

85-LW-3442 (10th)

Margaret Willis, Plaintiff-Appellant

v.

Mid-Ohio Automotive, Inc., d.b.a. Nationwide Auto Parts, Defendant-Appellee.

No. 84AP-1139 (REGULAR CALENDAR).
10th District Court of Appeals of Ohio, Franklin County.
Decided on July 23, 1985.

APPEAL from the Franklin County Common Pleas Court.

RONALD E. PLYMALE CO., L.P.A., MR. RONALD E. PLYMALE and MR. STEPHEN D. PLYMALE, for appellant.

MESSRS. LANE, ALTON & HORST, MR. JOHN M. ALTON and MR. GREGORY D. RANKIN, for appellee.

OPINION

COOK, J.

On November 14, 1981, at approximately 10:30 a.m., appellant, Margaret Willis, and her three-year-old granddaughter, went to a shopping center at 1228 Marion Road in Columbus, Ohio. She parked directly in front of the Nationwide Auto Parts store, appellee herein, one of several small retail stores in the shopping center. She and her granddaughter entered appellee's store and purchased five quarts of oil and an oil filter. After leaving the store, they walked across the sidewalk adjacent to the store and stepped off the curb onto the surface of the parking lot. In doing so, appellant slipped on a grease spot on the parking lot surface and fell, injuring herself. As a result of her fall, appellant had grease on her arms and face and her clothes. The grease also got on her granddaughter's pants when she sat down beside her grandmother.

Appellant brought an action against appellee and J.A.L. Realty Company, the lessor of appellee's store, for her injuries. Subsequently, the cause proceeded to trial. During trial, J.A.L. Realty was dismissed. At the conclusion of appellant's case, the trial court granted appellee's motion for a directed verdict.

Appellant has appealed the judgment of the trial court and has filed the following assignment of error:

"The trial court erred in failing to apply the proper law to the facts elicited in trial when defendant-appellee moved for a directed verdict."

The assigned error is without merit.

In support of her assignment of error, appellant contends the trial court improperly applied the holding in Anaple v. Standard Oil (1955), 162 Ohio St. 537, to the facts in the instant cause in directing a verdict in favor of appellee at the close of appellant's case.

Civ. R. 50(A)(4) provides:

"(A) Motion for directed verdict.

"(4) When granted on the evidence. When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one

conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue."

In Anaple, the court, in the syllabus, held:

"1. Where a customer of a gasoline service station seeks to recover damages for personal injuries sustained in slipping on a grease spot, which was on the premises of such service station and about which he had not been warned, such customer has the burden of proving

"1. That the nature, size, extent and location of such grease spot involved a potential hazard to customers, sufficient to justify a reasonable conclusion that the duty of ordinary care, which the operator of such service station owes to his customers, would require such operator to prevent or remove such a grease spot or to warn his customers about it, and

"2. (a) That such sufficient potential hazard was created by some negligent act of the operator of the service station or his employees, or

"(b) That such operator or his employees had, or should in the exercise of ordinary care have had, notice of that potential hazard for a sufficient time to enable them in the exercise of ordinary care to remove it or to warn customers about it.

"2. Where there is no evidence as to how much grease was in a mere five-inch spot of heavy grease on the floor just outside the door of a lubritorium, apart from testimony of a customer who slipped on it that enough grease got on his clothes to be noticeable and that he later had it cleaned off his shoe and his pants, the potential hazard from such a grease spot is too slight to justify a conclusion that the duty of ordinary care, which the operator of such lubritorium owes to his customers, would require such operator to prevent or remove such a grease spot, or to warn his customers about it."

In the instant cause, the facts are stronger for a finding of no liability than in Anaple. The grease spot on which appellant allegedly slipped was located on the surface of the parking lot of the shopping center which was owned by J.A.L. Realty, which had the duty under appellee's lease to maintain the parking area in the "vicinity of and adjacent to" appellee's premises. Appellant presented no evidence as to the nature, size, and extent of the subject grease spot. Appellant did not present any evidence as to how the spot came into existence or how long it had been there, nor did she present any evidence that appellee knew or should have known of the existence of the grease spot. She presented no evidence as to how much grease was in the spot other than the testimony of appellant that enough grease got on her clothes and her hands and arms, as well as her granddaughter's pants when she sat down next to appellant, to be noticeable.

We conclude that, construing the evidence offered by appellant most strongly in her favor, reasonable minds could come to but one conclusion under the holding of the Anaple case, and that conclusion is adverse to appellant.

Appellant's single assignment of error is overruled, and the judgment is affirmed.

Judgment affirmed.

WHITESIDE and MOYER, JJ., concur.

COOK, J., of the Eleventh Appellate District, sitting by assignment in the Tenth Appellate District.