IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-01172 COA

K-MART CORPORATION **APPELLANT**

v.

SADIE E. GRANTHAM AND HUSBAND, CLEMON GRANTHAM **APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	09/27/95
TRIAL JUDGE:	HON. BILLY JOE LANDRUM
COURT FROM WHICH APPEALED:	JONES COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JAMES L. QUINN
ATTORNEYS FOR APPELLEES:	EUGENE M. HARLOW
	LINNEA KATHLEEN HALL
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	JURY VERDICT OF $50,000 IN FAVOR OF SADIE GRANTHAM AND $9,000 IN FAVOR OF CLEMON GRANTHAM
DISPOSITION:	AFFIRMED - 11/04/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

BEFORE McMILLIN, P.J., HINKEBEIN, AND SOUTHWICK, JJ.

McMILLIN, P.J., FOR THE COURT:

The Court deals today with a "slip and fall" case in a retail establishment. The facts are simple and the issue to be resolved by the Court may be simply stated. However, the resolution of that issue poses a close question. In this case, the jury returned a verdict in favor of the victim of the fall in the amount of $50,000 and also awarded loss of consortium damages to her husband in the amount of $9,000. The defendant, K-Mart Corporation, has appealed claiming that it was entitled to a directed verdict in its favor as a matter of law. However, upon due consideration of the issue, this Court affirms the judgment of the trial court.

I.

Facts

Sadie E. Grantham, in the status of a business invitee at the K-Mart store in Laurel, slipped and fell while walking down a store aisle. There was substantial evidence that Mrs. Grantham had stepped on the remains of a partially-eaten hamburger patty and that the greasy consistency of the fragment caused her to lose her footing. There was no contention by Mrs. Grantham that an agent of K-Mart was responsible for placing the food scrap on the floor. Rather, Mrs. Grantham contended that the hamburger remains had been on the floor for a sufficiently long period of time to put K-Mart on constructive notice of its presence, and that K-Mart's negligence consisted in not removing the hazard within a reasonable time. The evidence bearing directly on this issue was two-fold: (a) A K-Mart employee testified that she had seen a small child seated in a shopping cart around 1:00 p.m. being pushed about the store by an adult and that the child was eating an unwrapped hamburger, and (b) Mrs. Grantham's fall occurred at approximately 4:30 p.m. on that same day.

There was testimony that all K-Mart employees were aware of the company policy to be attentive to spills and other hazards in the aisles and that there was a duty to secure an area where a hazard existed until it could be cleaned up. There was also testimony that a K-Mart security official had visited the area where Mrs. Grantham fell shortly before her fall. He claimed not to have observed anything in the aisle. However, this employee's primary duty consisted of inspecting secluded areas where shoplifters were known to temporarily secrete items taken from more visible areas in anticipation of later removing them from the store. There was no evidence that K-Mart had a specific policy of periodic inspections of the aisles or of a periodic sweeping schedule supported by a time log or other record.

K-Mart sought a directed verdict at the close of the proof; however, the trial court denied the relief and submitted the case to the jury. As we have observed, the jury returned a verdict in favor of Mrs. Grantham and also in favor of her husband on his loss of consortium claim.

K-Mart's post-trial motions for relief at the trial level were denied, and it now brings this appeal, assigning as its sole issue the question of whether the evidence was sufficient to support the verdict returned by the jury.

II.

The Standard of Review

K-Mart's appeal is based on the proposition that the trial court erred as a matter of law both when it denied K-Mart's directed verdict motion at the close of the proof and when it subsequently denied K-Mart's post-judgment motion for JNOV. This Court, in passing on such matters, is obligated to consider the evidence in a light most favorable to the non-moving plaintiff. *Goodwin v. Derryberry Co.*, 553 So. 2d 40, 42 (Miss. 1989). We must accept as true all probative evidence that supports the plaintiff's theory of the case and all reasonable inferences that may be drawn from such evidence. *Id.* It is only upon reaching the conclusion that, viewing the evidence in this manner, the plaintiff has failed as a matter of law to establish one or more of the essential elements of her cause of action that this Court can find error in the trial court's refusal to grant the motion. *Id.*

III.

Discussion

Grantham's theory of the case was that the jury could reasonably infer that the hamburger remains on which Mrs. Grantham slipped were a portion of the hamburger seen in the possession of the young child several hours before the incident. K-Mart argues that the evidence was insufficient, as a matter of law, to support such an inference. Both sides cite this Court to essentially the same cases, each urging that the cases provide support for their respective positions.

We begin with the unchallenged proposition that, in cases where the material causing the fall was not placed there by an agent of the entity in charge of the premises, there must be some evidence from which the jury could conclude that the material had been there long enough that the responsible entity should, through the exercise of reasonable care, have detected its presence and seen to its removal. *Waller v. Dixieland Food Stores Inc.*, 492 So. 2d 283, 285 (Miss. 1986). We also observe that it was not necessary to prove by direct evidence how long the hazard had existed prior to the incident causing injury, but that the jury could, from circumstantial evidence having sufficient probative value, draw a reasonable inference that the hazard had been in place long enough to have been discovered through the exercise of reasonable diligence. *Munford Inc. v. Fleming*, 597 So. 2d 1282, 1285 (Miss. 1992).

K-Mart argues that inference must be stacked upon inference to an extent not permitted by the law in order to establish liability. In effect, it claims that the connection between (a) the observation of the child with the hamburger several hours prior to the accident in another area of the store and (b) the recovery of hamburger residue at the scene of the accident, without further evidence, is too tenuous to permit an assessment of liability.

This Court disagrees. It is the opinion of this Court that the jury could reasonably conclude that the consumption of a food item such as a hamburger in a retail establishment is a somewhat extraordinary event. Further, the jury, in calling upon the common experience of its members, could conclude that there was a reasonable likelihood that a child sufficiently young to be seated in the child seat of a shopping cart would have a greater propensity to carelessly discard any unwanted portion of the food than would an older, more responsible, person. Undoubtedly the jury could conclude that a typical shopper would not remain in the store (or that a child would remain in possession of the unwanted residue of a partially-eaten hamburger) for a period approaching three and one-half hours, so that there was a substantial likelihood that the child had discarded the material several hours prior to the accident. Finally, the jury could reasonably conclude that a space of several hours was sufficient time for K-Mart agents, had they been exercising reasonable care, to discover and remove the hamburger residue from the floor of its store, thereby charging K-Mart with constructive notice of its presence.

The only other logical explanation for the presence of the hamburger fragment would require a finding that another customer, at a time significantly later in the afternoon, also entered the store with a hamburger and chose to dispose of an unwanted part of the sandwich a few minutes in advance of Mrs. Grantham's fall. Though the plaintiff has the burden of establishing her case, that burden is only by a preponderance of the evidence. *Jerry Lee's Grocery Inc. v. Thompson*, 528 So. 2d 293, 295 (Miss. 1988). This Court cannot conclude that the trial court erred when it permitted the jury to determine, on this evidence, whether they believed it was more likely than not that Mrs. Grantham fell on a part of a hamburger discarded by the young child observed in the store several hours prior to her fall and that the hamburger fragment had remained in an aisle open to K-Mart's business invitees, unobserved by any K-Mart agent, for a sufficient length of time to charge K-Mart with constructive

notice of its presence.

Having so concluded, this Court is obligated to affirm the verdict of the jury and the ensuing judgment.

THE JUDGMENT OF THE CIRCUIT COURT OF JONES COUNTY IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. COSTS ARE ASSESSED TO THE APPELLANT.

BRIDGES, C.J., THOMAS, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.