NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 260132-U

NO. 4-26-0132

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 2, 2026
Carla Bender
4th District Appellate
Court, IL

ZOLISHA WARE,	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
v.	)	McLean County
LOWE'S HOME CENTERS, LLC, a North Carolina Limited Liability Company, d/b/a Lowe's, f/k/a Lowe's Home Centers, Inc.,	)	No. 22LA46
Defendant-Appellee.	)	Honorable
	)	Rebecca S. Foley,
	)	Judge Presiding.

JUSTICE LANNERD delivered the judgment of the court.
Presiding Justice Steigmann and Justice Grischow concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's entry of summary judgment in favor of defendant, holding (1) plaintiff failed to establish a genuine issue of material fact that pebbles she slipped on were placed on the floor by defendant's employees or that defendant's employees had actual or constructive notice of the pebbles and (2) plaintiff failed to establish video evidence existed to support her claim of spoliation of evidence.

¶ 2 On June 11, 2025, plaintiff, Zolisha Ware, filed an amended complaint against defendant, Lowe's Home Centers, LLC, a North Carolina Limited Liability Company, d/b/a Lowe's, f/k/a Lowe's Home Centers, Inc. (Lowe's), alleging negligence following an incident where Ware fell in the garden area of a Lowe's store due to pebbles on the floor. Ware also alleged a claim for spoliation of evidence, asserting Lowe's failed to preserve video from the incident. In September 2025, Lowe's moved for summary judgment, arguing Ware could not establish Lowe's owed a duty of care to her under the circumstances and Ware could not establish spoliation of

evidence. The trial court granted Lowe's motion for summary judgment. On appeal, Ware contends the court erred because genuine issues of material fact exist regarding whether Lowe's owed her a duty of care and breached that duty and whether it negligently failed to preserve evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2025, Ware filed her amended complaint, alleging negligence and spoliation of evidence. The amended complaint alleged Ware fell in a garden area at a Lowe's store due to pebbles on the floor, and Lowe's was negligent for allowing the pebbles to accumulate on the floor of its store, failing to inspect the premises, failing to provide a safe walking surface, and failing to warn her of an unsafe walking surface. With respect to the spoliation of evidence claim, Ware alleged there were cameras in the store, "including cameras in the garden area where [she] was injured," and Lowe's had not preserved evidence from them.

¶ 5 In her deposition, Ware testified that, on Memorial Day, May 25, 2020, she went to the Lowe's store in Bloomington, Illinois, to purchase gardening materials. When she walked into the store, she walked by an employee stationed at a register. Ware stopped inside the store for 10 to 15 minutes to look at, and walk around, a gardening display. After looking at the display, Ware turned to walk toward the location of topsoil in the store and fell. Ware observed "[m]aybe a little bit more than five" decorative pebbles on the floor under her knees. The employee stationed at the register was about three and a half shopping cart lengths away. Ware was asked if the employee could have seen the rocks on the floor. Ware said, "Yes," and Lowe's counsel objected based on speculation.

¶ 6 During Ware's deposition, the following colloquy occurred:

"Q. The rocks that you saw on the floor after your accident, do you know

where they came from?

A. No.

Q. Did you see an open bag or anything like that?

A. No.

Q. Do you know how they got in that spot?

A. No.

Q. Do you know if anyone from Lowe's put them there?

A. No.

Q. Do you know if anyone from Lowe's knew that they were there before your accident?

A. No.

Q. And you don't know how long they were there?

A. No.

Q. Do you know if anyone else has slipped on rocks in the garden center at Lowe's?

A. No.

Q. Do you know if they sold that kind of rock at Lowe's?

A. No, I don't know."

Ware later stated she knew Lowe's sold "decorative rocks" in the garden area but did not know if they were located in the topsoil aisle.

¶ 7 Ware stated two customers assisted her, and she spoke with a Lowe's employee who told Ware his name was Greg and that he was an assistant manager. Ware informed the employee she was going to seek medical care and that she wanted to fill out a claim. The employee

used a device to record Ware's name and phone number and said he would file a claim for her. Ware spoke to the employee again the next day, who told her he had not finished the paperwork, would see his head manager the next day, and would send her a claim code. After that, Ware was unable to reach the employee when she called. Ware asked for the manager to call her, but no one called her back.

¶ 8 Bradley O'Machel was the store manager at Lowe's at the time of Ware's fall. In his deposition, O'Machel testified he had several assistant managers who worked under him. He did not recall one named Greg. He did not recall responding to a woman who fell in the garden area. O'Machel described the reporting procedure for if a person fell, as well as safety procedures at Lowe's. Those safety procedures mandated morning and evening safety walks through the store, and safety walks could also occur during the day. Regarding security cameras, the following colloquy was held:

> "Q. So what about any kind of video surveillance in the store? Did you have video surveillance in the store?
>
> A. Yeah, there were cameras in the store.
>
> Q. Were there cameras in the garden area?
>
> A. Yes, from what I recall.
>
> Q. Okay. If someone had made a report of a slip and fall, would that have been preserved that day?
>
> A. Yes ***."

¶ 9 At some point after the depositions of Ware and O'Machel, Lowe's filed a motion for summary judgment, arguing Ware could not establish Lowe's owed a duty of care to her under the circumstances because there was no evidence of similar accidents, the length of time the

pebbles were on the floor, that Lowe's put the pebbles on the floor, or that Lowe's knew they were there. Lowe's also argued Ware could not establish spoliation of evidence because there was no evidence a camera was pointed at the area where she fell or that a video of the incident ever existed.

¶ 10 Ware did not present any evidence in opposition to the motion for summary judgment. However, in her response to Lowe's motion, she argued the employee at the nearby register could have seen the pebbles, which she maintained established an issue of material fact as to whether Lowe's breached a duty to her. She further alleged O'Machel's deposition testimony that there were cameras in the garden area created an issue of material fact as to whether Lowe's failed to preserve evidence.

¶ 11 The trial court granted Lowe's motion for summary judgment. The court analyzed the factors Lowe's argued were applicable to determining whether Lowe's owed a duty to Ware and found, in part, there was no evidence of how long the pebbles were on the floor or that Lowe's knew of the pebbles. The court also found Ware failed to provide evidence Lowe's had video of the area where she fell.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, Ware contends the trial court erred in granting Lowe's motion for summary judgment because there are genuine issues of material fact regarding whether Lowe's owed Ware a duty of care, breached that duty, and whether it negligently failed to preserve evidence.

¶ 15 At the outset, we note, although the trial court primarily addressed the negligence issue as a question of whether Lowe's owed a duty to Ware, we analyze the matter instead as one of whether Ware presented an issue of material fact concerning a breach of Lowe's duty to exercise

ordinary care.

¶ 16 Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2024). "A triable issue of fact exists where there is a dispute as to a material fact or where, although the facts are not in dispute, reasonable minds might differ in drawing inferences from those facts." *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 31 (1999). "Because summary judgment is a drastic means of disposing of litigation, the pleadings and supporting documentation are construed strictly against the movant and liberally in favor of the opponent, and summary judgment should be granted only when the movant's right is clear and free from doubt." *Peters v. R. Carlson & Sons, Inc.*, 2016 IL App (1st) 153539, ¶ 13.

¶ 17 While a party need not prove the case in order to survive a motion for summary judgment, he or she must present a factual basis that would arguably entitle him or her to a judgment. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12. "Unsupported conclusions, opinions, or speculation is insufficient to raise a genuine issue of material fact for purposes of summary judgment." *Orr v. Fourth Episcopal District African Methodist Episcopal Church*, 2018 IL App (4th) 170469, ¶ 61.

¶ 18 We review summary judgment rulings *de novo*. *Id.* Because our review is *de novo*, we are not bound by the trial court's reasons for the entry of summary judgment and may affirm on other grounds. *Federal Insurance Co. v. Turner Construction Co.*, 277 Ill. App. 3d 262, 266 (1995).

¶ 19 A. Negligence

¶ 20 As we remarked above, both in the trial court and in arguing the issue on appeal,

the parties generally have conflated the existence of a duty with breach of a duty. We affirm the court's grant of summary judgment because we hold Ware did not present genuine issues of material fact concerning breach of a duty.

¶ 21 "To recover damages based upon a defendant's alleged negligence, a plaintiff must allege and prove that the defendant owed a duty to the plaintiff, that defendant breached that duty, and that the breach was the proximate cause of the plaintiff's injuries." *Pageloff v. Gaumer*, 365 Ill. App 3d. 481, 483 (2006) (citing *First Springfield Bank & Trust v. Galman*, 188 Ill. 2d 252, 256 (1999)). If the plaintiff cannot establish an element of the cause of action, summary judgment for the defendant is proper. *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989).

¶ 22 The trial court and the parties on appeal generally addressed the issue of negligence in the context of whether there was an issue of material fact that Lowe's had a duty to clear the pebbles from the floor or warn of the pebbles. The parties, both in the trial court and on appeal, and the court addressed factors derived from case law for determining whether a duty exists, citing a case involving naturally occurring and open and obvious hazards. See *Pageloff*, 365 Ill. App. 3d at 483. However, in doing so, the parties also argued issues regarding constructive notice of the pebbles and whether Lowe's should have had knowledge of the existence of the pebbles. As discussed below, in a case of a slip and fall inside of a business, those are matters applicable to breach of a duty.

¶ 23 The existence of a duty is clear. As a business invitee, a retail store such as Lowe's owes a duty of ordinary care to maintain its premises in a reasonably safe condition. *Hayes v. Bailey*, 80 Ill. App. 3d 1027, 1030 (1980). The primary case cited by the parties analyzing duty further and applying the factors utilized by the parties and the trial court involved whether a duty arose concerning a naturally occurring or open and obvious hazard. See *Pageloff*, 365 Ill. App. 3d

at 483-85 (discussing falling walnuts at a campground). Such circumstances have not been argued here. For the foregoing reasons, instead of analyzing the matter in terms of whether Lowe's owed Ware a duty of care, we address the matter in regard to whether Ware presented an issue of material fact concerning Lowe's breach of its duty of ordinary care.

¶ 24 Regarding breach of the duty of ordinary care, the general rule is that liability will be imposed where a business invitee is injured by slipping and falling on a foreign substance on the premises if (1) the substance was placed there by the negligence of the owner or its employees, (2) the owner or its employee knew of its presence, or (3) the owner had constructive notice of the substance because it was there for such a long time that its presence should have been discovered. *Donoho v. O'Connell's, Inc.*, 13 Ill. 2d 113, 118 (1958); *Olinger v. Great Atlantic & Pacific Tea Co.*, 21 Ill. 2d 469, 474 (1961); *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001).

¶ 25 Regarding actual knowledge, when a foreign substance is unrelated to the defendant's operations, it cannot reasonably be inferred that the substance was more likely to have been dropped by the defendant's employees rather than third persons. *Olinger*, 21 Ill. 2d at 475. Thus, in such cases, the defendant is entitled to judgment as a matter of law. *Id.* When there is proof that the foreign substance was sold at or related to the defendant's business, but no further evidence is offered other than the presence of the substance and the occurrence of the injury, the defendant is also entitled to a judgment as a matter of law. *Id.*; *Thompson v. Economy Super Marts, Inc.*, 221 Ill. App. 3d 263, 265-66 (1991). However, where the plaintiff offers some direct or circumstantial evidence, however slight, such as the location of the substance or the business practices of the defendant, from which it could be inferred that it was more likely that the defendant or its employees, rather than a customer, dropped the substance on the premises, the negligence issue should go to the trier of fact. *Olinger*, 21 Ill. 2d at 475-76; *Thompson*, 221 Ill. App. 3d at

265.

¶ 26 Regarding constructive notice, "[a] business owner 'has constructive notice of all conditions discoverable by reasonable inspection of the premises.' " *Heider v. DJG Pizza, Inc.*, 2019 IL App (1st) 181173, ¶ 35 (quoting *Lombardo v. Reliance Elevator Co.*, 315 Ill. App. 3d 111, 120 (2000)). Constructive notice may be proven by demonstrating the condition existed for an extended period of time and the defendant could therefore have discovered the condition through the exercise of reasonable care. *Id.* Thus, when a plaintiff alleges constructive notice, the time element is a material factor, and the plaintiff must establish that the foreign substance was on the floor long enough to constitute constructive notice to the defendant. *Hayes*, 80 Ill. App. 3d at 1030. If there is evidence tending to show constructive notice, then the issue of negligence will be submitted to the trier of fact. *Id.* However, where there is no evidence at all as to how long the substance was on the floor, it is not proper to submit the issue to the trier of fact. See *id.*

¶ 27 Here, Ware presented nothing more than mere speculation to establish Lowe's breached its duty of ordinary care. She presented nothing to show or provide an inference that the pebbles were deposited on the floor by the negligence of employees of Lowe's or that Lowe's actually knew the pebbles were there. While there was some evidence to infer the pebbles might be sold at Lowe's, there was nothing to establish or infer that they were not dropped by a customer. Thus, the issue was one of constructive notice.

¶ 28 Regarding constructive notice, Ware presented no evidence regarding the amount of time the pebbles were on the floor to create an issue of material fact that they were there long enough to constitute constructive notice to Lowe's of their presence. Ware speculates that the nearby presence of an employee could allow for constructive notice, but no evidence was provided to show the employee saw the pebbles or was even looking in Ware's direction. That the pebbles

were on the floor for a length of time sufficient to create constructive notice or that the employee saw the pebbles is purely speculation, which cannot create an issue of material fact to defeat Lowe's motion for summary judgment. See *id.* ("It is incumbent upon the plaintiff to establish that the foreign substance was on the floor long enough to constitute constructive notice to the proprietor."). Accordingly, the trial court did not err in granting the motion for summary judgment because Ware failed to establish there was a genuine issue of material fact that Lowe's breached its duty of care.

¶ 29 B. Spoliation of Evidence

¶ 30 Ware next argues the trial court erred in granting Lowe's motion for summary judgment on the claim of spoliation of evidence.

¶ 31 The spoliation of evidence is not an independent tort, but such a claim can be stated under negligence principles. *Dardeen v. Kuehling*, 213 Ill. 2d 329, 335-36 (2004) (citing *Boyd v. Travelers Insurance Co.*, 166 Ill. 2d 188, 192-93 (1995)). A plaintiff must allege that the defendant owed him or her a duty, that the defendant breached the duty, and that the breach proximately caused the plaintiff's damages. *Id.* at 336.

¶ 32 In general, there is no duty to preserve evidence, but such a duty may arise under the following circumstances: by an agreement, pursuant to a contract, pursuant to a statute, special circumstances, or a voluntary undertaking. *Id.* To state a claim for spoliation of evidence, the plaintiff must demonstrate that but for the defendant's loss or destruction of the evidence, he or she likely would have prevailed in the underlying suit. *Cangemi v. Advocate South Suburban Hospital*, 364 Ill. App. 3d 446, 471-72 (2006). Therefore, Ware had to show that the failure to preserve the surveillance video caused her to be unable to prove that Lowe's was negligent.

¶ 33 Here, as with her negligence claim, Ware relies solely on speculation in support of

her arguments. The record shows only that the garden area had video cameras and that, if a report was made, video evidence would be preserved. Nothing was presented to show that a camera was pointed at the area where Ware actually fell or that video was actually recorded. O'Machel was never asked about those matters. Ware had the burden to establish the loss of evidence and, here, she never demonstrated there was evidence that existed at all. Instead, she merely speculated there might have been evidence because the store had cameras. Accordingly, we find the trial court properly granted Lowe's motion for summary judgment with respect to her spoliation claim.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's judgment.

¶ 36 Affirmed.