Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00539-CV

Cristina **PADILLA**,
Appellant

v.

RED LOBSTER HOSPITALITY, LLC,
Appellee

From the 57th Judicial District Court, Bexar County, Texas
Trial Court No. 2016-CI-21243
Honorable Antonia Arteaga, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: May 13, 2020

AFFIRMED

Appellant Cristina Padilla ("Padilla") appeals the trial court's order granting traditional and no-evidence summary judgment in favor of appellee Red Lobster Hospitality, LLC ("Red Lobster"). We affirm the trial court's judgment.

Background

In August 2015, Padilla slipped and fell on a puddle of soapy water in the restroom of a Red Lobster restaurant in San Antonio. Padilla sued Red Lobster for personal injury based on

premises liability. Red Lobster filed a motion for traditional and no-evidence summary judgment, which the trial court granted without stating its grounds. Padilla appeals.

Standard of Review

We review an order granting summary judgment de novo. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 156 (Tex. 2004). We accept the nonmovant's evidence as true and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *Id.* at 157. Where, as here, a defendant moves for both traditional and no-evidence summary judgment and the trial court grants summary judgment without stating its grounds, we first review the trial court's decision as to the no-evidence motion for summary judgment. *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004).

A party is entitled to no-evidence summary judgment if, "[a]fter adequate time for discovery, . . . there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial." TEX. R. CIV. P. 166a(*i*). The trial court must grant a no-evidence motion for summary judgment unless the nonmovant produces evidence raising a genuine issue of material fact. *Id.* "A genuine issue of material fact exists if more than a scintilla of evidence establishing the existence of the challenged element is produced." *Ridgway*, 135 S.W.3d at 600.

A party moving for traditional summary judgment has the burden to show no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215–16 (Tex. 2003) (citing TEX. R. CIV. P. 166a(c)). A defendant that conclusively negates at least one essential element of the plaintiff's claim is entitled to traditional summary judgment. *Little v. Tex. Dep't of Criminal Justice*, 148 S.W.3d 374, 381 (Tex. 2004).

Discussion

As an invitee asserting a premises liability claim, Padilla bore the burden to prove: (1) Red Lobster had actual or constructive knowledge of a condition on the premises; (2) the condition posed an unreasonable risk of harm; (3) Red Lobster did not exercise reasonable care to reduce or eliminate the risk; and (4) Red Lobster's failure to exercise reasonable care proximately caused Padilla's injuries. *CMH Homes, Inc. v. Daenen*, 15 S.W.3d 97, 99 (Tex. 2000); *Wal-Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934, 936 (Tex. 1998). In two issues on appeal, Padilla argues the trial court erred in granting traditional and no-evidence summary judgment in Red Lobster's favor because the summary judgment evidence raised a fact question regarding whether Red Lobster had knowledge of the alleged dangerous condition.

Because Padilla concedes "there is no evidence that [Red Lobster] had actual knowledge of the soapy puddle," we consider whether Red Lobster had constructive knowledge. "In premises cases constructive knowledge can be established by showing that the condition had existed long enough for the owner or occupier to have discovered it upon reasonable inspection." *CMH Homes, Inc.*, 15 S.W.3d at 102–03. Evidence that a dangerous condition "could possibly" have been present long enough to be discovered is insufficient; rather, the plaintiff must identify evidence that it was "more likely than not" the alleged dangerous condition was present "a long time." *Gonzalez*, 968 S.W.2d at 938; *accord Wal-Mart Stores, Inc. v. Rosa*, 52 S.W.3d 842, 843–44 (Tex. App.—San Antonio 2001, pet. denied).

Here, Padilla identified no evidence of how long the alleged dangerous condition existed. Rather, Padilla relies on the "common knowledge" that a public restroom's users may spill water or soap on the floor. But even "the fairly obvious fact that spills are more likely to occur" in certain areas of public places does not relieve a premises-liability plaintiff of the burden to prove constructive knowledge. *Wal-Mart Stores, Inc. v. Reece*, 81 S.W.3d 812, 817 (Tex. 2002). Padilla

also relies on her own affidavit testimony that "the bathroom was very poorly lit, to the point where it was very difficult to see the bathroom floor clearly." A plaintiff's uncorroborated observations regarding an alleged lack of lighting, however, do not raise a fact issue regarding a premises owner's constructive knowledge. *Aaron v. Magic Johnson Theatres*, No. 01-04-00426-CV, 2005 WL 2470116, at *5 (Tex. App.—Houston [1st Dist.] Oct. 6, 2005, no pet.) (mem. op.) (citing *Coastal Transp. Co. v. Crown Cent. Petroleum*, 136 S.W.3d 227, 232 (Tex. 2004)). Padilla identifies no evidence that the puddle of soapy water was so large or conspicuous that Red Lobster should have discovered it. Padilla also does not identify any evidence indicating when or how the puddle came to be on the restroom floor, such as evidence "concerning the condition of the spilled liquid that might indicate how long it had been there." *See Reece*, 81 S.W.3d at 817.

Instead, the record demonstrates a Red Lobster employee inspected the restroom approximately fifteen minutes before Padilla entered it and certified the "floors [were] clean and dry." Red Lobster's manager stated in a sworn affidavit that while he "had access to all complaints, tickets, or reports regarding any alleged dangerous conditions of the Premises[,] [n]o such complaints, tickets, or reports exist regarding any alleged condition of the restroom floor on the date of the alleged incident." The manager further testified "no dangerous condition of the restroom floor was ever verbally reported to me" before Padilla's fall. Therefore, the summary judgment record indicates the alleged dangerous condition did not exist more than fifteen minutes and could have formed only moments before Padilla slipped on it.

Considering the evidence in the light most favorable to Padilla, we conclude there is no evidence the alleged dangerous condition "more likely than not" existed long enough that Red Lobster reasonably should have discovered it. *See Gonzalez*, 968 S.W.2d at 938. Without more than a scintilla of evidence in the record raising a fact question on this element of Padilla's claim, the trial court was required to grant Red Lobster's no-evidence motion for summary judgment. *See*

TEX. R. CIV. P. 166a(*i*). Because we overrule Padilla's second issue regarding no-evidence summary judgment, we need not address Padilla's first issue regarding traditional summary judgment.

Conclusion

Having overruled Padilla's second issue and, therefore, not reaching Padilla's first issue, we affirm the trial court's judgment.

Sandee Bryan Marion, Chief Justice