

SUPREME COURT OF CALIFORNIA

Ortega v. Kmart Corp.

26 Cal. 4th 1200 (Cal. 2001) · Decided December 20, 2001

SUMMARY

The California Supreme Court held that a plaintiff in a premises-liability slip-and-fall case may establish constructive notice through evidence that the store failed to inspect the area within a reasonable period before the accident. Such evidence permits, but does not require, an inference that the dangerous condition existed long enough for a reasonably careful owner to discover and remedy it; the issue remains for the jury.

CASE DETAILS

COURT	Supreme Court of California
WRITING FOR THE COURT	Chin, J.; George, C. J.; Baxter, J.; Werdegarr, J.; Kolkey, J.; McDonald, J.
JURISDICTION	California
DECIDED	December 20, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff obtained a jury verdict for personal injuries caused by slipping on spilled milk in defendant's grocery store. The Court of Appeal affirmed, and the California Supreme Court granted review to determine whether failure to inspect may support constructive notice when the plaintiff lacks direct evidence of how long the hazard existed.
STANDARD OF REVIEW	The existence and duration of a dangerous condition sufficient to establish constructive notice are ordinarily questions of fact for the jury; judgment as a matter of law is appropriate when the evidence provides no reasonable basis for finding constructive notice.
PRECEDENTIAL VALUE	Published California Supreme Court opinion; binding California precedent.
PARTIES	Kmart Corp. v. Richard M. Ortega

TOPICS

- premises liability
- negligence
- duty of care
- standard of care
- evidence

PRACTICE AREAS

premises liability

negligence

evidence

QUESTIONS PRESENTED

1. Whether a store owner may be liable for injuries caused by a dangerous condition when the plaintiff cannot directly prove the source of the condition or how long it existed.
2. Whether evidence that the premises were not inspected within a reasonable period before the accident may support an inference that the condition existed long enough to give the owner constructive notice.
3. Whether allowing that inference improperly shifts the plaintiff's burden of proving notice or imposes liability without proof of causation.

HOLDINGS

1. A plaintiff may establish constructive notice of a dangerous condition through circumstantial evidence that the site was not inspected within a reasonable period before the accident, even without direct evidence of how long the condition existed.
2. A store owner owes business invitees a duty to exercise reasonable care to keep the premises reasonably safe, including reasonable inspections commensurate with the risks presented by the business and premises.
3. The inspection-based inference does not create a presumption of negligence, shift the burden of proof to the store owner, or eliminate the requirement that the plaintiff establish constructive notice and causation.

KEY QUOTATIONS

"We conclude that plaintiffs still have the burden of producing evidence that the dangerous condition existed for at least a sufficient time to support a finding that the defendant had constructive notice of the hazardous condition." (at 1212-1213)

"It remains a question of fact for the jury whether, under all the circumstances, the defective condition existed long enough so that it would have been discovered and remedied by an owner in the exercise of reasonable care." (at 1213)

FACTUAL BACKGROUND

Ortega slipped on a puddle of milk near a refrigerator at a Kmart store and suffered significant knee injuries. He could not establish directly how long the milk had been on the floor or whether it was fresh, warm, cold, or odorous. Kmart kept no written inspection records; its manager testified that employees generally walked the relevant aisle every 15 to 30 minutes, but management had no way to know whether the aisle had been inspected that day and the milk could have remained for as long as two hours.

PROCEDURAL HISTORY

Ortega sued Kmart for injuries sustained after slipping on a puddle of milk. A jury awarded Ortega \$47,200, and the Court of Appeal affirmed the judgment. The California Supreme Court affirmed the Court of Appeal.

DISPOSITION

affirmed

CASES CITED

- Hatfield v. Levy Brothers, 18 Cal. 2d 798, 805-806 (1941)
- Girvetz v. Boys' Market, Inc., 91 Cal. App. 2d 827, 829-831 (1949)
- Louie v. Hagstrom's Food Stores, 81 Cal. App. 2d 601, 606-608 (1947)
- Bridgman v. Safeway Stores, Inc., 53 Cal. 2d 443, 447-449 (1960)
- Sapp v. W. T. Grant Co., 172 Cal. App. 2d 89, 91-94 (1959)
- Perez v. Ow, 200 Cal. App. 2d 559, 560-563 (1962)
- Brown v. Poway Unified School District, 4 Cal. 4th 820, 826 (1993)
- Nola M. v. University of Southern California, 16 Cal. App. 4th 421, 426-427 (1993)
- Constance B. v. State of California, 178 Cal. App. 3d 200, 207 (1986)
- McKellar v. Pendergast, 68 Cal. App. 2d 485, 489 (1945)
- Prosser & Keeton on Torts § 41, at 269 (5th ed. 1984)
- Palsgraf v. Long Island Railroad Co., 248 N.Y. 339, 341 (1928)
- Ruiz v. Minnesota Mining & Manufacturing Co., 15 Cal. App. 3d 462, 468 (1971)
- Moradi-Shalal v. Fireman's Fund Insurance Companies, 46 Cal. 3d 287, 296-301 (1988)
- Winn-Dixie Stores, Inc. v. Marcotte, 553 So. 2d 213, 215 (Fla. Dist. Ct. App. 1989)
- Colevins v. Federated Department Stores, Inc., 213 Ga. App. 49, 443 S.E.2d 871, 873 (1994)
- Gjelij v. Wal-Mart Stores, Inc., 27 F. Supp. 2d 1011, 1013 (E.D. Mich. 1998)
- Thompson v. Economy Super Marts, Inc., 221 Ill. App. 3d 263, 581 N.E.2d 885, 888 (1991)
- J. C. Penney Co. v. Barrientez, 1965 OK 166, 411 P.2d 841 (Okla. 1965)
- Bozza v. Vornado, Inc., 42 N.J. 355, 200 A.2d 777, 779 (1964)
- People v. Bland, 10 Cal. 4th 991, 1003 n.5 (1995)