

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000399-MR

DALLAS ROBBINS

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE GREGORY M. BARTLETT, JUDGE  
ACTION NO. 00-CI-00515

THE KROGER COMPANY

APPELLEE

OPINION  
REVERSING AND REMANDING  
\*\* \*\*

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

TACKETT, JUDGE: Dallas Robbins appeals from the judgment of the Kenton Circuit Court entering summary judgment for The Kroger Company, in an action for an alleged slip-and-fall injury. Robbins argues that there existed enough proof that Kroger had actual or constructive knowledge of the hazard to create a genuine issue of material fact. We agree, and reverse and remand.

Robbins fell in the dairy aisle after slipping on a pool of what appeared to be milk. Robbins testified in his

deposition that he was being careful as he walked down the aisle, and that he sidestepped to get out of another couple's way when he stepped in the puddle and fell. He testified that a Kroger employee was standing about ten to fifteen feet away stocking biscuits. He alleged that he was knocked unconscious briefly in the fall, and that when he got up he immediately went to the front desk to notify someone that he had fallen. When he went back to the spot in which he had fallen, someone had already mopped the area. Robbins did not know the name of the employee that witnessed the accident.

Robbins' deposition is the only evidence in the record. Kroger moved for summary judgment, alleging that Robbins could not prove that it had actual or constructive knowledge of the spill, that the spill had been there long enough that someone should have discovered and cleaned it up, or that the substance was placed on the floor by an agent of the company. The Kenton Circuit Court granted summary judgment. We reverse in light of the evidence in the record and the standard for summary judgment in Kentucky.

The applicable standard for summary judgments in Kentucky is found in Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (1991). We disagree with the circuit court that the evidence advanced by Robbins through his deposition is insufficient to defeat a properly supported motion

for summary judgment. Before a summary judgment may be granted, there must be no genuine issue of material fact in dispute, and it must appear "as a matter of law, . . . that it would be impossible for the respondent to produce evidence at trial warranting a judgment in his favor and against the movant."

Paintsville Hospital v. Rose, Ky., 683 S.W.2d 255 (1985). Here, we do not agree that the Paintsville Hospital standard was met. The evidence that an employee of the company was nearby when the accident occurred was sufficient to avoid a summary judgment, even though Robbins did not get the employee's name. In addition, the fact that the spill was already mopped up when Robbins returned from the customer service desk could lead a jury to infer that the employee had already seen the spill and done nothing to clean it up in a timely fashion.

The judgment of the Kenton Circuit Court is reversed and the matter remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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BRIEF FOR APPELLEE:

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