

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 23rd day of October, 2009.*

Cynthia Garlick, Appellant,

against Record No. 082469  
Circuit Court No. CL-2007-014187

Safeway, Inc., Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Fairfax County.

Upon consideration of the record, briefs, and argument of counsel, we are of the opinion that the trial court erred in granting the motion of Safeway, Inc. (Safeway) to strike at the conclusion of Cynthia Garlick's evidence on the grounds that Garlick had not proven a prima facie case of negligence against Safeway.

The complaint alleged that Garlick, while a customer at a Safeway store, fell in water on the floor and was injured as a result of Safeway's negligence. Garlick demanded a trial by jury. At the close of Garlick's evidence, Safeway moved to strike the evidence, asserting that Garlick failed to prove Safeway had actual or constructive notice of any unsafe condition on its premises. The circuit court granted Safeway's motion to strike and dismissed Garlick's case.

The standard under which a trial court should review the evidence at trial before granting a motion to strike "requires the trial court to accept as true all the evidence favorable to the plaintiff as well as any reasonable inference a jury might draw therefrom which would sustain the plaintiff's cause of action." A trial

court "is not to judge the weight and credibility of the evidence, and may not reject any inference from the evidence favorable to the plaintiff unless it would defy logic and common sense."

Green v. Ingram, 269 Va. 281, 290, 608 S.E.2d 917, 922 (2005) (citation omitted) (quoting Upper Occoquan Sewage Auth. v. Blake Constr. Co., 266 Va. 582, 590 n.6, 587 S.E.2d 721, 725 n.6 (2003)). On appeal from a circuit court's judgment striking the evidence, we consider the facts in the light most favorable to the plaintiff and draw all fair inferences from those facts. Polyzos v. Cotrupi, 264 Va. 116, 121, 563 S.E.2d 775, 777 (2002).

Garlick presented evidence that the water on which she slipped was at the exact location where just moments before a Safeway store employee had been unloading refrigerated cheese from a cart, and that it customarily takes from thirty minutes to two hours to stock cheese. Concerning the amount of water on the floor, Garlick testified that she fell in "a cup . . . a lot of water," that "there was water dripping from [her] knees all the way down to [her] foot," and that the water covered an area of two and a half to three feet of the floor. Another employee testified that on separate occasions he had observed water dripping from carts used to stock refrigerated or frozen goods. Garlick further testified that shortly after she fell, the manager apologized and told her it was Safeway's policy for employees to clean up after themselves after stocking food products.

Safeway argues that because Garlick has conceded that she has no evidence of actual notice, she must prove constructive notice in order to establish a prima facie case of negligence. Safeway contends that Garlick failed to prove such constructive notice because she did not prove that the condition had existed long enough that Safeway should have known of its existence in time to

remove it or warn Garlick of the danger. Ashby v. Faison & Assocs., Inc., 247 Va. 166, 170, 440 S.E.2d 603, 605 (1994).

Safeway's reliance upon Ashby is misplaced. Unlike in Ashby, in which there was no evidence of an employee who might have observed the wet condition, Garlick's evidence was sufficient for a jury to reasonably conclude that Safeway's employee either allowed the water to accumulate on the floor or was standing in or so near water of a sufficient quantity that the employee should have recognized the danger posed by the water and either removed it or warned Safeway's customers of the danger.

Thus, Garlick presented sufficient evidence to give rise to a jury question whether Safeway had notice of the existence of the water on the floor, triggering a duty to warn against or remedy the dangerous condition. Austin v. Shoney's, Inc., 254 Va. 134, 139, 486 S.E.2d 285, 288 (1997); Memco Stores, Inc. v. Yeatman, 232 Va. 50, 54-55, 348 S.E.2d 228, 230-31 (1986). Negligence is an issue to be decided by a fact finder and is to be decided as a matter of law only when reasonable minds could not differ. Kimberlin v. PM Transport, Inc., 264 Va. 261, 266, 563 S.E.2d 665, 667 (2002).

We hold that it was error for the circuit court to rule as a matter of law that Garlick had not proven that Safeway had constructive notice of a dangerous condition establishing a prima facie case of negligence. Reasonable minds could differ about the conclusions to be drawn from the evidence in the record. Accordingly, the circuit court's final order of September 17, 2008 granting Safeway's motion to strike is reversed and this case is remanded to the circuit court for further proceedings.

This order shall be certified to the said circuit court.

A Copy,

Teste:

*original order signed by the  
Clerk of the Supreme Court of  
Virginia at the direction of the  
Court*