

# Defendant's Notice Rights Upheld In Slip And Fall Case

April 9, 2020 | by Thomas F. Dorn, Jr

On December 31, 2019, the Appellate Division in Jackson v. Shop Rite of Ewing, (A-3267-18T2), an unpublished opinion, affirmed the decision of the trial court in Mercer County granting defendant's motion for summary judgment on the issue of lack of notice.

In this case, plaintiff Beverly Jackson was a customer inside defendant Shop Rite of Ewing's store. A video showed that plaintiff slipped and fell inside the pharmacy section of the store. Before she fell the video showed a man and two teenagers walking past a display area and a bottle of Herbal Essences shampoo fall to the floor causing the cap to fall off. The customers picked up the bottle and cap and returned it to the display area. Three minutes later the video showed plaintiff slipping and falling on what turned out to be a quarter sized dollop of shampoo that had oozed out of the fallen bottle.

Plaintiff testified at her deposition that she shopped at Shop Rite of Ewing every day for 30 years and that before her fall she had never seen anything on the floor of the store. Defendant did not have a written policy governing inspections or addressing spills but did advise employees to immediately clean up any spill or to remain at the spill until maintenance personnel arrived.

The Law Division judge granted defendant's motion for summary judgment because defendant had no actual or constructive notice of the shampoo on the floor.

Because plaintiff was a business invitee on defendant's premises, the defendant owed plaintiff a duty of reasonable care to guard against any dangerous conditions on its property that the defendant either knew about or should have discovered. A storeowner defendant has a duty to conduct reasonable inspections to discover dangerous conditions. A plaintiff has to prove that a defendant had actual or constructive notice of the dangerous condition that caused an accident.

The Appellate Division agreed that defendant did not have actual or constructive notice of the spill. The video showed that no employee of the store was aware of the spill before plaintiff fell. As for constructive notice, three minutes time for the store employees to discover the spill was not a reasonable opportunity to discover and remove the spill. Also, the lack of a written policy on spills was not a factor because plaintiff's own testimony that every day for 30 years there was nothing on the store floors showed that the lack of a written policy was not a factor on the issue of negligence.

This case shows that defendant property owners have rights too; the fact that someone falls does not automatically lead to a monetary recovery. A plaintiff has to produce evidence that a storeowner either knows about a dangerous condition or should have had enough time to discover it. Sometimes 3 minutes trumps 30 years.