IN THE COURT OF APPEALS OF GEORGIA

Case No. A25A2006

JEFFERY MARTIN,
Appellant,

v.

VISWAS MOTEL, INC. d/b/a ECONO LODGE,
Appellee.

BRIEF OF APPELLANT JEFFERY MARTIN

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BRIEF OF APPELLANT JEFFERY MARTIN

Introduction

Appellant Jeffery Martin slipped and fell on water on a step of a staircase in a motel owned by Appellee Viswas Motel, Inc. ("Viswas"). Viswas had no reasonable procedures for inspecting the property and conceded, for purposes of its motion for summary judgment, that it had constructive knowledge of the water. The trial court granted summary judgment to Viswas, misconstruing and misapplying the governing law and imposing a duty on motel guests to wear shoes when walking around the motel. Instead, the record shows that Viswas had constructive knowledge of the water on its steps, that the water was a hazardous condition, that it caused Martin to fall and sustain injuries, that Martin had no knowledge of water on those steps, let alone "equal knowledge," and that Martin did not commit the sort of contributory negligence that bars a suit by walking barefooted. The judgment below should be reversed.

Jurisdictional Statement

(i) This Court has appellate jurisdiction pursuant to OCGA § 5-6-34 (a) (1).

(ii) No issue in this appeal comes within the Supreme Court's jurisdiction under Ga. Const. Art. VI, Sec. VI, Pars. II or III, as revised by OCGA § 15-3-3.1.

(iii) The notice of appeal was filed on April 28, 2025, within 30 days following the final judgment entered on March 31, 2025. V2.1-2, 305-16.

Enumeration of Errors

1. The trial court erred in granting summary judgment to the defendant. V2.305-16.

Statement of the Case

In the case below, Appellant Jeffery Martin seeks damages for personal injuries he sustained due to falling in a stairwell of Econo Lodge motel located in Tifton Georgia operated by Viswas Motel, Inc. ("Viswas").

On August 9, 2018, around 3 P.M., Martin checked into the motel on a business-related trip. V3.39-40. On his way to his second-floor room that afternoon, after using a different stairwell to reach the second floor, Martin noticed an employee of the motel washing the sidewalks and air conditioning units with a water hose on the property, including the second floor of the motel, just down from his room. V3.41-42, 43-45. While Martin was in his room that afternoon, he continued to hear the employee using the hose to spray water. V3.44. For the remaining portion of the afternoon and into the early evening Martin worked on his computer, watched television, and relaxed. V3.40-41. Occasionally Martin went outside and onto the walkway at the rear of the second floor. V3.45. The day was sunny; nobody remembers any rain. V3.46; V4.31, 32.

Later that evening, around 8 P.M., Martin left his room with an ice bucket to get ice from the ice machine located at the rear of the motel

on the ground floor. V3.46-47, 48, 49. Martin proceeded down the back staircase at the motel. V3.41, 47. Martin had never before walked up or down that stairway. V3.42. He was barefoot at the time, having taken off his socks when he went outside earlier to avoid getting his socks wet. V3.50-51. Initially the walkway was wet, but when he went out for a later smoke and again when he went for ice, the walkway was dry. V3.51.

Pictures of the steps from the top looking down and from the bottom looking up are identified at V3.48-49 and appear at V3.90-91. After descending to the first landing, he stepped off to the next step which was wet causing him to lose his balance and fall, despite holding a handrail. V3.47, 50, 51. Until that point, the walkway, steps, and first landing were dry. V3.51-52. There were no warning signs cautioning guests about water. V3.39. As a result, he landed on his left hip, right arm, right elbow and wrist, and then slid down the stairs. V3.48.

After he fell, Martin noticed that there were puddles of water on the steps. V3.51, 52. Martin testified that the steps were wet and that there was water on the step that caused him to fall. V3.51. After the fall, Martin also noticed that his clothes were wet. V3.55. He regained his composure, proceeded to get ice, and then went to the front office to report the fall. V3.52-54, 56-57.

Viswas's corporate representative, Priti Patel, testified that she was unaware of any inspection procedure Viswas had to detect hazardous

conditions on the property, particularly the staircases. V4.25-26, 34-35. She was unaware of any motel policy prohibiting Martin or any other guest from walking barefoot outside of the room or on the motel property. V4.26, 26-27. She was unaware of anything Martin "did wrong, in the sense of causing his fall." V4.26. After considerable resistance, she finally admitted that apart from rain, water should not be on the steps. V4.27-28, 32-33. How to deal with that water would depend on Viswas's policies, but she, who was designated to testify about Viswas's policies, "wouldn't know what the policies are." V4.33-34.

In the oral argument, counsel for Viswas agreed that the court may assume that "there were no reasonable inspection procedures." V5.4:9-10. The court "can assume actual knowledge or constructive knowledge [by Viswas] and none of my arguments are changed by that." V5.10:3-5.

Proceedings. Jeffery Martin filed this suit on June 25, 2020. V2.3. After a period of discovery lengthened by the pandemic, Defendant moved for summary judgment. V2.30-208. Plaintiff responded (V2.218-35) and Defendant replied. V2.236-51. After a hearing on February 16, 2024 (V5), Plaintiff filed a supplemental response. V2.275-77. On March 31, 2025, the trial court granted summary judgment for the defendant. V2.305-16. Having preserved the error by his written filings and oral argument, Plaintiff filed a timely notice of appeal. V2.1-2.

Argument

The trial court erred in granting summary judgment for Viswas because the record supports a finding that Viswas had a duty to inspect its premises for hazards, that it failed to do so, that it therefore had constructive knowledge of the water on its steps, that the water was a hazardous condition, that it caused Martin to fall and sustain injuries, that Martin had no knowledge of water on those steps, let alone "equal knowledge," and that Martin did not commit the sort of contributory negligence that bars a suit by walking barefooted.

To prevail on a motion for summary judgment, Viswas must show both that there is no genuine issue as to any material fact and that Viswas is entitled to judgment as a matter of law. This Court reviews the judgment de novo, viewing the evidence in the light most favorable to Martin. OCGA § 9-11-56 (c); *Jones v. City of Atlanta*, 320 Ga. 239, 249 (III) (2024).

1. Motels have a duty to inspect the premises for hazards like the water on steps in this case.

It is well-settled that businesses open to the public have a duty to their invitees to inspect the premises to detect hazards that might harm the invitees. *Valentin v. Six Flags Over Ga., L.P.*, 286 Ga. App. 508, 510 (2007). Without evidence of such inspections or a reasonable inspection policy, a jury may find that the owner of the business had constructive knowledge of the hazard. *Pollard v. Deloach*, 372 Ga. App.

303, 306 (2024). As shown by the two cases discussed below, the same rule applies to owners of motels in keeping their walkways safe.

In *Avery v. Cleveland Ave. Motel*, 239 Ga. App. 644 (2) (1999), the plaintiff tripped at a stairway at the defendant's motel, and when she reached for the handrail, it became loose and contributed to her fall and injuries. Though there was "no evidence that [defendant] had actual knowledge of the defects in its stairwell," this Court held that the motel defendant could have constructive knowledge based on the absence of an inspection procedure. Quoting *Ingles Markets v. Martin*, 236 Ga. App. 810, 811 (1999), the Court stated:

> Constructive knowledge may be inferred when there is evidence that the owner lacked a reasonable inspection procedure. In order to prevail at summary judgment based on lack of constructive knowledge, the owner must demonstrate not only that it had a reasonable inspection program in place, but that such program was actually carried out at the time of the incident.

Id. at 645-646. Likewise quoting *Ingles Markets*, the Court rejected the idea that the plaintiff in such cases has any burden to show how long the hazard had been on the premises until the defendant proved that an adequate inspection procedure had in fact been followed.

> [The Motel] contends that, regardless of whether reasonable inspection procedures were followed on the day in question, it is entitled to summary judgment because plaintiff failed to show how long the [hazard had been present] before the fall. Although this Court has in the past rendered conflicting decisions on [similar] issues, we emphatically rejected [such a] position in a recent ten-judge decision, holding that

> in order to withstand a motion for summary judgment, a plaintiff need not show how long a [hazard has been present] unless the defendant has established that reasonable inspection procedures were in place and followed at the time of the incident. Accordingly, the determinative question in this appeal is whether, viewed in the light most favorable to plaintiff[], the evidence shows that [the Motel] followed reasonable inspection procedures at the time of the incident.

Id. at 646.

The facts in the present case are even stronger for the reversal of summary judgment than in the *Avery* case, where this Court reversed the grant of summary judgment because the motel there produced evidence that "the walkways of the Days Inn were swept daily in the morning and 're-checked' in the afternoon. In addition, other motel employees were instructed to pick up any debris they might encounter while performing their duties." *Id.* at 646. But the motel produced no evidence of an inspection of the walkways that day or of the handrail at any time. *Id.* Here, there was no inspection procedure or documentation that any inspection ever occurred. Because of the absence of such evidence, Viswas "failed to sufficiently establish that procedures were in place to inspect the stair railings," and this Court should likewise "reverse the trial court's grant of summary judgment to [the motel]."

The second case is *Colvin v. Brentwood Manor*, 251 Ga. App. 477 (2001), in which the plaintiff tripped at night on a "bunched-up mat" on the walkway outside her apartment, which she did not detect because two lights in the walkway were out. Though the owner had the hallways

and mats inspected once a day and inspected the lighting at night once a week, and though it had no actual knowledge of the condition of the mats or lights, this Court found that the owner could have constructive knowledge of the problem with the lighting because of an inadequate inspection program.

> When we construe this testimony in the light most favorable to [the plaintiff], the nonmoving party, we cannot find that the landlord has shown that reasonable inspection procedures were followed at the time of the incident. The maintenance technician's statement merely says that a weekly inspection schedule was in place at the time, and that is insufficient.

Id. at 479. In the present case, there was no inspection procedure at all. Under these authorities, a jury could reasonably find that the defendant had constructive notice of the hazard in its stairwell.

Counsel for Viswas has wisely conceded that, at least for purposes of its summary judgment motion, Viswas had no reasonable inspection procedures and that the Court may assume that Viswas had actual or constructive knowledge of the water. V5.4:9-10, 10:3-5.

2. Because the trial court misconstrued the record and the plaintiff's position, it erred in granting summary judgment.

A review of the summary judgment order at V2.305-16 shows that the trial court decided against Martin on four points. Martin respectfully submits that the trial court misconstrued the record and Martin's position. With the record and contentions correctly construed, the trial court's four points do not warrant summary judgment.

2.1. The record contains non-speculative evidence of a hazard.

The trial court first argued that evidence of the hazard was "speculative." V2.309-11. The court argued that, because the plaintiff had initially assumed that the water hazard that existed and that caused his fall was a residue of the washing hours earlier, "his claim depends" on the inference that the water came from the earlier washing.

On the contrary, in establishing the existence of a hazard that caused injury, the law requires the plaintiff only to prove the *existence* of a hazard on the premises and its causal role, not to prove the historical steps by which it got there. Apart from *Sharfuddin*, discussed below, all of the cases cited by the trial court in this section of its argument relate to proving the existence of a hazard that caused the plaintiff's fall.[1] Here, the evidence is not just non-speculative, it is *undisputed*

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[1] *Taylor v. Thunderbird Lanes, LLC*, 324 Ga. App. 167, 169-71 (2013) (plaintiff merely speculated that oil must have been on the floor but didn't notice any); *Season All Flower Shop, Inc. v. Rorie*, 323 Ga. App. 529, 534-35 (2013) (plaintiff assumed she slipped on invisible moisture on floor); *H. J. Wings & Things v. Goodman*, 320 Ga. App. 54, 55-56 (2013) (plaintiff assumed floor was heavily waxed, but had no evidence that it was waxed at all); *Pinckney v. Covington Athletic Club & Fitness Ctr.*, 288 Ga. App. 891, 892-93 (2007) (plaintiff had no evidence that algae slime was present around pool or caused her fall); *Flagstar Enters., Inc. v. Burch*, 267 Ga. App. 856, 856-58 (2004) (no evidence of hazard on floor to make it more dangerous than normal on rainy day); *Mansell v. Starr Enters.*, 256 Ga. App. 257, 258-60 (2002) (no evidence of oil that would make water on rainy day more dangerous).

that Martin slipped on water on the step just after the landing. It is also undisputed, indeed conceded by Viswas's corporate representative, that apart from rainy conditions, water should not be on the stairs. Since there was a water hazard on the stairs, and since the hazard caused the plaintiff's fall, and since Viswas had constructive knowledge of it, Martin did not need to go further to prove where the hazard came from.

The trial court's heavy reliance on *Sharfuddin v. Drug Emporium, Inc.*, 230 Ga. App. 679 (1998), is misplaced because that case turned on the defendant's constructive knowledge of water on the floor, an issue conceded by the defendant here. In *Sharfuddin*, the plaintiff needed to show that the water appeared on the floor as a result of the mopping of an employee of the defendant store in order to impute knowledge of the water to the store, for otherwise the plaintiff had no evidence of the defendant's knowledge, as summarized in division 4. *Id*. at 684 (4). The plaintiff there did not show the origin of the water on the floor in order to prove the existence of the hazard or its causal role. Here, Viswas has conceded that it lacked a reasonable inspection procedure and that it had either actual or constructive knowledge. Neither *Sharfuddin* nor any other case requires proof of the origin of the water on a defendant's stairs in order to show that it is a hazard.

2.2. Appellant Martin made no fatal admissions about causation.

The trial court's second argument claims that Martin could not prove that the water hazard caused him to slip unless (1) he proved where the water came from and (2) it would have caused him to slip if he were wearing shoes. V3.311-13. Martin disposed of the first argument in the preceding subsection, and will address the heretofore unknown duty to wear shoes below.

At the risk of stating the obvious, water on walking surfaces is slippery, particularly when (as here) it is unexpected. Water is a hazard that should not have been on these stairs, as Viswas's representative admitted. V4.32-33. This Court has decided scores, perhaps hundreds, of cases involving falls on wet surfaces. This Court has never held that the properties of water on walkways that cause falls depend on who put the water there and when. Nor has the Court held that water can cause people to fall only if they wear shoes, but not if they walk barefooted. Though the choice of footwear *vel non* may be relevant to a jury's consideration of a given case, nothing in the record of this case suggests that Martin's bare feet would have caused him to fall, even without the unforeseen presence of water on the stair.

Unlike many cases where a plaintiff falls but cannot link the fall to some condition on the floor, including the five cases cited by the trial

court,[2] Martin plainly testified that this water caused his fall:

> Q. And were you able to discern what caused you to slip and fall?
>
> A. The steps were wet. There was like puddles of water on the steps.
>
> . . .
>
> Q. So the first time you felt wetness on your feet was when you stepped on the first step off the landing?
>
> A. Correct.

V3.51:11-14, 22-24. No evidence has been raised to the contrary, nor has his testimony been seriously questioned. He reported immediately to Viswas's office, which could then have checked to develop any evidence that would disprove his claims, but they presented nothing.

The trial court thus erred in concluding that Martin presented no evidence of causation.

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[2] *Richardson v. Mapoles*, 339 Ga. App. 870, 873-74 (2016) (plaintiff could not explain how difficulty in opening door caused her to slip); *Canaan Land Props. v. Herrington*, 330 Ga. App. 17, 19-21 (2014) (plaintiff did not know what caused his shopping cart to stop suddenly and trip him); *Willingham Loan & Realty Co. v. Washington*, 311 Ga. App. 535, 535-36 (2011) (plaintiff did not know what caused her to fall down steps); *Greyhound Lines, Inc. v. Williams*, 290 Ga. App. 450, 451-52 (2008) (fall could have occurred due to stepping on a rock, stepping in a hole, or bad foot placement); *Shadburn v. Whitlow*, 243 Ga. App. 555, 556-57 (2000) (no evidence that a condition on the stairs, rather than inebriation, caused the fall).

2.3. Martin's knowledge that an employee sprayed walkways at 3 P.M. did not give him "equal knowledge" that a stairwell descending from the walkway would be wet at 8 P.M.

Next the trial court argued that Martin had equal or superior knowledge of the water on the step that caused him to fall at 8 P.M., but its only basis for drawing that conclusion is that Martin saw an employee spraying the walkways at 3 P.M. V2.313-14. That was erroneous because a plaintiff's knowledge of conditions at a different time and place do not give notice of the conditions that cause his fall; rather, "it is a plaintiff's knowledge of the specific hazard which precipitates [the injury] which is determinative, not merely [his] knowledge of the generally prevailing hazardous conditions or of the hazardous conditions which [he] observes and avoids." *Johnson St. Props., LLC v. Clure*, 302 Ga. 51, 56 (2017); *Cook v. SMG Constr. Servs., LLC*, 373 Ga. App. 354, 357 (2024). Martin saw the employee spraying the second-floor walkway, not the stairs, which he did not traverse before his fall and injuries.

All the more so, the wet conditions he saw on the walkway at 3 P.M. were no longer "generally prevailing" at 9 P.M., since Martin had gone outside on the walkway on several smoke breaks and seen that the walkway was dry and conditions were sunny, as even the trial court observed. V2.306. From that point forward, he had no reason to anticipate water on the walkway, let alone places where he had not seen the employee spraying.

The only piece of evidence adduced by the trial court was that Martin had taken off his socks to avoid getting them wet when he initially stepped out of the room onto the walkway and that he had not put them back on. V2.314. Defying the cardinal rule of summary judgment practice that the court "must view the evidence, and all reasonable inferences drawn therefrom, in the light most favorable to the nonmovant," *Cowart v. Widener*, 287 Ga. 622, 624 (1, a) (2010), rather than in favor of the moving party, the trial court erroneously deduced without a shred of evidence that when Martin left the room at 8 P.M. to walk on the walkway that he had seen to be dry, "he knew or at least suspected that the allegedly hazardous condition was still present." V2.314. At the risk of understatement, the trial court should have considered the reasonable inference that Martin was simply comfortable walking on the walkways barefooted, as he had already done on smoke breaks, and that he simply chose not to put on socks to do so this time.

There is simply no evidence that Martin had any knowledge of the water on the stair before he stepped in it, and the trial court erred in concluding otherwise.

2.4. Walking barefoot is not negligence that bars a recovery.

Finally, the trial court erroneously concluded that walking barefoot is a "[f]ailure to exercise ordinary care [that] precludes a negligence claim" and that it proves that the plaintiff "intentionally and unreasonably exposed himself to a hazard of which the plaintiff knows or, in

the exercise of ordinary care, should have known." V3.315 (semantics corrected, brackets removed). None of the three cases cited by the trial court come within a mile of justifying the trial court's conclusion. There is no case imposing a generally applicable duty to wear shoes when walking, and there was nothing about the facts of this case to make it glaringly apparent that Martin needed to wear shoes to walk down the steps, get ice, and return.

On the contrary, both Georgia appellate courts have upheld claims by plaintiffs who were injured while walking with bare feet. In *Aaron v. Coca-Cola Bottling Co.*, 143 Ga. 153 (1915), the Supreme Court upheld the claim of a girl who walked barefooted on a sidewalk adjacent to the defendant's store, on which fragments of broken glass bottles cut her feet, finding that the allegations "show negligence on the part of each of the defendants, contributing to produce the injury." *Id*., 156. More to the point here on the issue of contributory negligence, this Court in *Lamb v. Redemptorist Fathers of Ga., Inc.*, 111 Ga. App. 491 (1965), upheld the claim of a boy who walked in an area of grass grown to a height of 6-8 inches around the defendant's pool, in which grass the owner knew its patrons threw bottles and opened tin cans with sharp edges, one of which cut the plaintiff on the foot. This Court held:

> [T]he defendant had a duty to exercise ordinary care in affording the plaintiff a reasonably safe place to walk. The plaintiff had a right to rely upon the defendant's performance of this duty. . . . If the plaintiff did know of the custom [or people throwing sharp articles into the grass, like the defendant's

> spraying its walkways here], it should still be left to a jury to determine whether the plaintiff would be barred from a recovery by his failure to exercise ordinary care.

Id., 504-05. The issue "should still be left to a jury" here for the same reasons.

More generally, Martin was entitled to assume that Viswas had done its duty to make the walkways and staircases safe.

> An invitee who responds to the owner/occupier's invitation and enters the premises does so pursuant to an implied representation or assurance that the premises have been made ready and safe for the invitee's reception, and the entering invitee is entitled to expect that the owner/occupier has exercised and will continue to exercise reasonable care to make the premises safe.
>
> . . .
>
> The invitee is not bound to avoid hazards not usually present on the premises and which the invitee, exercising ordinary care, did not observe, and the invitee is not required, in all circumstances, to look continuously at the floor, without intermission, for defects in the floor.

Robinson v. Kroger Co., 268 Ga. 735, 741 (1997). See also *id*. at 743 (making the same point). Martin had no duty to act on the assumption that water was present on Viswas's stairs. So, he had no duty to put on shoes (as if they would necessarily help) before descending the stairs. The trial court erred in arguing otherwise.

Conclusion

For the foregoing reasons, Appellant Jeffery Martin respectfully submits that the judgment below should be reversed.

Respectfully submitted on July 1, 2025.

This submission is within the word count limit of Rule 24.

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Certificate of Service

I certify that I have this day served a copy of this BRIEF OF APPELLANT JEFFERY MARTIN upon all counsel of record by emailing this PDF pursuant to a prior agreement with the attorneys listed below to accept service of PDF documents by email as follows:

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