THE WEEK IN TORTS

FLORIDA LAW WEEKLY
VOLUME 39, NUMBER 35
How Long Is Long Enough?
CASES FROM THE WEEK OF AUGUST 29, 2014

NO ERROR IN GRANTING SUMMARY JUDGMENT IN A SLIP AND FALL CASE WHERE PLAINTIFF FAILED TO PROVE THAT DEFENDANT HAD CONSTRUCTIVE KNOWLEDGE OF ANY TRANSITORY FOREIGN SUBSTANCE REQUIRING REMEDIAL ACTION

Walker v. Winn-Dixie, 39 Fla. L. Weekly D1750 (Fla. 1st DCA August 20, 2014):

A woman sued Winn-Dixie for slipping and falling on its wet floor. However, when she entered the store it was dry and sunny, and she had testified that she saw no water or other liquid substance before she fell. However, when she went back to the store to return her cart, it began misting, and she fell. She claimed she saw wet tracks from the wheels of the cart, but admitted only one minute had elapsed between the time she started riding the cart back to the store and her arrival inside the front entrance area.

Winn-Dixie had surveillance video showing two assistant managers inspecting the area where the plaintiff fell two or three minutes before the incident happened.

Winn-Dixie moved for final summary judgment arguing that the recently enacted §768.0755 requires proof of actual or constructive knowledge with the presence of a transitory foreign substance, which can be proven by showing the dangerous condition **existed for such a length of time** that in the exercise of ordinary care the business establishment should have known of the condition.

Applying this statute to the evidence, the court found that the brief time period between the time it started to rain and the time of the plaintiff's fall was insufficient to satisfy the statute's requirement that the alleged dangerous condition must exist for a "length of time" that in the exercise of ordinary care the business establishment would have known of its condition. The plaintiff's argument was that the store did not act quickly enough to complete its rainy day precautions before she fell, but the court found that that argument ignores the statute's provision that the condition has to occur with regularity and was therefore foreseeable. There was no evidence of recurring water in the area in question or of prior incidents in the area.

The court found that at most, the alleged unnoticeable water was present for no more than four minutes and there was no act of negligence of any Winn-Dixie employees. As such, the court affirmed the entry of summary judgment

FAILURE TO SHOW UNUSUAL OR COMPELLING CIRCUMSTANCES PRECLUDED PRODUCTION OF FINANCIAL INFORMATION CONCERNING PAYMENTS MADE BY INSURANCE CARRIERS TO PHYSICIAN FOR SERVICES PROVIDED AS A LITIGATION EXPERT

Brana v. Roura, 39 Fla. L. Weekly D1767 (Fla. 4th DCA August 20, 2014):

Doctor filed petitions for writ of certiorari in response to subpoenas sent by the plaintiffs issued to hospitals where the doctor performed spinal surgeries, and for all records pertaining to Dr. Grabel. As worded, the court found the subpoenas would require the production of confidential medical records of his patients. However, the plaintiff failed to show to the trial court that he had complied with the notice provision of section 456.057(7)(a), which requires notice to patients whose medical records are sought before issuance of a subpoena for the records by a court.

The subpoenas issued requiring disclosure of financial information concerning payments made by carriers to Dr. Grabel for services provided as a litigation expert also violated Rule 1.280(b)(5)(A)(iii)4, which states that the expert shall not be required to disclose his or her earnings as an expert or income derived from other sources. Subpoenas may not be used to secure discovery of financial business records concerning litigation experts unless there are "unusual or compelling" circumstances.

ATTORNEY'S FEES AWARDED FOR FRIVOLOUS APPEAL WHEN CLAIM NOT SUPPORTED BY MATERIAL FACTS OR APPLICATION OF LAW TO THOSE FACTS

The Law Offices of Lynn Martin v. Madson, 39 Fla. L. Weekly D1782 (Fla. 1st DCA August 22, 2014).

Kind regards

Julie Littky-Rubin