IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

WAYNE TROUTMAN, Plaintiff, v. GIANT EAGLE, *et al.*, Defendants.	)	CASE NO. CV 12 784973 JUDGE BRENDAN J. SHEEHAN **OPINION AND JUDGMENT ENTRY**

I. ISSUES PRESENTED.

This matter is before the Court on Defendant Giant Eagle's ("Giant Eagle's") Motion for Summary Judgment. The issues have been fully briefed to the Court.

The parties are in substantial agreement as to the facts of this case. On June 17, 2010, Plaintiff Wayne Troutman was shopping at the Southpark Giant Eagle store located on Route 82. As he approached the seafood counter, he noticed two men mopping the floor and two hard plastic "tents" stating "Wet Floor" approximately 1 1/2 to 2 feet in front of the moppers. He took two to three more steps then slipped and fell in a large pool of water. Mr. Troutman was 10-12 feet away from the nearest warning sign when he fell.

Giant Eagle contends that summary judgment is appropriate because the pool of water was an open and obvious hazard. Mr. Troutman contends that the water was difficult to see on the ground and the warning signs did not demarcate the area impacted by the water even though Giant Eagle was aware of the water.

II. LAW AND ANALYSIS.

Under Civ.R. 56, summary judgment is appropriate when, (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the non-moving party. *Holliman v. Allstate Ins. Co.*, 86 Ohio St.3d 414, 715 N.E.2d 532 (1999); *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1997). When a motion for summary judgment is properly made and supported, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial and may not merely rest on allegations or denials in the pleadings. *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). The nonmoving party must produce evidence on any issue for which that party bears the burden of production at trial. *Wing v. Anchor Media, Ltd.*, 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991). Further, to survive summary judgment, a plaintiff must produce more than a scintilla of evidence in support of his position. *Markle v. Cement Transit Co., Inc*, 8th Dist. No. 70175, 1997 WL 578940, 2 (1997), *citing Redd v. Springfield Twp. School District*, 91 Ohio App.3d 88, 92, 631 N.E.2d 1076 (9th Dist. 1993).

A business ordinarily owes its invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition and has the duty to warn its invitees of latent or hidden dangers. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003 Ohio 2573, 788 N.E.2d 1088, ¶5, citing *Paschal v. Rite Aid Pharmacy, Inc.*, 18 Ohio St.3d 203, 18 Ohio B. 267, 480 N.E.2d 474 (1985).

The open-and-obvious doctrine is a defense to premises liability claims and negates the duty the applicable duty to warn. The open-and-obvious doctrine provides that premises owners

do not owe a duty to persons entering those premises to warn of dangers that are open and obvious. *Id.* at ¶ 14, citing *Sidle v. Humphrey*, 13 Ohio St.2d 45, 233 N.E.2d 589 (1963), paragraph one of the syllabus. The stated rationale for this defense is "that the open and obvious nature of the hazard itself serves as a warning. Thus, the owner or occupier may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves." *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 644, 1992 Ohio 42, 597 N.E.2d 504.

"When only one conclusion can be drawn from the established facts, the issue of whether a risk was open and obvious may be decided by the court as a matter of law. When reasonable minds could differ with respect to whether a danger is open and obvious, the obviousness of the risk is an issue for the jury to determine." *Collier v. Libations Lounge, L.L.C.*, 8th Dist. No. 97504, 2012 Ohio 2390, P11 (internal citations omitted).

The Court finds that reasonable minds could differ as to whether water on the floor is an open and obvious hazard when warning signs and cleaning efforts are occurring 10-12 feet away. Even though the pool of water may be very large, it may not be readily discernible. A clear, colorless liquid on a hard surface *may* not be easily noticed. While warning signs were placed near part of the hazard, they warned of a hazard at least 10 feet away and failed to encompass the entire affected area. Whether it is reasonable for someone to stop and check their immediate vicinity for danger when a hazard is noticed 10-12 feet away is a question of fact to be determined by a jury after viewing all of the evidence at trial.

ACCORDINGLY, DEFENDANT GIANT EAGLE'S MOTION FOR SUMMARY JUDGMENT IS DENIED.

IT IS SO ORDERED.

Brendan J. Sheehan

JUDGE BRENDAN J. SHEEHAN

Dated: 2/1/13

CERTIFICATE OF SERVICE

A copy of the foregoing was mailed to the following this 1st day of February, 2013:

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