constructive notice is firmly rooted in our jurisprudence. . . . The rule emerged from our reluctance to impose liability on a storekeeper for the carelessness of another over whom it had no control or for "the fortuitous act of a single customer" that could instantly create a dangerous condition.[15]

Because Taylor adduced no evidence that Brookshire had constructive knowledge of the unreasonably dangerous condition that caused her harm, the ice on which she slipped, Brookshire was entitled to summary judgment.

---

[12] *CMH Homes, Inc. v. Daenen*, 15 S.W.3d 97, 101 (Tex. 2000).

[13] *Id*. at 102 ("To our knowledge, no court has ever suggested that if it is possible to construct buildings or fixtures with materials that are impervious to wear and tear, an owner or occupier has a legal duty to do so and is charged with knowledge of an unreasonably dangerous condition if it does not.").

[14] 102 S.W.3d at 824.

[15] *Wal-Mart Stores, Inc. v. Reece*, 81 S.W.3d 812, 815-816 (Tex. 2002).

Accordingly, we grant Brookshire's petition for review and without hearing argument,[16] reverse the judgment of the court of appeals and render judgment that Taylor take nothing.

Nathan L. Hecht
Justice

Opinion delivered: December 1, 2006

[16] TEX. R. APP. P. 59.1.