No. 125,442

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

GUY CORAZZIN,
Appellant,

v.

EDWARD D. JONES & CO., L.P., d/b/a EDWARD JONES, et al.,
Appellees.

SYLLABUS BY THE COURT

1.

Summary judgment is rarely appropriate in negligence cases, unless the plaintiff fails to establish a prima facie case demonstrating the existence of the four elements of negligence: existence of a duty, breach of that duty, an injury, and proximate cause. A negligence claim based on premises liability requires the same four elements: duty, breach, causation, and damages. If a court concludes that a defendant accused of negligence did not have a duty to act in a certain manner toward the plaintiff, then a court may grant summary judgment because the existence of duty is a question of law.

2.

A trial court judge may not decide disputed issues of material fact on summary judgment, even if the claims sound in equity rather than law.

3.

A party cannot avoid summary judgment on the mere hope that something may develop later during discovery or at trial. Mere speculation is similarly insufficient to avoid summary judgment.

4.

The owner of a business is not the insurer of the safety of its patrons or customers. But an owner or operator of a place open to the public has a duty to warn of any dangerous condition that the owner or operator knows about—or should know about—if exercising reasonable care while tending to the business.

5.

To establish the existence of this duty, the plaintiff must show that the owner or operator had actual knowledge of the condition, or that the condition had existed for long enough that in the exercise of reasonable care the owner or operator should have known of the condition. If no duty exists, there can be no negligence.

Appeal from Johnson District Court; DAVID W. HAUBER, judge. Opinion filed May 19, 2023. Affirmed.

Caroline R. Gurney and *Michael J. Mohlman*, of Smith Mohlman Injury Law, LLC, of Kansas City, Missouri, for appellant.

Andrew D. Holder, of Fisher, Patterson, Sayler & Smith, L.L.P., of Overland Park, for appellees.

Before BRUNS, P.J., GREEN and WARNER, JJ.

GREEN, J.: In this premises liability case the plaintiff, Guy Corazzin, was injured when he sat in an office chair, which later collapsed and caused him to be injured. Corazzin sued Edward D. Jones & Co., L.P. (Edward Jones), alleging that Edward Jones negligently injured him because it failed to make sure that the chair was safe for normal use. Edward Jones moved for summary judgment. It alleged that it had no actual or constructive notice that the chair was defective or dangerous. The trial court agreed and granted Edward Jones' summary judgment motion.

On appeal, Corazzin contends that there were genuine issues of material fact that precluded summary judgment. Corazzin maintains that a warning in the assembly instructions put Edward Jones on notice that the chair was not intended for commercial use. Thus, Corazzin maintains that he created a genuine issue of material fact as to whether Edward Jones had actual knowledge that the chair was dangerous. Because we conclude that there are no genuine issues of material fact, the granting of summary judgment was appropriate. Thus, we affirm.

FACTS

Tracy Kunkel is a financial advisor at Edward Jones, with an office in Overland Park. In November 2018, Kunkel bought six new office chairs from Nebraska Furniture Mart in Kansas City, Kansas. All six chairs were new Coaster Company of America, L.P. brand, Model 800056 office chairs. The assembly instructions that Kunkel followed also included the following warning: "'This product is for home use only and not intended for commercial establishment.'" Kunkel assembled the chairs and placed them in her office for customers to use. Kunkel acted in the course and scope of her employment with Edward Jones.

Roughly a month later, Corazzin and his wife attended a meeting at Kunkel's office to discuss investment opportunities. Kunkel did not direct Corazzin to sit in any particular chair. Corazzin did not recall anything unusual about the chair he chose to sit in and stated at his deposition that he would have chosen a different chair if he had thought there was anything unusual. Although Corazzin did not inspect the chair, he did not see any readily apparent cracks, flaws, instability, or other indication that the base of the chair could break.

Corazzin sat in the chair for approximately 30 minutes. But when he pushed back from the table to cross his legs, he fell to the ground. Corazzin recalled everything going

black, and when his vision returned his wife and Kunkel were standing over him. After helping Corazzin up, Kunkel told him that someone larger than him—in excess of 300 pounds—had sat in the chair the day before. Kunkel remarked that the chairs were brand new, indicating she was surprised that the chair had broken. Two photographs of the chair show that the legs of the chair had snapped. At his deposition, Corazzin was shown the chair's assembly instructions. He agreed that assembly required the wheels to be inserted into the spokes. But when he viewed the photographs of the chair, it did not appear that the wheels had come off the spokes, but rather two of the spokes simply snapped. Corazzin could not think of anything that, in hindsight, would have told him that there was an issue with the chair.

Corazzin filed a negligence action against Edward Jones based on premises liability, alleging personal injury and damages. Edward Jones moved for summary judgment, arguing that it had no duty to repair the chair or warn Corazzin because it had no notice of a dangerous condition. The trial court granted summary judgment, ruling that no genuine issues of material fact existed in this action.

Corazzin timely appeals.

ANALYSIS

Did the warning give Edward Jones notice that the chair was dangerous?

Corazzin argues that summary judgment was improper because he presented the following evidence of the warning in the chair's assembly instructions, which created a genuine issue of material fact:

> "Warning!
> "1. Don't attempt to repair or modify parts that are broken or defective. Please contact the store immediately.

"2. *This product is for home use only and not intended for commercial establishment.*" (Emphasis added.)

Corazzin contends in his brief that despite the warning, an Edward Jones' employee assembled the chair and used it in Edward Jones' business.

> "Plaintiff contends that the warning exists because this piece of furniture was not designed to tolerate constant, heavy traffic in a commercial setting. Furniture placed in a commercial setting like Defendant's offices would require higher durability since you have more people and heavier people using it, and thus more wear and tear on the furniture. Constant use in a commercial setting may cause a piece of furniture to snap and break, as happened in the case presently before the Court. The warning provided Defendant actual notice that the subject chair was not intended to withstand frequent use in a commercial office setting. Defendant Edward Jones, through their employee, Tracy Kunkel, had this information, but chose to use the chair in a commercial setting, directly counter to the warning. Thus, there is sufficient evidence in the record to establish that Defendant had actual knowledge of a dangerous condition on the premises."

Thus, Corazzin maintains that Edward Jones was aware that the chair had been misused based on the warning label, and he maintains that this created a dangerous condition. Edward Jones, however, argues that no evidence exists showing that it knew the chair presented a dangerous condition. Also, we note that Corazzin, in his brief, acknowledges the following: that Edward Jones "did not create the hazard. Therefore, actual or constructive notice is required to establish liability."

Our standard of review for summary judgment is well known:

> "Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and supporting affidavits show that no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law. The district court must resolve all facts and reasonable inferences drawn from the

> evidence in favor of the party against whom the ruling is sought. When opposing summary judgment, a party must produce evidence to establish a dispute as to a material fact. In order to preclude summary judgment, the facts subject to the dispute must be material to the conclusive issue in the case. Appellate courts apply the same rules and, where they find reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment is inappropriate. Appellate review of the legal effect of undisputed facts is de novo. [Citation omitted.]" *GFTLenexa, LLC v. City of Lenexa*, 310 Kan. 976, 981-82, 453 P.3d 304 (2019).

When the controlling facts are based on the parties' joint stipulation, an appellate court determines de novo whether the moving party is entitled to a judgment as a matter of law. *Stewart Title of the Midwest v. Reece & Nichols Realtors*, 294 Kan. 553, 557, 276 P.3d 188 (2012).

An issue of fact is not genuine unless it has legal controlling force as to the controlling issue. A disputed question of fact which is immaterial to the issue does not preclude summary judgment. In other words, if the disputed fact, however resolved, could not affect the judgment, it does not present a "genuine issue" for purposes of summary judgment. *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 934, 296 P.3d 1106 (2013). As a general rule, summary judgment in a pending case should not be granted until discovery is complete. Nevertheless, if the facts pertinent to the material issues are not disputed, summary judgment may be appropriate even when discovery is unfinished. 296 Kan. at 935. "A party who requires more discovery to defend against a motion for summary judgment must seek a continuance to conduct that discovery under K.S.A. 2019 Supp. 60-256(f). [Citation omitted.]" *Farmers Bank & Trust v. Homestead Community Development*, 58 Kan. App. 2d 877, 883, 476 P.3d 1 (2020).

Summary judgment is rarely appropriate in negligence cases, unless the plaintiff fails to establish a prima facie case demonstrating the existence of the four elements of

negligence: "existence of a duty, breach of that duty, an injury, and proximate cause." *Montgomery v. Saleh*, 311 Kan. 649, 653, 466 P.3d 902 (2020). If a court concludes that a defendant accused of negligence did not have a duty to act in a certain manner toward the plaintiff, then a court may grant summary judgment because the existence of duty is a question of law. *Elstun v. Spangles, Inc.*, 289 Kan. 754, 757, 217 P.3d 450 (2009).

Our Supreme Court has recognized that a trial court judge may not decide disputed issues of material fact on summary judgment: "A district court judge may not decide disputed issues of material fact on summary judgment, even if the claims sound in equity rather than law." *Stechschulte v. Jennings*, 297 Kan. 2, Syl. ¶ 1, 298 P.3d 1083 (2013).

A nonmovant cannot evade summary judgment by hoping something may develop later in the action: "'A party cannot avoid summary judgment on the mere hope that something may develop later during discovery or at trial. Mere speculation is similarly insufficient to avoid summary judgment.' [Citations omitted]." *Geer v. Eby*, 309 Kan. 182, 190, 432 P.3d 1001 (2019).

As stated earlier, negligence claims require a plaintiff to show four well-known elements—that a duty is owed to the plaintiff; that a breach of that duty has occurred; that the breach of duty has caused the plaintiff's injury; and that damages have been suffered by the plaintiff—in short: duty, breach, causation, and damages. *Granados v. Wilson*, 317 Kan. 34, 44, 523 P.3d 501 (2023). A negligence claim based on premises liability requires the same four elements: duty, breach, causation, and damages. *Rogers v. Omega Concrete Systems, Inc.*, 20 Kan. App. 2d 1, 4, 883 P.2d 1204 (1994) (citing *McGee v. Chalfant*, 248 Kan. 434, 437, 806 P.2d 980 [1991]).

One of the succinct expressions of the premises liability rule is found in *Cunningham v. Braum's Ice Cream & Dairy Stores*, 276 Kan. 883, 890, 80 P.3d 35 (2003) (quoting *Seibert v. Vic Regnier Builders, Inc.*, 253 Kan. 540, 548, 856 P.2d 1332

[1993]). There our Supreme Court observed this business principle: "'The owner of a business is not the insurer of the safety of its patrons or customers.'" 276 Kan. at 890. Nevertheless, an owner or operator of a place open to the public has a duty to warn of any dangerous condition that the owner or operator knows about—or should know about—if exercising reasonable care while tending to the business. *Thompson v. Beard and Gabelman, Inc.*, 169 Kan. 75, 77, 216 P.2d 798 (1950).

To establish the existence of this duty, the plaintiff must show that the owner or operator had actual knowledge of the condition, or that the condition had existed for long enough that in the exercise of reasonable care the owner or operator should have known of the condition. See *Jackson v. K-Mart Corp.*, 251 Kan. 700, 703, 840 P.2d 463 (1992); *Magness v. Sidmans Restaurants, Inc.*, 195 Kan. 30, 32, 402 P.2d 767 (1965). Whether a duty exists is a question of law. *Rogers*, 20 Kan. App. 2d at 4-5. "If no duty exists, there can be no negligence." *Fountain v. Se-Kan Asphalt Services, Inc.*, 17 Kan. App. 2d 323, 327, 837 P.2d 835 (1992).

With this understanding, it is appropriate for us to focus on Corazzin's negligence action. Corazzin claims that the warning about home use furniture versus commercial use furniture gave Edward Jones sufficient notice that the chair presented a danger to customers. Edward Jones, however, argues that the warning itself is not enough to qualify as notice of a dangerous condition. Our research has revealed no Kansas case exactly on point with the issue in this case. We have found persuasive precedents from other jurisdictions involving an issue similar to the one in this case.

In the first case we will consider, Melinda Thomas sustained injuries at The Shed restaurant when a picnic bench, which she was sitting on, collapsed. *Thomas v. Shed 53, LLC*, 331 So. 3d 66, 68 (Miss. App. 2021). After Thomas filed a personal injury action, The Shed moved for summary judgment. Thomas responded by arguing that the furniture The Shed purchased from Lowe's or Home Depot was substandard and not intended for

commercial use. Thomas submitted expert affidavits in support of her claim. But the affidavits from Thomas' experts did nothing to clarify why the residential or commercial distinction was important or how the business knew or should have known of a dangerous condition. The trial court struck the expert testimony and granted summary judgment.

On appeal, Thomas argued that there was a genuine issue of material fact whether The Shed maintained its premises in a reasonably safe manner. She claimed that The Shed created a dangerous condition by buying cheap, residential-grade furniture from Lowe's or Home Depot which failed because the furniture was not intended for more rigorous restaurant use. The *Thomas* court affirmed the trial court's summary judgment. In doing so, the court held that The Shed had fulfilled its duty to customers by reasonably inspecting and maintaining the restaurant furniture and had no actual or constructive knowledge of a dangerous condition involving the furniture. The court candidly concluded: "Thomas provides no genuine issue of material fact that The Shed breached its duty. Instead, Thomas merely points to the fact The Shed purchased marked-down residential-grade picnic benches instead of commercial-grade furniture." 331 So. 3d at 71.

Similarly, in our next case, Heather Dalzell sat at an outdoor picnic table at a restaurant. *Dalzell v. Mosketti L.L.C.*, No. 2015-CA-93, 2016 WL 3032733 (Ohio App. 2016) (unpublished opinion). The bench broke, injuring her. The restaurant purchased the furniture at Lowe's less than a year before the accident, and the restaurant did not alter or modify the furniture. The *Dalzell* court held that summary judgment was appropriate because the restaurant had no knowledge of a defect in the bench until Dalzell fell. 2016 WL 3032733, at *7.

And in our third case, Charles Burnett was injured when visiting Kenneth Covell's law office and a chair collapsed under him. *Burnett v. Covell*, 191 P.3d 985 (Alaska 2008). Burnett failed to produce—or even allege that he could produce—any evidence of

any signs of physical deterioration present in the chair. The *Burnett* court upheld summary judgment for Covell because Burnett could not show that Covell had breached his duty of care. 191 P.3d at 991.

To advance our inquiry here, the cases which best exemplify the extreme ends in this inquiry are probably *Parks v. Steak & Ale of Texas, Inc.*, No. 01-04-00080-CV, 2006 WL 66428 (Tex. App. 2006) (unpublished opinion), and *Prechel v. Walmart, Inc.*, No. 21-CV-12388, 2023 WL 2267193 (E.D. Mich. 2023). Mitchell Parks suffered injury when his chair at Steak & Ale collapsed under him. The *Parks* court affirmed summary judgment because Parks did not direct the court to anything in the record that showed that Steak & Ale knew or should have known that the chair created an unreasonable risk of harm. 2006 WL 66428, at *3. Thus, *Parks* represents perhaps the low end of the spectrum, with the least evidence and the weakest appellate case against summary judgment. Corazzin gives us more than Parks gave the *Parks* court. Corazzin points to the warning in the instruction manual that the chair was intended for home use—not commercial use.

And *Prechel* represents the other end of the spectrum—a plaintiff who presented sufficient evidence to survive a summary judgment motion. Denise Prechel was shopping for a desk chair at a Sam's Club store when a sales associate placed a chair in the aisle for her to try out. When Prechel sat down in the chair, the chair tipped or tilted and Prechel sunk more than expected, into a squatting position. Her petition alleged a back injury, caused by the fact that the chair was missing one of its five wheels. The *Prechel* court denied summary judgment, noting that the photographs clearly showed that the wheel was visibly missing both before and after the incident. The court held that a jury could find that the alleged defect existed long enough for the defendants to know about it and fail to correct it: "A reasonable jury could conclude that defendants had constructive notice of the hazardous defect." 2023 WL 2267193, at *4. Thus, a visible, uncorrected defect in the chair was enough to move Prechel beyond summary judgment.

In reading these five cases, *Parks* and *Prechel* show the kinds of evidence which would control a summary judgment ruling. If a plaintiff presents literally nothing, as in *Parks*, the trial court should grant summary judgment. But if a plaintiff can show—as in *Prechel*—a readily apparent structural defect in the chair, then summary judgment is inappropriate.

In support of its position, Edward Jones cites *Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 400-01, 675 S.E.2d 783 (2009). In this case, the plaintiff suffered personal injuries at a restaurant when the legs of the chair she was seated in suddenly broke. In her deposition, the plaintiff testified that before the chair collapsed, she did not notice anything wrong with the chair, and that the chair was not rickety, wobbly, or otherwise unstable.

Edward Jones points out in its brief that the plaintiff in *Pringle* designated a furniture salesman as an expert, who opined the following: (1) that the chair was a residential chair unfit for use in a commercial setting and (2) that residential chairs are not built to withstand frequent use in a commercial setting. The expert further opined that over time and with frequency of use, a residential chair in a commercial setting would show signs of wear, such as becoming wobbly, shaky, or loose.

Although Corazzin did not file a reply brief to distinguish his case from *Pringle*, we note that his case is distinguishable on the issue of notice. Here, the record clearly establishes that Kunkel purchased the chair and followed the instructions—instructions which contained the residential-use-only warning. But the expert in *Pringle* testified that "some" residential chairs were stamped with such a warning label. 382 S.C. at 401. And the expert could not say whether a residential-use-only warning label was present since he was unable to examine the broken and discarded chair. Also, the owner in *Pringle* testified that some chairs came with the restaurant when he bought it and others he purchased later. But he could not say whether the chair which broke was one that he

purchased himself. 382 S.C. at 402. So the record in *Pringle* is more ambiguous than this case since the chair in *Pringle* may or may not have had a warning label and the defendant may or may not have seen it.

Nevertheless, this factual dissimilarity between this case and *Pringle* is useful in our discussion of premises liability because it shows that a warning label may not be significant in determining whether a residential chair is dangerous. For instance, the *Pringle* court held: "Although [the expert in *Pringle*] opined that residential chairs like the ones used in the restaurant are not substantial enough for use in a commercial setting because they cannot sustain heavy general use, he never stated that a residential chair in and of itself is a dangerous condition." 382 S.C. at 404-05. Thus, under the *Pringle* court's reasoning, if a residential chair in and of itself is not a dangerous condition, then a warning label that a chair is for residential use only would not warn the owner or operator of a dangerous condition.

Indeed, the *Pringle* court further ruled that summary judgment would be appropriate whether or not the owner knew the chair was for residential use only. The *Pringle* court stated: "We agree with the trial court that the Pringles did not present a genuine issue of material fact as to whether the use of a residential chair in a commercial establishment, without more, constitutes evidence of negligence on the part of the owner of the establishment." 382 S.C. at 406. And, mindful of the plaintiff's burden when confronted with summary judgment, the *Pringle* court further added that there was no evidence that the restaurant "knew or should have known that the chair was in danger of collapse or other failure." 382 S.C. at 405.

To establish damages for injuries caused by a dangerous or defective condition on a defendant's premises, a plaintiff must show either (1) that the owner or operator had actual knowledge of the condition or (2) that the condition had existed for long enough

that in the exercise of reasonable care the owner or operator should have known of the condition. See *Jackson*, 251 Kan. at 703.

Applying these principles to the present case, the subject chair here was undisputedly residential—not commercial—furniture. Corazzin contends that residential furniture presents a dangerous condition when used in a commercial setting. Also, he contends that residential chairs, like the one he collapsed in, are not substantial enough for commercial use because they cannot take the heavy general use they encounter. Nevertheless, the evidence shows that the subject chair was in use for only a short period before it collapsed—roughly one month. As Edward Jones points out in its brief, the subject chair showed no signs of deterioration. There was no evidence presented that the subject chair had a visible or uncorrected defect in the chair, unlike the evidence of the visible and uncorrected chair defect in the *Prechel* decision.

Also, Corazzin, in his deposition testimony, stated that he would have chosen a different chair if he had thought there was anything unusual about the chair. Although he did not inspect the chair, he stated that he did not see any readily apparent cracks, flaws, instability, or other indication that the base of the chair could break.

As *Thomas* and *Pringle* show, a plaintiff does not establish a genuine issue of material fact just by showing residential-grade furniture being used in a commercial setting. Corazzin's argument that Edward Jones knew or should have known that the subject chair was dangerous—based on the warning label—does not present evidence showing that Edward Jones had reason to know: (1) that the chair was dangerous or (2) that the chair was in a defective condition that had existed long enough that in the exercise of reasonable care Edward Jones should have known of this condition. Thus, Corazzin's claim is insufficient to create a genuine issue of material fact that Edward Jones negligently placed the subject chair in one of its offices.

For the preceding reasons, we affirm the trial court's grant of summary judgment.

Affirmed.