

IN THE SUPREME COURT OF THE STATE OF NEVADA

SUSAN PAJAK AND WILLIAM PAJAK,  
Appellants,  
vs.  
TARGET CORPORATIONS,  
Respondent.

No. 47056

**FILED**

JUL 18 2007

JUANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *A. Alvarado*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Douglas W. Herndon, Judge.

After appellant Susan Pajak slipped and fell, allegedly having stepped in a light brown liquid substance on the floor at a Target store, she and her husband appellant William Pajak filed a complaint in the district court against respondent Target Corporations, alleging that Target had negligently maintained its premises. The Pajaks sought damages for Susan's personal injuries and William's loss of consortium.

After discovery on the issue of liability was completed,<sup>1</sup> Target filed a summary judgment motion, arguing that, since Susan had admitted during her deposition testimony that she was unable to identify the light

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<sup>1</sup>Although the Pajaks argue that discovery was not completed because Target lost four photographs depicting the floor after Susan's fall, the district court concluded that the photographs were inconsequential to their claims, since witnesses for both sides could attest to the floor's condition, and Target had provided the Pajaks with other evidence documenting the floor's condition. We perceive no error in the district court's conclusion and decline to further address the Pajaks' spoliation of evidence arguments.

brown substance, how it got on the floor, how long it may have been on the floor before her fall, or whether Target employees knew of its existence before her fall, the Pajaks had failed to demonstrate any material factual issues with respect to whether Target had either created the condition or had actual or constructive notice of its existence. Therefore, Target maintained, the Pajak's negligence claims failed as a matter of law.

The Pajaks, who were represented by counsel at the time, opposed the motion, arguing that Target's failure to implement a formal inspection procedure to ensure that the store's floors are safe presented an issue of fact regarding whether Target had constructive notice of the hazardous condition. The district court orally granted Target's motion on February 7, 2006, and entered its findings of fact, conclusions of law, and judgment on February 23, 2006. The Pajaks' timely appeal followed.<sup>2</sup>

This court reviews orders granting summary judgment de novo.<sup>3</sup> Summary judgment was appropriate here if the pleadings and other evidence on file, viewed in a light most favorable to the Pajaks, demonstrate that no genuine issue of material fact remained in dispute and that Target was entitled to judgment as a matter of law.<sup>4</sup> To withstand summary judgment, the Pajaks could not rely solely on the general allegations and conclusions set forth in their complaint, but must

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<sup>2</sup>After this court granted the Pajaks' attorney's motion to withdraw, the Pajaks opted to proceed in proper person.

<sup>3</sup>See Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

<sup>4</sup>Id.

instead have presented specific facts demonstrating the existence of a genuine factual issue supporting their claims.<sup>5</sup>

Upon our review of the record and consideration of the parties' appellate arguments,<sup>6</sup> we perceive no error in the district court's summary judgment. Although the presence of a foreign substance on Target's floor generally is incompatible with the standard of ordinary care,<sup>7</sup> liability for any injuries Susan sustained after slipping in the substance and falling may be found only if Target's employees created the condition or had actual or constructive notice of its existence.<sup>8</sup> Thus, in order to defeat Target's summary judgment motion, the Pajaks were required to offer evidence suggesting that the employees had spilled or otherwise deposited the substance on the floor, or that they had constructive notice of its

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<sup>5</sup>Id. at 731, 121 P.3d at 1030-31.

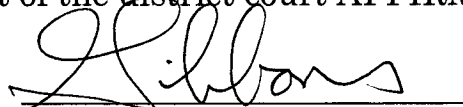
<sup>6</sup>Although we considered the Pajaks' appellate arguments in resolving this appeal, we disregarded any references to facts or evidence, including the exhibits attached to their "Rebuttal to Respondent's brief," that were not part of the record on appeal. See Carson Ready Mix v. First Nat'l Bank, 97 Nev. 474, 476, 5 P.2d 276, 277 (1981). Additionally, we decline to consider any issues that the Pajaks present on appeal that were not first raised in the district court. See Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

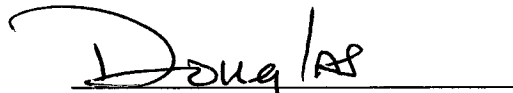
<sup>7</sup>See Asmussen v. New Golden Hotel Co., 80 Nev. 260, 262, 392 P.2d 49, 49-50 (1964) (noting that a business owes its customers a duty to keep its premises in a reasonably safe condition for the customers' use).

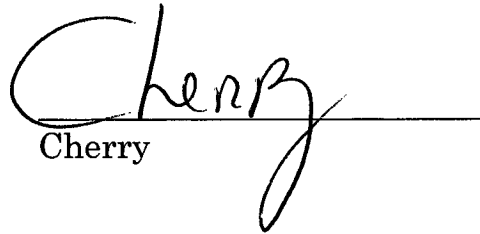
<sup>8</sup>Id. at 262, 392 P.2d at 50; Sprague v. Lucky Stores, Inc., 109 Nev. 247, 250, 849 P.2d 320, 322-23 (1993).

existence.<sup>9</sup> Accordingly, because the Pajaks failed to demonstrate a material factual issue with regard to Target's negligence, we

ORDER the judgment of the district court AFFIRMED.<sup>10</sup>

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

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<sup>9</sup>Wood, 121 Nev. at 731, 121 P.3d at 1030-31; Sprague, 109 Nev. at 250, 849 P.2d at 323. Although the Pajaks maintain that summary judgment was inappropriate because Target failed to implement a formal inspection procedure, in order to support liability on a constructive notice theory, the Pajaks would have to demonstrate that Target's employees had knowledge of a recurrent condition, *i.e.*, a slippery floor, in the area where Susan fell that posed a potential danger to customers, but that they failed to reasonably respond or to keep the area free from that foreseeable danger. See Sprague 109 Nev. at 251, 849 P.2d at 323 (reversing a district court summary judgment after concluding that deposition testimony raised a material factual issue as to whether the defendant store had constructive knowledge of a "chronic hazard" of produce being on the floor in its produce department that might result in injury to a customer). Here, the Pajaks failed to demonstrate that the area where Susan fell (the housewares department) presented a recurrent slippery floor hazard requiring Target to keep the area patrolled to remove foreseeable spills. To the contrary, deposition testimony indicated that spills were not common and that employees were assigned to the store's various departments to, among other things, keep the aisles clean.

<sup>10</sup>The Pajaks' request that this court impose sanctions against their former attorney and Target and its attorney is denied.

cc: Hon. Douglas W. Herndon, District Judge  
Thomas F. Kummer, Settlement Judge  
Susan Pajak  
William Pajak  
Thorndal Armstrong Delk Balkenbush & Eisinger/Las Vegas  
Eighth District Court Clerk