

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Isabel M. Scalici v. Smith’s Food & Drug Centers, Inc.

Scalici v. Smith's Food & Drug Centers, Inc. · No. 2:24-cv-00540-ART-EJY · Decided January 23, 2026

SUMMARY

The United States District Court for the District of Nevada denied Isabel M. Scalici’s motions for partial summary judgment in her premises-liability action against Smith’s Food & Drug Centers, Inc. The court found genuine disputes regarding notice of the spill, causation, damages, failure to mitigate, and comparative negligence. The court also deemed waived Smith’s affirmative defenses based on laches, NRS 11.202, and reservation of the right to amend.

CASE DETAILS

COURT	United States District Court for the District of Nevada
WRITING FOR THE COURT	Anne R. Traum
JURISDICTION	United States District Court for the District of Nevada
DECIDED	January 23, 2026
DOCKET	2:24-cv-00540-ART-EJY
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for partial summary judgment on premises liability, causation, specified damages, and several affirmative defenses in a removed Nevada negligence action. The district court denied the motions.
STANDARD OF REVIEW	Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The evidence and reasonable inferences are viewed in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	Isabel M. Scalici v. Smith’s Food & Drug Centers, Inc.

TOPICS

- summary judgment
- premises liability
- affirmative defenses
- comparative fault
- damages

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Scalici was entitled to partial summary judgment on premises liability based on actual or constructive notice of the water on the floor.
2. Whether Nevada's mode-of-operation theory established notice as a matter of law on the evidence concerning Smith's produce-spraying practices.
3. Whether Scalici was entitled to summary judgment on causation and specified damages because Smith's had not retained a rebuttal expert.
4. Whether genuine disputes of material fact precluded summary judgment on Smith's affirmative defenses of failure to mitigate damages and comparative negligence.
5. Whether Smith's waiver of its defenses of laches, NRS 11.202, and reservation of the right to amend required the court to grant relief on those defenses.

HOLDINGS

1. Summary judgment on premises liability was denied because genuine disputes of material fact remained as to whether Smith's had actual or constructive notice of the water hazard and failed to remedy it.
2. Scalici was not entitled to summary judgment under Nevada's mode-of-operation theory because the evidence did not establish a virtually continuous hazard associated with Smith's produce-spraying activity.
3. Scalici was not entitled to summary judgment on causation, past or future medical expenses, or past wage loss because Smith's identified evidence creating genuine disputes of material fact.
4. Summary judgment was denied on Smith's failure-to-mitigate defense because disputed facts remained regarding whether Scalici acted reasonably in pausing treatment while moving to Florida and whether she received treatment while in Portugal.
5. Summary judgment was denied on Smith's comparative-negligence defense because the surveillance evidence created a genuine dispute as to whether Scalici failed to exercise reasonable care and thereby caused or contributed to her injury.

KEY QUOTATIONS

“Summary judgment is appropriate if the movant shows “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”” (at 3)

“An owner of a business owes its patrons “a duty to keep the premises in a reasonably safe condition for use—the duty of ordinary care.”” (at 4)

“The owner or occupant of property is not an insurer of the safety of a person on the premises, and in the absence of negligence, no liability lies.” (at 4)

“an affirmative defense consists of new facts and arguments that, if true, will defeat a plaintiff's claim, even if all allegations in the complaint are true.” (at 8)

FACTUAL BACKGROUND

On April 7, 2022, Isabel Scalici slipped on water droplets while shopping in the produce section of a Smith's store in Las Vegas. Evidence suggested that a patron had shaken wet produce approximately eight minutes before the fall, but surveillance images also showed patrons moving through the area afterward, including a person apparently taking produce from the rack shortly before the fall. Scalici later received medical treatment for back injuries, and her medical evidence reflected possible preexisting or alternative causes, including a prior automobile accident, laminectomy, herniated disk, and stem-cell treatment. She also claimed past and future medical expenses and past wage loss.

PROCEDURAL HISTORY

Scalici filed a negligence action in Nevada state court on December 22, 2023, arising from a slip and fall at a Smith's store. Smith's removed the action to the United States District Court for the District of Nevada. Scalici then filed three motions for partial summary judgment, all of which the court denied; related motions for submission were denied as moot.

DISPOSITION

other

CASES CITED

- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986)
- Fairbank v. Wunderman Cato Johnson, 212 F.3d 528, 531 (9th Cir. 2000)
- James River Ins. Co. v. Hebert Schenk, P.C., 523 F.3d 915, 920 (9th Cir. 2008)
- Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-60 (1970)
- DeBoer v. Sr. Bridges of Sparks Fam. Hosp., 282 P.3d 727, 732 (Nev. 2012)
- Perez v. Las Vegas Med. Ctr., 805 P.2d 589, 591 (Nev. 1991)
- Harrington v. Syufy Enterprises, 931 P.2d 1378, 1380 (Nev. 1997)
- Turner v. Mandalay Sports Ent., LLC, 180 P.3d 1172, 1177 (Nev. 2008)
- Asmussen v. New Golden Hotel Co., 392 P.2d 49, 49 (Nev. 1964)
- Sprague v. Lucky Stores, 849 P.2d 320, 322-23 (Nev. 1993)
- Rios v. Wal-Mart, Inc., 740 Fed. Appx. 582, 583 (9th Cir. 2018)
- Paul v. Imperial Palace, Inc., 908 P.2d 226, 230 (Nev. 1995)
- FGA, Inc. v. Giglio, 278 P.3d 490, 496-97 (Nev. 2012)
- Sosa Guzman v. Costco Wholesale Corp., No. 2:22-CV-02070-CDS-BNW, 2024 WL 4406915, at *3 n.3 (D. Nev. Aug. 23, 2024)
- Didier v. Sotolongo, 441 P.3d 1091 (Nev. 2019)
- Sanchez v. Albertson's LLC, No. 2:19-CV-02017-JAD-DJA, 2022 WL 2982926, at *4 (D. Nev. July 27, 2022)

- Lord v. State, 806 P.2d 548, 551 (Nev. 1991)
- Albios v. Horizon Communities, Inc., 132 P.3d 1022, 1034 (Nev. 2006)
- Shuette v. Beazer Homes Holdings Corp., 124 P.3d 530, 547 (Nev. 2005)
- Baker v. Wal-Mart Stores, Inc., No. 2:19-CV-02218-GMN-VCF, 2021 WL 5114652, at *3 (D. Nev. Sept. 8, 2021)
- F.D.I.C. v. Johnson, 35 F. Supp. 3d 1286, 1292 (D. Nev. 2014)
- Schettler v. RalRon Capital Corp., 275 P.3d 933, 940 (Nev. 2012)
- Automatic Merchandisers, Inc. v. Ward, 646 P.2d 553, 554 (Nev. 1982)
- Sercu v. Laboratory Corp. of America, No. 3:09-CV-0619-LRH-RAM, 2011 WL 540282, at *2-*3 (D. Nev. Feb. 8, 2011)