IN THE SUPREME COURT OF MISSISSIPPI

NO. 2019-IA-01498-SCT

VENTURE, INC. d/b/a SAVE-A-LOT

v.

MATTIE HARRIS

DATE OF JUDGMENT:	09/09/2019
TRIAL JUDGE:	HON. LARITA M. COOPER-STOKES
TRIAL COURT ATTORNEYS:	ABBY ROBINSON ROY A. SMITH, JR. R. BRANTLEY ADAMS
COURT FROM WHICH APPEALED:	HINDS COUNTY COUNTY COURT
ATTORNEYS FOR APPELLANT:	ROY A. SMITH, JR. R. BRANTLEY ADAMS
ATTORNEY FOR APPELLEE:	ABBY ROBINSON
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
DISPOSITION:	AFFIRMED IN PART; REVERSED IN PART AND REMANDED - 12/17/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE RANDOLPH, C.J., COLEMAN AND CHAMBERLIN, JJ.

CHAMBERLIN, JUSTICE, FOR THE COURT:

¶1. This case comes before the Court on interlocutory appeal. Mattie Harris filed a premises-liability action against Venture, Inc., d/b/a/ Save-A-Lot after Harris allegedly tripped over the base of a temporary iron display rack while shopping at the Save-A-Lot grocery store. Harris claims that Venture created a dangerous condition on the premises by placing a temporary iron display rack on the edge of a shopping aisle so that the base and the legs of the display rack protruded into the aisle and obstructed the walking clearance of customers. Harris claimed that Venture negligently maintained the premises by creating a

dangerous condition on the premises and failed to warn invitees of the condition. The dangerous condition, Harris claimed, was the proximate cause of her fall and the resulting injuries.

¶2. Harris filed for summary judgment, and Venture filed a motion to stay proceedings on Harris's motion under Mississippi Rule of Civil Procedure 56(f) until the parties could complete the discovery process. Venture later filed its own motion for summary judgment. After the Hinds County County Court conducted a hearing on the parties' motions, it granted Harris's motion for partial summary judgment as to the issue of liability and denied Venture's Rule 56(f) motion and motion for summary judgment. Aggrieved, Venture sought interlocutory appeal and asserts that the trial court abused its discretion by denying its Rule 56(f) motion and by granting Harris's motion for summary judgment. Venture further asserts that the trial court erred by denying its motion for summary judgment because no unreasonably dangerous condition existed on the premises. This Court granted interlocutory appeal.

FACTS AND PROCEDURAL HISTORY

¶3. On October 9, 2018, a seventy-eight year-old Mattie Harris was grocery shopping at Save-A-Lot in Jackson, Mississippi, and claimed to have tripped over a temporary iron display rack holding Prego spaghetti sauce at the end of the spices and juices aisle of the store.

¶4. On January 4, 2019, Harris filed suit against Venture, alleging that Venture had been

negligent in placing the display rack in the walking space of the aisle. In her complaint, Harris claimed that Venture owed a duty to protect its invitees from hazardous conditions in its store, that Venture breached that duty by allowing the display rack to be placed in the walking space of the aisle and that the negligent placement of the rack caused her to trip and fall, resulting in her experiencing severe side and back pain from broken ribs, a fractured arm and elbow, emotional distress, depression, humiliation, embarrassment and pain and suffering.

¶5. On February 4, 2019, Venture answered Harris's complaint, denying all liability and asserting that Harris's own negligence was the proximate cause of her fall and the resulting injuries. Over the next few months, the parties conducted discovery via interrogatories and requests for production. Venture claims that several of Harris's responses to its discovery requests were improper, incomplete and withheld discoverable information. On April 9, 2019, Venture's counsel reached out to Harris's counsel in order to schedule a time to take Harris's deposition, but due to scheduling conflicts, the parties were unable to schedule Harris's deposition. On May 1, 2019, Venture requested supplementation of the information that Harris had withheld in her responses to Venture's requests for discovery. Harris did not respond to Venture's request for supplementation.

¶6. On May 14, 2019, Harris moved for summary judgment. On May 22, 2019, Venture filed a motion to hold Harris's motion for summary judgment in abeyance so that the parties could complete discovery under Mississippi Rule of Civil Procedure 56(f). Venture did not

submit any affidavits along with its Rule 56(f) motion, but within its motion, Venture asserted that it could not defend its position against Harris's motion without obtaining information that Harris withheld during discovery or without deposing Harris. Within its Rule 56(f) motion, Venture also outlined the steps it had taken in order to gain access to the information that it alleged was in the exclusive possession of Harris.

¶7. On June 5, 2019, noting that Harris had not yet noticed her motion for partial summary judgment for a hearing, Venture filed its own motion for summary judgment based on the information it had available to it at the time. Venture attached the affidavit of the Save-A-Lot store manager to its motion for summary judgment and also submitted the footage of the incident that was recorded on the store's security cameras along with its motion for summary judgment.

¶8. The trial court conducted a motion hearing on September 5, 2019, to address both parties' motions for summary judgment and Venture's motion for a continuance. On September 9, 2019, the trial court entered its order granting Harris partial summary judgment as to the issue of liability and denying both of Venture's motions. At the hearing, the judge stated that she found that "there was an obstructive rack that is sticking out into the aisle at the store; that the plaintiff fell in the immediate area of this same rack; and the trier of fact may reasonably conclude that the rack caused the fall of the plaintiff." The judge concluded the hearing by stating that she found "that there are no genuine issues of fact to be determined as far as this matter is concerned, and the plaintiff's partial summary judgment

is hereby awarded on the issue of liability." The trial court's written order granting Harris's motion for partial summary judgment stated that

> The Court after hearing arguments and considering the pleadings as filed, finds that Defendant[']s Prego Sauce Rack, the subject of this lawsuit, was obstructive, in that Plaintiff fell in the immediate area of the rack. The Court further holds that a trier of facts suggest [sic] that the rack caused Plaintiff's fall.

¶9. Aggrieved by the trial court's decision, Venture sought, and this Court granted, interlocutory appeal regarding the trial court's granting of Harris's motion for partial summary judgment, its denying Venture's motion for summary judgment and its denying Venture's Rule 56(f) motion.

¶10. Because we find that both parties' motions for summary judgment should have been denied by the trial court and because we remand the case for a trial on its merits, we decline to address the trial court's ruling on Venture's Rule 56(f) motion.

STANDARD OF REVIEW

¶11. "We review the grant [or denial] of summary judgment de novo and will view evidence 'in the light most favorable to the party against whom the motion has been made.'" ***Renner v. Retzer Res., Inc.***, 236 So. 3d 810, 814 (Miss. 2017) (quoting ***Karpinsky v. Am. Nat'l Ins. Co.***, 109 So. 3d 84, 88 (Miss. 2013)). "This Court has held that if the trial court applies the wrong legal standard, the review of the ruling is de novo." ***Quitman Cnty. v. State***, 910 So. 2d 1032, 1035 (Miss. 2005) (citing ***Baker v. State***, 802 So. 2d 77, 80 (Miss. 2001)). "This Court has also stated 'where . . . the trial judge has applied an erroneous legal

standard, we should not hesitate to reverse.'" ***Id.*** (quoting ***McClendon v. State***, 539 So. 2d 1375, 1377 (Miss. 1989)). But, this Court has also "stated that 'we will not reverse a lower court's decision where the court reaches the right conclusion although for the wrong reason.'" ***HWCC-Tunica, Inc. v. Miss. Dep't of Revenue.***, 296 So. 3d 668, 681 (Miss. 2020) (quoting ***Briggs v. Benjamin***, 467 So. 2d 932, 934 (Miss. 1985)).

DISCUSSION

¶12. The issues raised in this appeal are the trial court's granting Harris's motion for partial summary judgment as to the issue of Venture's liability and the trial court's denying Venture's motion for summary judgment. Because of the nature of this case and for the sake of efficiency, we will analyze the parties' motions for summary judgment together.

I. Summary Judgment Standard

¶13. In its appeal, Venture argues that the trial court applied an erroneous standard of review when considering the parties' individual motions for summary judgment. We agree with Venture's assertion here and find that the trial court applied an erroneous standard to the motions for summary judgment.

¶14. "This Court will review a trial court's grant or denial of a motion for summary judgment de novo." ***Double Quick, Inc. v. Moore***, 73 So. 3d 1162, 1165 (Miss. 2011) (citing ***Titus v. Williams***, 844 So. 2d 459, 464 (Miss. 2003)). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that

the moving party is entitled to a judgment as a matter of law." Miss. R. Civ. P. 56(c).

¶15. "The evidence must be viewed in the light most favorable to the party against whom the motion has been made. If, in this view, the moving party is entitled to judgment as a matter of law, summary judgment should be entered in his favor. Otherwise, the motion should be denied." ***Moore***, 73 So. 3d at 1165 (citing ***Titus***, 844 So. 2d at 464). The party moving for summary judgment bears the burden of demonstrating that no genuine issue of material fact exists. ***Johnson v. Pace***, 122 So. 3d 66, 68 (Miss. 2013) (citing ***Tucker v. Hinds Cnty.***, 558 so. 2d 869, 872 (Miss. 1990)). "This Court has continuously held . . . 'the court cannot try issues of fact on a Rule 56 motion; it may only determine whether there are issues to be tried.'" ***Evan Johnson & Sons Constr., Inc. v. State***, 877 So. 2d 360, 365 (Miss. 2004) (quoting ***Grisham v. John Q. Long V.F.W. Post, No. 4057, Inc.***, 519 So. 2d 413, 415 (Miss. 1988)).

¶16. "Summary judgment is inappropriate where there are undisputed facts which are susceptible to more than one interpretation." ***McLeod v. Allstate Ins. Co.***, 789 So. 2d 806, 809 (Miss. 2001) (citing ***Canizaro v. Mobile Commc'ns Corp. of Am.***, 655 So. 2d 25, 28 (Miss. 1995)). "If the undisputed facts can support more than one interpretation, then this Court, 'will not hesitate to reverse and remand for a trial on the merits.'" ***Id.*** (quoting ***Canizaro***, 655 So. 2d at 28).

¶17. Venture claims that the trial court applied an improper legal standard for a premises-liability claim when the trial court ruled on the parties' motions for summary judgment.

Venture asserts that the trial court's order effectively used a strict liability standard to find that Venture was liable. Venture further argues that merely proving the occurrence of a fall on the premises is insufficient to show the proprietor's negligence.

¶18. Here, the trial court found that because the rack was sticking out into the aisle of the store and because Harris fell in the immediate vicinity of the rack, a trier of fact "may reasonably conclude that the rack caused the fall of the plaintiff" and that "a trier of facts suggest [sic] that the rack caused Plaintiff's fall." Neither of these findings constitutes an appropriate standard for granting a motion for summary judgment. When presented with conflicting evidence, the trial judge found that a trier of fact could reasonably decide a question of fact in one particular way, but she failed to state that a reasonable trier of fact could not determine the question of fact in any other way. That a jury could find for a party is not a sufficient legal basis to grant summary judgment.

II. Premises Liability Law

¶19. "Premises liability is a 'theory of negligence that establishes the duty owed to someone injured on a landowner's premises as a result of "conditions or activities" on the land . . . .'" ***Johnson v. Goodson***, 267 So. 3d 774, 777 (Miss. 2019) (quoting ***Doe v. Jameson Inn, Inc.***, 56 So. 3d 549, 553 (Miss. 2011)). "To prevail in a negligence action, such as a premises-liability case, the plaintiff must prove each element of negligence: duty, breach of that duty, proximate causation, and damages or injury." ***Bailey Lumber & Supply Co. v. Robinson***, 98 So. 3d 986, 993 n.3 (Miss. 2012) (citing ***Thomas v. Columbia Group, LLC***,

969 So. 2d 849, 852 (Miss. 2007)).

> Mississippi applies a three-step process to determine premises liability. The first step consists of classifying the status of the injured person as an invitee, licensee, or a trespasser. Following this identification, the duty which was owed to the injured party is determined. The third step is to determine whether this duty was breached by the landowner or business operator. The determination of which status a particular plaintiff holds can be a jury question, but where the facts are not in dispute the classification becomes a question of law for the trial judge.

Leffler v. Sharp, 891 So. 2d 152, 156 (Miss. 2004) (citations omitted).

¶20. "As to the first step, determination of the injured party's status, this Court has held that '[a]s to status, an *invitee* is a person who goes upon the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage . . . ." ***Id.*** (alterations in original) (quoting ***Corley v Evans***, 835 So. 2d 30, 37 (Miss. 2003)).

¶21. Here, both parties stipulate that Harris was an invitee on the premises.

¶22. "A business owner owes a duty to an invitee to keep the premises in a reasonably safe condition and to warn the invitee of dangerous conditions that are not readily apparent." ***Clinton Healthcare, LLC v. Atkinson***, 294 So. 3d 66, 71 (Miss. 2019) (footnote omitted) (citing ***Drennan v. Kroger Co.***, 672 So. 2d 1168, 1170 (Miss. 1996)). Proof of the operator's knowledge of the dangerous condition is not required when the hazardous condition was created by the operator's own negligence or by the negligence of someone under his authority. ***Id.*** This Court has held that "mere proof of occurrence of an accident is insufficient to establish negligence." ***Patterson v. T.L. Wallace Constr., Inc.***, 133 So. 3d 325, 332 (Miss. 2013) (citing ***Sears Roebuck & Co. v. Tisdale***, 185 So. 2d 916, 917 (Miss.

1966)). Knowledge is undisputed here because Venture acknowledges placement and knowledge of the temporary rack.

¶23. "[T]here is no liability for injuries, where the condition is not dangerous . . . ." ***Kroger, Inc. v. Ware***, 512 So. 2d 1281, 1282 (Miss. 1987) (citing ***King v. Dudley***, 286 So. 2d 814, 816 (Miss. 1973), *abrogated on other grounds by* ***Mayfield v. The Hairbender***, 903 So. 2d 733, 738 (Miss. 2005)), *overruled on other grounds by* ***Tharp v. Bunge Corp.***, 641 So. 2d 20, 23–24 (Miss. 1994).

¶24. "The invitee is still required to use in the interest of his own safety that degree of care and prudence which a person of ordinary intelligence would exercise under the same or similar circumstance." ***Fulton v. Robinson Indus., Inc.***, 664 So. 2d 170, 175 (Miss. 1995) (citing ***Tate v. S. Jitney Jungle Co.***, 650 So. 2d 1347, 1351 (Miss. 1995)). "The owner of a business is not . . . liable for injuries caused by conditions which *are not dangerous* . . . ." ***McGovern v. Scarborough***, 566 So. 2d 1225, 1227 (Miss. 1990) (quoting ***Stanley v. Morgan & Lindsey, Inc.***, 203 So. 2d 473, 476 (Miss. 1967)).

¶25. This Court has distinguished cases that "involved dangers which are usual and which customers normally expect to encounter on the business premises, such as thresholds, curbs, and steps" from those cases involving a "physical defect on the defendant's premises condition which may be found to be unusual and unreasonably dangerous . . . ." ***Tate***, 650 So. 2d at 1351. Obviously, the plaintiff must present evidence to prove the existence of a dangerous condition. ***Stanley v. Boyd Tunica, Inc.***, 29 So. 3d 95, 97–98 (Miss. Ct. App.

2010).

III. Harris's and Venture's Motions for Summary Judgment

¶26. Here, the parties presented the trial court with contradictory facts. Both parties supplied sworn statements to support the claims made in their summary judgment motions.

¶27. Harris also submitted photographs of the display and the rack at issue in this case as they were at the time of the incident to support her contention that Venture failed to keep its store premises free from unreasonably dangerous conditions. The photographs she provided showed that the temporary display rack was set up as an "end cap" at the end of a row of permanent display shelves. The photographs also showed that the display rack was only about a foot or so tall, that the spaghetti sauce displayed on the rack was stacked several feet high and that the jars were not stacked all the way to the front edge of the rack. Further, the legs on the bottom of the rack appear to angle out slightly from the base. Harris also argues that the rack should have had reflective coloring on it to bring attention to the rack as she alleges is present in the photograph of an adjacent display stand.

¶28. In its motion for summary judgment, Venture argue that the temporary display rack is a condition that a shopper would expect to encounter in a grocery store and is not unusual or unreasonably dangerous. Venture attached the affidavit of its store manager, Jim Gaskins, in support of this contention. Gaskins's affidavit stated that that type of display rack is frequently and commonly used around the store to display groceries and is used to draw customers' attention to the items on the temporary display. Venture also provided security

camera video footage of the incident in support of its claim that the rack did not constitute a dangerous condition and that because no dangerous condition existed, Venture could not be liable for Harris's injuries. Venture also pointed to the security footage to rebut Harris's claim in her motion for partial summary judgment that Venture's negligence was the sole and proximate cause of her injuries because the footage showed that Harris had difficulty walking on her own, regardless of the placement or condition of Venture's temporary display rack.

¶29. In ***Tate***, in which a customer sued a grocery store after cutting her knee on a deli counter that contained a defective piece of metal, this Court held that "as a matter of law, there is, at a minimum, a jury question of Jitney failing to maintain the premises in a reasonably safe condition" and that "[t]he trial court erred, therefore, in granting a directed verdict." ***Tate***, 650 So. 2d at 1351 (citing ***Tharp***, 641 So. 2d at 27). As in ***Tate***, here, Harris alleges that what would usually be a normally expected condition in a grocery store, a temporary display rack, was made unreasonably and unexpectedly dangerous due to Venture's use of a rack with legs that angled from the base into the walkway, its failure to stack the spaghetti sauce up to the front edge of the rack thus leaving a portion of the base sticking into the walkway, its failure to provide safeguards to draw attention to the rack and its failure to position the temporary display rack itself flush with the permanent display shelves. Venture rebuts Harris's contentions by claiming that these temporary display racks are often used around the store and that their purpose is to draw the attention of shoppers, making them a reasonable and expected condition on the premises.

¶30. The facts and contentions made by the parties in this case have some similarities to those made in ***Renner***. In ***Renner***, a customer tripped and fell over an empty highchair at a McDonald's restaurant. ***Renner***, 236 So. 3d at 811. The parties offered conflicting testimony as to the dangerousness of the highchair's placement. ***Id.*** at 814. Renner argued that the McDonald's had not maintained reasonably safe conditions on the premises, that the employees had failed to warn him of the dangerously placed highchair in the aisle and that the employees had failed to remedy the dangerous condition by moving the highchair out of the walkway of its customers. ***Id.*** Renner responded by offering his own testimony as well as the testimony of an eyewitness to the incident who frequented the McDonald's. Renner's eyewitness testified that the highchairs were regularly stacked in a way that a customer using or passing by the condiment station could not see that the legs of the highchairs protruded beyond the visible, top portion of the chairs that could be seen behind the "half wall" where the highchairs were regularly stored. ***Id.*** at 812 (internal quotation marks omitted). The trial court ruled "that, because highchairs normally are present in restaurants, an invitee could expect to encounter them." ***Id.*** at 815. This Court reversed the trial court's ruling, however, and held that because the nonmoving party had "produced sufficient testimonial evidence establishing that genuine issues of material fact exist," that "[i]t was error for the trial court to grant summary judgment in favor of the defendants because triable issues of fact remain." ***Id.*** (citing ***Ladnier v. Hester***, 98 So. 3d 1025, 1028 (Miss. 2012). This included the question of whether the *placement* of the highchairs constituted an unreasonably dangerous condition.

Id.

¶31. This issue is further informed by ***Davis v. Variety Stores Inc.***, No. 3:12-cv-267-DPJ-FBK, 2014 WL 2967908 (S.D. Miss. July 1, 2014) (applying Mississippi substantive law). In ***Davis***, the plaintiff tripped and fell over a temporary clothing rack located on the defendant's premises. In denying summary judgment on the defendant's claim that the clothing rack did not constitute a dangerous condition, the trial court focused not on the issue of whether a temporary clothing rack constituted a dangerous condition in and of itself but, rather, whether the *positioning* of the clothing racks on the defendant's premises may have created an unreasonably dangerous condition. ***Id.*** at **2-3; *see also* ***Keyes v. Techtronic Indus. Factory Outlets, Inc.***, No. 3:18-CV-671-DPJ-FKB, 2020 WL 4489439 (S.D. Miss. Aug. 4, 2020) (involving the temporary placement of a lawnmower below sight level in the aisle).

¶32. As has long been the law in Mississippi, the question of negligent stacking, when supported by evidence and done by the alleged tortfeasor, is a question for the jury. ***K-Mart Corp. v. Hardy ex rel. Hardy***, 735 So. 2d 975, 980–82 (Miss. 1999).

¶33. Here, after reviewing the conflicting evidence provided by the parties, we find that neither party has presented sufficient evidence to show that no genuine issue of material fact exists in this case nor has either party shown entitlement to judgment as a matter of law. While the question is fact-dependent, a nondefective, temporary iron display rack would not typically constitute a dangerous condition. But its use, positioning and placement might.

¶34. Furthermore, because this case is fact intensive and the two parties submitted conflicting evidence as to whether the rack constituted a dangerous condition, we find that summary judgment in favor of either party was inappropriate and that the question of whether the rack constituted a dangerous condition should be resolved by a trier of fact in a trial on the merits.

CONCLUSION

¶35. We find that both parties presented sufficient evidence to show that several genuine issues of material fact exist in this case. Therefore, we find that the trial court erred by granting partial summary judgment as to the issue of liability in this matter. We reverse the ruling of the trial court and remand this case for completion of discovery and a trial on the merits.

¶36. **AFFIRMED IN PART; REVERSED IN PART AND REMANDED.**

RANDOLPH, C.J., KITCHENS AND KING, P.JJ., COLEMAN, MAXWELL, BEAM, ISHEE AND GRIFFIS, JJ., CONCUR.