COURT OF APPEALS
DECISION
DATED AND RELEASED

June 11, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3437

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

HELEN L. ROHLAND and DENNIS ROHLAND,

Plaintiffs-Appellants,

v.

LONDON SQUARE MALL and FIREMAN'S FUND INSURANCE COMPANY,

Defendants-Third Party Plaintiffs-Respondents,

STEVE HENRY, D/B/A NORTH COUNTRY ENTERPRISES, GENERAL ACCIDENT INSURANCE and MARK STUDINSKI, D/B/A ROCK N ROLL TO GO,

Third Party Defendants-Respondents.

APPEAL from a judgment of the circuit court for Eau Claire County: GREGORY A. PETERSON, Judge. *Affirmed in part; reversed in part and cause remanded.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Helen and Dennis Rohland appeal a summary judgment dismissing their personal injury action arising out of a slip and fall at London Square Mall. The trial court dismissed the action against the mall, the exhibitor of an event, Mark Studinski, d/b/a Rock N Roll to Go, and a promoter, Steve Henry, d/b/a North Country Enterprises, and their insurers, concluding that the Rohlands failed to demonstrate a dispute of material fact as to the issue of liability. The Rohlands argue that material issues of fact preclude dismissal of each defendant. We conclude that the trial court properly dismissed the Rohlands' claims against the mall and the promoter. However, the record discloses a dispute of material fact with respect to Studinski's liability. Therefore, we affirm in part, reverse in part and remand for further proceedings.

The record discloses that on her way out of the mall, Helen slipped and fell on a slippery spot on the floor of the mall. She was walking past Studinski's truck at the time. Studinski testified that Armor All had been sprayed on his truck tires that morning after the truck was parked inside the mall. Aaron Borreson, his employee, also testified that he used Armor All on the truck. The evidence conflicts whether Armor All was sprayed directly on the tire or on a rag used to wipe the tire.

When reviewing summary judgment, we apply the standard set forth in § 802.08(2), STATS., in the same manner as the circuit court. ***Kreinz v. NDII Sec. Corp.,*** 138 Wis.2d 204, 209, 406 N.W.2d 164, 166 (Ct. App. 1987). Summary judgment is appropriate when material facts are undisputed and when inferences that may be reasonably drawn from the facts are not doubtful and lead only to one conclusion. ***Radlein v. Industrial Fire & Cas. Ins. Co.,*** 117 Wis.2d 605, 609, 345 N.W.2d 874, 877 (1984). Once a defense is shown, "it is the burden of the party asserting a claim on which it bears the burden of proof at trial 'to make a showing sufficient to establish the existence of an element essential to that party's case.'" ***Kaufman v. State St. Ltd. Partnership,*** 187 Wis.2d 54, 58-59, 522 N.W.2d 249, 251 (Ct. App. 1994) (citation omitted).

The Rohlands argue that a dispute of material fact is presented with respect to Studinski's liability. We agree. The record discloses Studinski's deposition testimony that one of his employees sprayed Armor All in the

vicinity of the floor where Helen fell. The mall manager testified that Armor All would cause concern if used at the mall because "it does have a tendency to float in the air and get on the floor, and there's a silicone or something, and it causes it to be very slippery on the floor." Helen's deposition testimony was to the effect that she fell near the passenger side of Studinski's truck on a slippery spot on the floor. Based on these proofs, it is a permitted inference for a trier of fact to conclude that the use of Armor All was related to the slippery spot on the floor. As a result, the record reveals triable issues of fact concerning Studinski's liability arising out his employee's potential misapplication of the Armor All product.

Next, the Rohlands argue that the mall is not entitled to summary judgment of dismissal. We disagree. The Rohlands allege that the mall was negligent and violated its duty under the safe place statute, § 101.11, STATS. In order for a property owner to be found liable for a dangerous condition, it must be shown that the property owner had actual or constructive notice of the defect. ***Topp v. Continental Ins. Co.,*** 83 Wis.2d 780, 788-89, 266 N.W.2d 397, 402 (1978). Here, there is no showing that the mall had notice of the allegedly slippery spot on the floor. There is no showing that the maintenance men were aware of the floor's condition before Helen fell. We reject the contention that the approximate two-hour time frame that the condition may have existed was sufficient to constitute constructive notice. *See* ***Dykstra v. Arthur G. McKee & Co.***, 92 Wis.2d 17, 26, 284 N.W.2d 692, 698 (Ct. App. 1979). Consequently, no triable issue of fact concerning the mall's liability is demonstrated.

Next, the Rohlands argue that Henry is not entitled to summary judgment of dismissal. They argue that Henry may be found liable as the promoter of the event because he assumed a contractual obligation to keep the area of the bridal show clean and orderly. We disagree. There is no showing that the Rohlands were parties to or beneficiaries of Henry's contract with the mall. Even if they were, the misapplication of a cleaning product by a third party is not a breach by Henry. There is no evidence as to Henry's negligence or notice of a slippery spot. Consequently, there is no issue of arguable fact concerning Henry's liability to the Rohlands.

By the Court.—Judgment affirmed in part; reversed in part and cause remanded.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.