

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

TARA BROADBECK,	:	APPEAL NO. C-061028
		TRIAL NO. A-0503875
RYAN BROADBECK,	:	
		<i>JUDGMENT ENTRY.</i>
and	:	
DESTINY BROADBECK,	:	
Plaintiffs-Appellants,	:	
vs.	:	
THE KROGER COMPANY,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Tara Broadbeck filed a complaint for damages she had suffered as a result of a fall in a store owned by defendant-appellee The Kroger Company (“Kroger”). Broadbeck slipped and fell in some liquid laundry detergent that had spilled across an aisle of the store. Broadbeck’s two children, Ryan and Destiny, filed claims for loss of consortium. The Broadbecks filed a motion for partial summary judgment as to liability, which the trial court denied. Kroger filed a motion for summary judgment, which the trial court granted on the basis that the spill was open and obvious as a matter of law. The Broadbecks have appealed.

¹See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

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The two assignments of error allege that the trial court erred in denying the Broadbecks' motion for partial summary judgment and in granting Kroger's motion for summary judgment.

A business owner owes an invitee the duty to maintain the premises in a reasonably safe condition and to warn of unreasonably dangerous latent conditions.² A store owner has no duty to warn business invitees of open and obvious dangers on the premises.³ "The rationale is that an open and obvious danger is itself a warning and the store owner 'may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves.'"⁴ Although a store customer is not required to constantly look down, the fact that Broadbeck did not see the spill did not necessarily render it a hidden danger that could not have been discovered by reasonable inspection.⁵ Distractions such as signs normally found in retail settings do not relieve customers of their duty to exercise ordinary care in moving through grocery stores.⁶

Tara Broadbeck's testimony was that she was in a hurry when she went to the Kroger store to buy laundry detergent. She was looking up at the signs to see which aisle held the laundry detergent. By her own admission, she was not watching where she was walking. The spill consisted of a blue liquid over a white floor. The spill was large, covering almost half the aisle. The submitted evidence belied the argument that the spill was hidden around the corner of the aisle. Broadbeck admitted that she might possibly have been able to see the spill if she had been paying attention to where she was walking.

² See *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203, 480 N.E.2d 474.

³ See *id.*

⁴ See *McGuire v. Sears, Roebuck & Co.* (1996), 118 Ohio App.3d 494, 693 N.E.2d 807, citing *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St.3d 642, 597 N.E.2d 504, and *Seltzer v. Abusway* (Jan. 11, 1995), 1st Dist. No. C-940062.

⁵ See *McGuire v. Sears, Roebuck & Co.*, *supra*.

⁶ See *id.*; *Youngerman v. Meijer, Inc.* (Sept. 20, 1996), 2nd Dist. No. 15732.

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The record supports the trial court's conclusion that a person using reasonable and ordinary care would have seen such a large spill of blue liquid on a white floor, and that, therefore, Broadbeck should have discovered the spill and protected herself from it. The assignments of error are overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 16, 2008
per order of the Court _____.
Presiding Judge