

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
LOUISIANA, SHREVEPORT DIVISION

Michelle Pesnell and Mark Howe, on behalf of Mary Howe, deceased
v. Hobby Lobby Stores, Inc.

Pesnell and Howe v. Hobby Lobby Stores, Inc. · No. Civil Action No. 24-0600 · Decided April 28, 2026

SUMMARY

The United States District Court for the Western District of Louisiana grants Hobby Lobby Stores, Inc.’s motion for summary judgment in a slip-and-fall action. Applying Louisiana’s Merchant Liability Act, the court concludes that the plaintiffs failed to present competent, non-speculative evidence establishing that a hazardous condition on Hobby Lobby’s premises caused the fall. The claims are dismissed with prejudice.

CASE DETAILS

COURT	United States District Court for the Western District of Louisiana, Shreveport Division
WRITING FOR THE COURT	Alexander C. Van Hook
JURISDICTION	United States District Court for the Western District of Louisiana
DECIDED	April 28, 2026
DOCKET	Civil Action No. 24-0600
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved for summary judgment on plaintiffs' Louisiana merchant-liability and negligence claims arising from a slip-and-fall. The district court granted the motion and dismissed all claims with prejudice.
STANDARD OF REVIEW	Summary judgment is proper under Federal Rule of Civil Procedure 56 when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The nonmovant must present evidence establishing a genuine issue on each claim element for which it bears the burden of proof; allegations, speculation, and conclusory assertions are insufficient.
PRECEDENTIAL VALUE	unknown

TOPICS

summary judgment

premises liability

negligence

hearsay

PRACTICE AREAS

torts

civil procedure

evidence

QUESTIONS PRESENTED

1. Whether plaintiffs presented sufficient competent evidence to create a genuine dispute that a condition on Hobby Lobby's premises caused Howe's fall, as required by Louisiana Revised Statutes § 9:2800.6.
2. Whether plaintiffs' pleadings, interrogatory responses, EMS statement, and later photographs constituted competent summary-judgment evidence sufficient to establish causation and defeat summary judgment.

HOLDINGS

1. A plaintiff asserting merchant liability for a fall must present competent, non-speculative evidence that a condition on the merchant's premises caused the fall. Plaintiffs failed to do so because the evidence showed only that Howe fell and did not identify the condition that caused the fall.
2. Summary judgment was appropriate because plaintiffs failed to produce evidence sufficient for a reasonable factfinder to find that a hazardous condition caused Howe's fall.
3. The EMS report's statement concerning what Howe thought caused her fall was inadmissible hearsay within hearsay and did not fall within the medical-diagnosis-and-treatment exception because the cause of the fall was legally significant rather than medically necessary for treatment.

KEY QUOTATIONS

“Summary judgment is proper pursuant to Rule 56 of the Federal Rules of Civil Procedure when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.””

“The Fifth Circuit observed that this “statute places a heavy burden of proof on plaintiffs in slip and fall cases,” which cannot be met by “[m]ere speculation or suggestion.””

“None of these statements provides the specific evidence necessary to establish a genuine issue of material fact regarding causation, necessary to survive summary judgment and proceed to trial.”

“While merchants must exercise reasonable care to protect their patrons and keep their premises safe from unreasonable risks of harm, they are not insurers of their patron’s safety and are not liable every time an accident happens.”

FACTUAL BACKGROUND

On March 2, 2023, Mary Howe fell while shopping at Hobby Lobby in Shreveport, Louisiana, sustaining injuries to her shoulder and leg. No customer or store employee witnessed the fall, and the record contained no contemporaneous surveillance video, photographs, or written incident report. Howe's pleadings and interrogatory responses offered alternative theories that she either tripped on a raised tile edge or slipped on a wet floor, while an EMS record reported that she thought she tripped over a tile. The photographs submitted in opposition were taken more than a year later and were unauthenticated.

PROCEDURAL HISTORY

Mary Howe filed suit in Louisiana state court after falling at a Hobby Lobby store. After Howe died, her daughter Michelle Pesnell and son Mark Howe were substituted as plaintiffs on her behalf. In federal court, Hobby Lobby moved for summary judgment, plaintiffs opposed, and Hobby Lobby replied. The district court granted summary judgment, concluding that plaintiffs lacked competent evidence establishing that a condition on the merchant's premises caused the fall.

DISPOSITION

dismissed

CASES CITED

- Quality Infusion Care, Inc. v. Health Care Serv. Corp., 628 F.3d 725, 728 (5th Cir. 2010)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 256 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986)
- Erie R.R. v. Tompkins, 304 U.S. 64 (1938)
- Russell v. Morgan's Bestway of La., LLC, 47,914 (La. App. 2 Cir. 4/10/13), 113 So. 3d 448, 452
- Bagley v. Albertsons, Inc., 492 F.3d 328, 330 (5th Cir. 2007)
- Berg v. Zummo, 2000-1699 (La. 4/25/01), 786 So. 2d 708, 715-16
- Roberts v. Benoit, 1991-0394 (La. 5/28/92), 605 So. 2d 1032, 1051
- Gruver v. Kroger Company, 10-689 (La. App. 3 Cir. 2/2/11), 54 So. 3d 1249, 1252 n.3
- Guidry v. Murphy Oil USA, Inc., 2015 WL 5177569, at *3 n.4 (M.D. La. 2015)
- Gray v. Wal-Mart Louisiana, LLC, 2011 WL 4551460, at *2 (W.D. La. 2011)
- Forsyth v. Barr, 19 F.3d 1527, 1537 (5th Cir. 1994)
- Cay v. State, DOTD, 1993-0887 (La. 1/14/94), 631 So. 2d 393, 395
- Ton v. Albertson's, LLC, 50,212 (La. App. 2 Cir. 11/18/15), 182 So. 3d 246, 249-50
- Neuman v. Brookshire Grocery Company, 2008 WL 728652, at *4 (W.D. La. 2008)
- Reed v. Home Depot USA, Inc., 37,000 (La. App. 2 Cir. 4/9/03), 843 So. 2d 588, 591
- Harris v. Kroger Co., 2017 WL 6419296, at *2 (W.D. La. 2017)
- Deal v. Outback Steakhouse of Florida, LLC, 2021 WL 3577003, at *3 (W.D. La. 2021)
- Rock v. Huffco Gas & Oil Co., Inc., 922 F.3d 272, 277-78 (5th Cir. 1991)
- Logan v. Westfield Insurance Company, 2020 WL 406785, at *3 (W.D. La. 2020)
- Robinson v. Wal-Mart Stores, Inc., 2016 WL 5210711, at *5 (W.D. La. 2016)
- Babin v. Winn-Dixie Louisiana, Inc., 2000-0078 (La. 6/30/00), 764 So. 2d 37, 40