

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7120

Summary Calendar

MARGARET LAMY and JOSEPH LAMY,
Plaintiffs-Appellants,
versus
NATIONAL TEA COMPANY d/b/a/ NATIONAL SUPERMARKET,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA S91 0485 G R)

(October 1, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

I.

Invoking diversity jurisdiction, the Lamys sued when Mrs. Lamy slipped on a spill in the National Supermarket in Waveland, Mississippi. The district court granted summary judgment for want of proof (i) that National breached its duty to provide a safe store; (ii) that National caused the spill or knew about it; and

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

(iii) that the spill remained on the floor for so long that National should have discovered it through the exercise of reasonable care. The court rejected the Lamys' argument that National breached its duty to provide a safe store through the presence of a manned checkout isle near the spill and the lack of thorough safety inspections.

The Lamys argue that they bring a novel question of state law that should be certified to the Mississippi Supreme Court, namely, whether the presence of a store employee close to the spill and the failure to make thorough safety inspections constitute a breach of the duty to provide a safe store. Alternatively, the Lamys argue that a genuine issue of material fact precluded summary judgment because it is not clear whether a store employee stood in close proximity to the spill or whether National failed to conduct adequate safety inspections.

II.

Taking the second issue first, the district court properly granted summary judgment because no genuine issue of material fact existed for trial. To prove that National breached its duty of exercising ordinary reasonable care to provide a safe store, the Lamys had to prove that National either created the hazardous condition or had actual knowledge of it, or that the condition existed for so long that, in the exercise of reasonable care, National should have discovered it. Munford, Inc. v. Fleming, 597 So.2d 1282, 1284 (Miss. 1992).

The Lamys presented no proof that National either created or had actual knowledge of the spill on the floor. In addition, they presented no evidence of the length of time the spill remained on the floor. By contrast, National presented evidence that store personnel had swept the floor twice, and that the manager inspected the floor three times in close temporal proximity to the accident. The district court properly granted summary judgment because the Lamys failed to establish that National breached its duty to maintain a safe store.

III.

We decline to certify to the Mississippi Supreme Court the question of whether Mississippi courts impose liability because a store employee stood in close proximity to a hazardous area or because a store employee did not make a thorough safety inspection. We are not persuaded that this case presents the issue claimed by plaintiffs to be unsettled under Mississippi law. We express no opinion regarding this point of Mississippi law.

AFFIRMED.