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ORIGINAL

No. 73228-5-1

COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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BARBARA SMITH,  
Plaintiff/Appellant,

v.

ALBERTSON'S LLC,  
Defendant/Respondent,

and

unknown JOHN DOES,  
Defendants.

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BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Contents ..... i

Table of Authorities ..... ii

I. Statement of the Case ..... 1

II. Argument ..... 6

    A. Standard of Review ..... 6

    B. Failure of Proof on Essential Element #1 -  
    No Evidence that Smith’s Trip Was Caused  
    by A Dangerous Condition in the Premises ..... 7

    C. Failure of Proof on Essential Element #2 -  
    No Evidence that Albertson’s Caused or  
    Had Knowledge that A Dangerous Condition  
    Existed in the Premises ..... 13

    D. All Other Facts Are Immaterial ..... 19

    E. Superior Court’s Oral Statements During  
    Summary Judgment Hearing Are Immaterial ..... 21

III. Conclusion ..... 22

## TABLE OF AUTHORITIES

### Cases

<i>Arment v. Kmart Corp.</i> , 79 Wn. App. 694, 700, 902 P.2d 1254 (1995) . . . . .	20
<i>Batten v. South Seattle Water Co.</i> , 65 Wn.2d 547, 398 P.2d 719 (1965) . . . . .	17
<i>Brant v. Market Basket Stores, Inc.</i> , 72 Wn.2d 446, 426 P.2d 824 (1967) . . . . .	17, 20
<i>Carlyle v. Safeway Stores, Inc.</i> , 78 Wn. App. 272, 896 P.2d 750 (1995) . . . . .	20
<i>Charlton v. Toys R Us</i> , 158 Wn. App. 905, 246 P.3d 199 (2010) . . . . .	20
<i>Coleman v. Ernst Home Center</i> , 70 Wn. App. 213, 217, 853 P.2d 473 (1993) . . . . .	15
<i>Davidson v. Metropolitan Seattle</i> , 43 Wn. App. 569, 719 P.2d 569 (1986) . . . . .	9, 12
<i>Doty-Fielding v. Town of South Prairie</i> , 143 Wn. App. 559, 178 P.3d 1054, <i>rev. denied</i> , 165 Wn.2d 1004 (2008) . . . . .	12
<i>Falconer v. Safeway Stores, Inc.</i> , 49 Wn.2d 478, 303 P.2d 294 (1956) . . . . .	17
<i>Grimwood v. University of Puget Sound, Inc.</i> , 110 Wn.2d 355, 753 P.2d 517 (1988) . . . . .	11
<i>Hutchins v. 1001 Fourth Ave. Associates</i> , 116 Wn.2d 217, 221, 802 P.2d 1360 (1991) . . . . .	13
<i>Hyatt v. Sellen Construction</i> , 40 Wn. App. 893, 700 P.2d 1164 (1985) . . . . .	8

<i>Ingersoll v. Debartolo, Inc.</i> , 123 Wn.2d 649, 869 P.2d 1014 (1994) . . . . .	14, 15, 19, 20
<i>Knopp v. Kemp &amp; Hebert</i> , 193 Wash. 160, 74 P.2d 924 (1938) . . . . .	17
<i>Lamon v. McDonnell Douglas Corporation</i> , 91 Wn.2d 345, 588 P.2d 1346 (1979) . . . . .	10-11
<i>Lynn v. Labor Ready, Inc.</i> , 136 Wn. App. 295, 306, 151 P.3d 201 (2006) . . . . .	21
<i>O'Donnell v. Zupan Enterprises, Inc.</i> , 107 Wn. App. 854, 28 P.3d 799 (2001) . . . . .	6
<i>Olympic Fish Products v. Lloyd</i> , 93 Wn.2d 596, 611 P.2d 737 (1980) . . . . .	6
<i>Pimentel v. Roundup Co.</i> , 100 Wn.2d 39, 666 P.2d 888 (1983) . . . . .	15
<i>Rothweiler v. Clark County</i> , 108 Wn. App. 91, 29 P.3d 758 (2001) . . . . .	12, 21
<i>Safeco Ins. Co. v. McGrath</i> , 63 Wn. App. 170, 817 P.2d 861 (1992) . . . . .	9, 12
<i>Schmidt v. Coogan</i> , 135 Wn. App. 605, 145 P.3d 1216 (2006), <i>rev'd on other grounds</i> , 162 Wn.2d 488, 173 P.3d 273 (2007) . . . . .	20
<i>Seven Gables Corp. v. MGM/UA Entertainment Co.</i> , 106 Wn.2d 1, 13, 721 P.2d 1 (1986) . . . . .	11
<i>Smith v. Manning's, Inc.</i> , 13 Wn.2d 573, 126 P.2d 44 (1942) . . . . .	19
<i>Sorenson v. Uddenberg</i> , 65 Wn. App. 474, 828 P.2d 650 (1992) . . . . .	14, 18

<i>State v. Warness</i> , 77 Wn. App. 636, 893 P.2d 665 (1995) . . . . .	9-10, 12
<i>Tavai v. Walmart Stores, Inc.</i> , 176 Wn. App. 122, 307 P.3d 811 (2013) . . . . .	7, 14, 19
<i>Trueax v. Ernst Home Center, Inc.</i> , 70 Wn. App. 381, 387, 853 P.2d 491, <i>reversed on other grounds</i> , 124 Wn.2d 334 (1993) . . . . .	14
<i>Vicwood Meridian Partnership v. Skagit Sand and Gravel</i> , 123 Wn. App. 877, 98 P.3d 1277 (2004) . . . . .	12
<i>Washington State Physicians Insurance Exchange &amp; Assoc. v. Fisons</i> , 122 Wn.2d 299, 858 P.2d 1054 (1993) . . . . .	8
<i>Wiltse v. Albertsons, Inc.</i> , 116 Wn.2d 452, 805 P.2d 793 (1991) . . . . .	14, 15, 19, 20
<i>Young v. Key Pharmaceuticals, Inc.</i> , 112 Wn.2d 216, 770 P.2d 182 (1980) . . . . .	6, 13, 19

Court Rules

CR 56(c) . . . . .	6
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Other Authorities

Restatement (Second) of Torts, § 343 (1965) . . . . .	7
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## I. STATEMENT OF THE CASE

### A. Smith's Fall.

This matter arises out of an incident in which Plaintiff Barbara Smith tripped and fell in the entrance area of an Albertson's store when she dragged her trailing foot into the edge of a carpeted mat upon which she was already standing. (CP 46-56) The incident was caught on store security video. (*Id.*) The material facts are not in dispute.

The incident occurred on March 18, 2012, at 10:03 a.m. at an Albertson's store only four blocks from Smith's home. (CP 34, 51) It was raining outside. (CP 35) Consequently, the store had commercial, rubber-backed, carpeted mats at the store entrance as a precaution to protect against moisture being tracked into the store. (CP 46-56, 57-58) The store also had the same kind of mat in front of a cut-flower display in the store's entrance area as a precaution against customers dripping water on the floor when obtaining cut flowers from the display. (CP 58) These are the same type of commercial mat used in stores and businesses throughout the region. (CP 57-58) These mats do an excellent job of keeping the floors safe in areas where moisture can occur. (CP 58)

Having shopped there for more than twelve years, Smith was familiar with the store. (CP 34) On March 18, 2012, Smith entered the store, walked across the carpeted mats at the door and then tripped on the mat in front of the cut flower display. CP 46-56, 40-43) Smith testified that her walking ability was "good" and that she has no idea why she fell. (CP 37-38) She did not look at the mat before her fall and has no knowledge of what condition it was in before her incident. (CP 38-39, 44)

The store security video shows that, before Smith's incident, the mat was positioned normally. (CP 46-51) It was not folded, creased, bunched up or in any other hazardous condition. (CP 46-56, 59)

The video shows that Smith stepped onto the mat with her leading (left) foot without any problem. (CP 51-52) It shows that Smith then successfully shifted her weight onto her leading foot (which was on the mat) without any problem (CP 51-52). The video shows that Smith then failed to lift up her trailing (right) foot as she began to bring it forward, and instead dragged her trailing foot into the edge of the mat, causing it to bunch up and Smith to fall. (CP 52-56) When she reviewed the frame prints from the video in her deposition,

Smith agreed with these facts. (CP 40-43) Smith has no knowledge that the mat was in any kind of hazardous condition. (CP 44)

The subject Albertson's store does approximately 14,000 transactions per week (728,000 per year), which does not count persons who come into the store without making a purchase such as children or other persons accompanying others, employees and vendors. (CP 58) Since there is only one public entrance to this store, all of these customers and other persons walk through the entrance area in issue every week, week after week, year after year. (CP 58) To the store manager's knowledge, there have been no instances of customers, employees or others tripping over the store's carpeted mats other than Smith. (CP 58)

There is no evidence that the mat was in a hazardous condition before Smith dragged her foot into it and caused it to bunch up. There is no evidence that Albertson's knew of a hazardous condition of the mat before Smith's incident. The superior court granted summary judgment and dismissed Smith's claim. (CP 168-69)

**B. Smith's Investigator/Consultant.**

In response to Albertson's motion for summary judgment, Smith filed a declaration of Tom Baird, who bills himself as an investigator and consultant in personal injury/wrongful death matters.

(CP 82) Baird's education consists of a bachelor's degree in sociology. (CP 91) His experience before starting a business as a consultant and investigator for plaintiff's personal injury lawyers was in various construction jobs intermixed with brief ownership of a couple of restaurants and a home decorating business. (CP 88-89) Baird has no training or experience in the grocery industry, no training or experience in the operation of large retail stores, and no training or experience with respect to design or construction of commercial mats. (CP 88-89)

Despite billing himself as an investigator, Baird never visited the subject Albertson's store and never inspected, measured or weighed the carpeted mat into which Smith dragged her foot. (CP 83) He merely read Albertson's summary judgment motion and pleadings, tried to interpret them (which is the court's function), and offered supposition/speculation about facts and argument including: speculation that the subject commercial mat was different in nature than the two other nearby mats; speculation that the subject mat was "flimsy"; speculation that Smith was "distracted"; speculation regarding Albertson's expectations; argumentative legal conclusions regarding whether Smith's incident was foreseeable and whether there is a law requiring the mat to be secured to the floor, etc. (CP 83-86)

Smith did not disclose Baird or the substance of his opinions as required by the court's case schedule order and discovery rules. Albertson's requested disclosure of expert opinions in an interrogatory propounded in April 2014, but Smith never disclosed Baird or his opinions in response to Albertson's interrogatory. (CP 143, 146, 148)

The superior court issued a case schedule at the outset of the case which required Smith to disclose primary witnesses, experts and their opinions no later than January 12, 2015 (CP 144, 172), but Smith did not disclose any opinions to be offered by Baird as required by this order. (CP 144, 162)

Albertson's objected to the inadmissible nature of Baird's opinions. (CP 134-36)

**C. Allegation of Damages.**

Without citation to the record, Smith's brief asserts that Smith incurred a large amount of medical expenses as a result of the subject incident. (Brief of Appellant, p. 4) There is no evidence in the record that Smith incurred any medical expenses as a result of the subject incident. This allegation is also irrelevant to the issues on appeal, *i.e.* the hazardous condition and notice elements of Smith's premises liability claim. Smith's allegation of medical expenses is an

apparent attempt to persuade the court to base its decision on sympathy rather than the relevant issues and law.

## II. ARGUMENT

### A. Standard of Review.

The standard of review for an order of summary judgment is *de novo*. *O'Donnell v. Zupan Enterprises, Inc.*, 107 Wn. App. 854, 858, 28 P.3d 799 (2001). Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). A defendant in a civil action is entitled to summary judgment when there is an absence of evidence supporting an element essential to the plaintiff's claim. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 224-26, 770 P.2d 182 (1980). A failure of proof concerning an essential element of the plaintiff's case renders all other facts immaterial. *Young v. Key Pharmaceuticals*, 112 Wn.2d at 225. The primary purpose of the summary judgment rule is to secure a just, speedy, and inexpensive determination of every issue by avoiding an unnecessary trial. *Olympic Fish Products v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980).

**B. Failure of Proof on Essential Element #1 - No Evidence that Smith's Trip Was Caused by A Dangerous Condition in the Premises.**

It is a fundamental element of any premises liability claim that the plaintiff was injured as a result of a dangerous condition in the premises. Washington follows the Restatement (Second) of Torts:

**Dangerous Conditions Known to or Discoverable by Possessor**

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.

Restatement (Second) of Torts, § 343 (1965) (underlining added);  
*Tavai v. Walmart Stores, Inc.*, 176 Wn. App. 122, 128, 307 P.3d 811 (2013).

Here, it is undisputed that the carpeted mat was a commercial, rubber-backed, mat of the same type used by stores and businesses throughout the region to protect against moisture and to keep the premises clean and safe. It is undisputed that these mats do an

excellent job of keeping the floors safe in areas where moisture can occur. It is undisputed that before Smith dragged her foot into the edge of the mat, it was positioned normally and was not folded, creased, bunched up or in any other hazardous condition.

Smith implicitly argues that the mat was in a dangerous condition because it was not “secured” to the floor. However, Smith presents no legal requirement that commercial mats of this nature must be secured to the floor. Smith merely argues that the court must accept this and let the jury decide because her “expert” said so in a declaration. Her expert referred to the ADA but cited no provision of the ADA. (CP 85) Her expert referred to the National Institute for Occupational Safety and Health, which is not a legislative body, and cited nothing from this organization. (CP 84)

Smith’s expert cannot testify to what the law is. *Washington State Physicians Insurance Exchange & Assoc. v. Fisons*, 122 Wn.2d 299, 344, 858 P.2d 1054 (1993) (no witness, whether lay or expert, is permitted to express an opinion on a question of law); *Hyatt v. Sellen Construction*, 40 Wn. App. 893, 898-99, 700 P.2d 1164 (1985) (determination of the applicable law is within the province of the trial judge, not that of an expert witness; expert opinions regarding safety laws were improper and were properly excluded).

Moreover, Smith presented no evidence that the fact the mat was not attached to the floor created any problem for persons walking on the mats. More than 14,000 people *per week* (more than 728,000 per year) enter and exit the store where the mats are located. There is no evidence of any customer, employee or other person tripping over any mat in the entrance, other than Smith, due to the fact that the mats were not attached to the floor. Placing a commercial mat flat on a commercial floor in the manner in which the mat was intended to be used does not constitute a dangerous condition or present an unreasonable risk of harm.

Smith also argues that the mat was “flimsy” and “dangerous” – again based solely on the speculative and conclusory declaration of her “expert” who has never seen the mat. An expert is not permitted to reach an opinion by drawing inferences from facts not in evidence or by assuming facts conflicting with the evidence. *Davidson v. Metropolitan Seattle*, 43 Wn. App. 569, 575, 719 P.2d 569 (1986) (trial court abused discretion and committed prejudicial error in admitting expert testimony where expert’s opinion lacked a factual basis); *Safeco Ins. Co. v. McGrath*, 63 Wn. App. 170, 177, 817 P.2d 861 (1992) (it is well established that conclusory or speculative expert opinions lacking an adequate foundation will not be admitted); *State*

*v. Warness*, 77 Wn. App. 636, 643, 893 P.2d 665 (1995) (speculative expert testimony is not admissible).

Smith cites *Lamon v. McDonnell Douglas Corporation*, 91 Wn.2d 345, 588 P.2d 1346 (1979), which is inapt. *Lamon* was a products liability case relating to design of an emergency escape hatch in an airplane. The escape hatch was located in the aisle of an airplane where persons on the plane walk and was not attached to the aircraft by hinges or otherwise (creating the possibility that when opened, there could simply be an unexpected hole in the path where persons walk). 91 Wn.2d at 347-48. The hatch was left open and the plaintiff, who was backing down the aisle, fell into it. *Id.* at 348. In response to a motion for summary judgment, the plaintiff submitted an affidavit from an expert engineer who had examined the hatch on the model of airplane involved in the incident. *Id.* The engineer's affidavit pointed out the fact that the unhinged, unattached design of the hatch meant that when opened, the hatch cover comes loose (*i.e.* separated from the hole it covers) and has to be manually fitted back into place or there would be an open hole which would be hazardous to persons walking in the aisle. *Id.* The engineer pointed out that this design also created the possibility that if the hatch door were not properly put back into place, it could act as a trap door endangering

anybody stepping on it. *Id.* at 348-49. The engineer also inspected the escape hatch design on a different manufacturer's airplane and presented facts that the different manufacturer's design connected the hatch door to the hatch with hinges and was also equipped with a spring device which automatically closes and keeps the hatch cover closed when not in use. *Id.* at 349.

Unlike the engineer's declaration in *Lamon*, Smith's "expert" did not inspect the object in issue, did not set forth any facts he observed about the object's design, did not inspect an alternative design, did not set forth any facts observed in an alternative, safer design and failed to set forth any facts to support his conclusory statement that there was a hazard relating to the mat.

Smith presented no evidence of the subject mat's construction from anyone who has ever seen, inspected, measured or weighed the mat. Smith presented no facts indicating that the mat's construction ever created a problem for persons walking on them. Speculation and conjecture are not sufficient to raise a genuine issue of material fact. *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986); *Grimwood v. University of Puget Sound, Inc.*, 110 Wn.2d 355, 360, 753 P.2d 517 (1988) (conclusory statements of fact in a declaration will not suffice to defeat a summary

judgment motion). *See also Davidson v. Metropolitan Seattle*, 43 Wn. App. 569 at 575 (trial court abused discretion and committed prejudicial error in admitting expert testimony where expert's opinion lacked a factual basis); *Safeco Ins. Co. v. McGrath*, 63 Wn. App. at 177 (it is well established that conclusory or speculative expert opinions lacking an adequate foundation will not be admitted); *State v. Warness*, 77 Wn. App. at 643 (speculative expert testimony is not admissible); *Vicwood Meridian Partnership v. Skagit Sand and Gravel*, 123 Wn. App. 877, 882, 98 P.3d 1277 (2004) ("conclusory opinions are not material facts admissible in evidence showing there is a genuine issue for trial."); *Rothweiler v. Clark County*, 108 Wn. App. 91, 100, 29 P.3d 758 (2001) ("In the context of a summary judgment motion, an expert must support his opinion with specific facts, and a court will disregard expert opinions where the factual basis for the opinion is found to be inadequate."); *Doty-Fielding v. Town of South Prairie*, 143 Wn. App. 559, 566, 178 P.3d 1054, *rev. denied*, 165 Wn.2d 1004 (2008) ("[S]tatements of ultimate facts, conclusions of fact, or conclusory statements of fact are insufficient to overcome a summary judgment motion.")

There is no evidence that Albertson's mat was in a dangerous condition. There was a failure of proof on this essential element of Smith's premises liability claim. A failure of proof concerning an essential element of the plaintiff's case renders all other facts immaterial. *Young v. Key Pharmaceuticals*, 112 Wn.2d at 225. The superior court correctly determined that Albertson's is entitled to judgment as a matter of law based on Smith's failure to prove that her fall was caused by a dangerous condition of the premises.

**C. Failure of Proof on Essential Element #2 - No Evidence that Albertson's Caused or Had Knowledge that A Dangerous Condition Existed in the Premises.**

Another essential element of Smith's premises liability claim is that the defendant caused or had knowledge that a dangerous condition existed.

Landowners are not insurers of a business invitee's safety. *Hutchins v. 1001 Fourth Ave. Associates*, 116 Wn.2d 217, 221, 802 P.2d 1360 (1991). It is a basic principle of negligence that the duty to use due care is predicated upon the knowledge of a danger:

As a general rule, a possessor of land is not liable to an invitee unless the possessor of land knew or should have known that the condition presented an unreasonable risk of harm, could not reasonably expect its invitees to realize

the risk themselves, and failed to make the condition reasonably safe or warn the invitee.

*Trueax v. Ernst Home Center, Inc.*, 70 Wn. App. 381, 387, 853 P.2d 491, *reversed on other grounds*, 124 Wn.2d 334 (1993). Stated in another fashion, a landowner has no duty to protect invitees from dangerous conditions of which the landowner has no knowledge. *Sorenson v. Uddenberg*, 65 Wn. App. 474, 478, 828 P.2d 650 (1992); *Wiltse v. Albertsons, Inc.*, 116 Wn.2d 452, 453, 805 P.2d 793 (1991); *Tavai v. Walmart Stores, Inc.*, 176 Wn. App. at 128 (“In general, the duty to exercise reasonable care to protect invitees from harm is triggered upon the invitee’s showing that the premises owner had actual or constructive notice of the hazardous condition.”) (citing *O’Donnell v Zupan Enterprises, Inc.*, 107 Wn. App. at 858).

In *Ingersoll v. Debartolo, Inc.*, 123 Wn.2d 649, 869 P.2d 1014 (1994), the Washington Supreme Court re-emphasized the principle that for a landowner to be liable to a customer for an unsafe condition of the land, the owner must have actual or constructive notice of the unsafe condition:

[It is a] basic and well established principle that for a possessor of land to be liable to a business invitee for an unsafe condition of the land, the possessor must have actual or constructive notice of the

unsafe condition. Constructive notice arises where the condition “has existed for such time as would have afforded [the proprietor] sufficient opportunity, in the exercise of ordinary care, to have made a proper inspection of the premises and to have removed the danger.” The plaintiff must establish that the Defendant had, or should have had, knowledge of the dangerous condition in time to remedy the situation before the injury or to warn the plaintiff of the danger.

*Ingersoll*, 123 Wn.2d at 652 (internal citations omitted).

The plaintiff has the burden of proving that the defendant had actual or constructive knowledge of an unsafe condition. *Wiltse v. Albertson's Inc.*, 116 Wn.2d at 459; *Coleman v. Ernst Home Center*, 70 Wn. App. 213, 217, 853 P.2d 473 (1993); *Pimentel v. Roundup Co.*, 100 Wn.2d 39, 49, 666 P.2d 888 (1983). The notice requirement insures liability attaches only to owners once they have become or should have become aware of a dangerous situation. *Iwai v. State of Washington*, 129 Wn.2d 84, 97, 915 P.2d 1089 (1996); *Wiltse*, 116 Wn.2d at 453-54.

Smith correctly points out that the knowledge element can be established by proof that the defendant itself created a dangerous condition that caused the plaintiff's injury. *Pimentel v. Roundup Co.*, 100 Wn.2d at 49; *Wiltse v. Albertson's Inc.*, 116 Wn.2d at 458.

Smith's problem is that she presented no evidence that a dangerous condition existed, much less that Albertson's created or had knowledge of such a condition. As is plainly visible from the store security video, the mat was flat on the floor, not bunched up, folded or in some other hazardous condition before Smith's accident. The thousands of other daily visitors to the store had no problem walking on the mats.

Smith essentially asks the court to ignore what members of the court can see with their own eyes from the video of the incident and to infer that the mat was in a dangerous condition solely from the fact that Smith fell. However, it has long been the law of this state that a fall, in and of itself, does not tend to prove that a floor is unreasonably dangerous:

Walking, although it becomes automatic by long practice and use, is, after all, a highly complicated process. The body balance is maintained by the coordination of many muscles, and their operation is controlled by an intricate system of motor nerves, the failure of any of which for a split second, on account of advancing age or for some other reason, may cause a fall. It is common knowledge that people fall on the best of sidewalks or floors. A fall, therefore, does not, of itself, tend to prove that a surface over which one is walking is dangerously unfit for the purpose.

*Knopp v. Kemp & Hebert*, 193 Wash. 160, 164-65, 74 P.2d 924 (1938). See also *Brant v. Market Basket Stores, Inc.*, 72 Wn.2d 446, 448, 426 P.2d 824 (1967) (“It is well established in the decisional law of this state that something more than a slip and a fall is required to establish either the existence of a dangerous condition, or the knowledge that a dangerous condition exists on the part of the owner or the person in control of the floor.”) (citations omitted).

Smith cites cases where, unlike in the present case, there was evidence that the defendant caused a dangerous condition which caused injury. *Batten v. South Seattle Water Co.*, 65 Wn.2d 547, 548-49, 398 P.2d 719 (1965) (the defendant installed a water meter box with a lid that was too small and could move out of place when stepped on in a path used by pedestrians, the lid moved and tilted up when the plaintiff stepped on it, causing the plaintiff’s leg to fall into the meter box); *Falconer v. Safeway Stores, Inc.*, 49 Wn.2d 478, 479, 303 P.2d 294 (1956) (the plaintiff slipped and fell on a piece of suet (animal fat)<sup>1</sup> on a sidewalk at the back of a grocery store which the defendant store used as a loading area, the defendant had just moved and loaded uncovered cans of meat trimmings and fat with a

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<sup>1</sup> Unlike commercial rubber-backed, carpeted mats, animal fat is a slippery substance which does not belong on the floor.

dolly and the loaded truck was still present when the plaintiff slipped and fell on the suet); *Sorenson v. Keith Uddenberg, Inc.*, 65 Wn. App. at 476, 479-80 (icy condition where customer fell was not the result of natural accumulation; the defendant caused the condition by plowing snow into piles on a slope where water could accumulate and re-freeze where customers park; store manager's testimony confirmed that this was how the icy patch occurred).

Here, in contrast, Albertson's merely used a commercial carpeted mat in the manner and for the purpose it was intended to be used, keeping it flat on the floor as persons would expect. Smith has presented no evidence that Albertson's did anything to cause the mat to be in a dangerous condition. The video of the incident plainly shows that the mat was positioned normally and without any folds, bunches or other dangerous condition. Smith's argument that Albertson's caused the mat to be in a dangerous condition is conclusory and unsupported by evidence.

In sum, Smith presented no evidence which could establish the essential element of proof that Albertson's caused or had notice of a hazardous condition before the incident occurred.<sup>2</sup> The superior court

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<sup>2</sup> Smith does not argue that Albertson's had actual or constructive notice. "Constructive notice arises where the condition

correctly determined that Albertson's is entitled to judgment as a matter of law for the additional reason that the notice element cannot be proven.

**D. All Other Facts Are Immaterial.**

Smith argues that "negligence is a question for the jury." However, since there is a failure of proof on two essential elements of Smith's claim, all other facts – including the reasonableness of the Albertson's conduct – are immaterial. *Young v. Key Pharmaceuticals*, 112 Wn.2d at 225.

Washington courts routinely dismiss premises liability claims against stores where there is no evidence that the store caused or had notice of conditions that plaintiffs have claimed were unsafe. *See, e.g. Tavai v. Walmart Stores, Inc.*, 176 Wn. App. 122 (store entitled to summary judgment where no evidence that store caused

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'has existed for such time as would have afforded [the proprietor] sufficient opportunity, in the exercise of ordinary care, to have made a proper inspection of the premises and to have removed the danger.'" *Ingersoll v. Debartolo, Inc.*, 123 Wn.2d at 652 (quoting *Smith v. Manning's, Inc.*, 13 Wn.2d 573, 580, 126 P.2d 44 (1942)). "The constructive notice rule requires the plaintiff establish how long the specific dangerous condition existed in order to show that the proprietor should have noticed it." *Wiltse v. Albertson's, Inc.*, 116 Wn.2d at 458 (emphasis added). Here, there is no evidence that a dangerous condition existed for any period of time before Smith's accident.

or had notice of water on floor 15 feet from a check-out counter); *Charlton v. Toys R Us*, 158 Wn. App. 905, 246 P.3d 199 (2010) (store entitled to summary judgment where there was no evidence that store caused or had notice of water tracked in beyond mats at store's entrance); *Schmidt v. Coogan*, 135 Wn. App. 605, 145 P.3d 1216 (2006), *rev'd on other grounds*, 162 Wn.2d 488, 173 P.3d 273 (2007) (attorney malpractice lawsuit following summary judgment in underlying action based on lack of evidence that store had notice of spill); *Arment v. Kmart Corp.*, 79 Wn. App. 694, 700, 902 P.2d 1254 (1995) (store entitled to summary judgment where there was no evidence that store had notice of soda spill); *Carlyle v. Safeway Stores, Inc.*, 78 Wn. App. 272, 896 P.2d 750 (1995) (store entitled to summary judgment where there was no evidence that store had notice of shampoo spill); *Ingersoll v. Debartolo, Inc.*, 123 Wn.2d 649 (mall owner entitled to summary judgment where there was no evidence that mall owner caused or had notice of ice cream-like smear on floor); *Wiltse v. Albertsons, Inc.*, 116 Wn.2d 452 (store entitled to summary judgment where there was no evidence that store caused or had notice of water on floor). *See also Brant v. Market Basket Stores*, 72 Wn.2d at 448-50 (court dismissed claim against store as a matter of law at the conclusion of the plaintiff's case

because there was no evidence the store had notice of water tracked inside entrance).

**E. Superior Court's Oral Statements During Summary Judgment Hearing Are Immaterial.**

Based on a comment made by the judge during oral argument, Smith argues that the superior court erroneously "weighed" her expert's declaration. The judge used the term "weight" when commenting about the declaration of Smith's "expert" and Albertson's objections to the admissibility of the opinions in this declaration.

Inadmissible evidence is irrelevant in summary judgment proceedings. *Lynn v. Labor Ready, Inc.*, 136 Wn. App. 295, 306, 151 P.3d 201 (2006). It is apparent from the context that the superior court used the term "weight" when commenting about the admissibility of Baird's opinions, not his credibility. *Cf. Rothweiler v. Clark County, supra*, 108 Wn. App. at 100 ("In the context of a summary judgment motion, an expert must support his opinion with specific facts, and a court will disregard expert opinions where the factual basis for the opinion is found to be inadequate.") The superior court judge correctly recognized that Baird's opinions should be disregarded because his declaration lacked a factual basis.

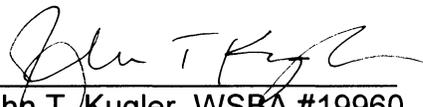
Moreover, the superior court's comments and reasons for granting a motion for summary judgment are immaterial because this court reviews summary judgment orders *de novo*. There was a failure of proof on two elements of Smith's premises liability claim and summary judgment was proper.

### III. CONCLUSION

There is no genuine issue of material fact. There is no evidence to prove the essential element that Smith's fall was caused by a dangerous condition of the premises. In addition, there is no evidence to prove the essential element that Albertson's caused a dangerous condition in its premises or had knowledge that a dangerous condition existed. Summary judgment was proper and should be affirmed.

Dated this 6 day of August, 2015.

TURNER KUGLER LAW, PLLC

By:   
John T. Kugler, WSBA #19960  
Attorney for Defendant/Respondent  
Albertson's LLC

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3  
4 IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
5 DIVISION I

6 BARBARA SMITH,  
7 Plaintiff/Appellant,

No. 73228-5-I

DECLARATION OF SERVICE

8 vs.

9 ALBERTSON'S LLC,  
10 Defendant/Respondent,

11 and

12 and unknown JOHN DOES,  
13 Defendants.

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COURT OF APPEALS DIV I  
STATE OF WASHINGTON

14 On August 6, 2015, I served a copy of the following document:

- 15 1) Brief of Respondent

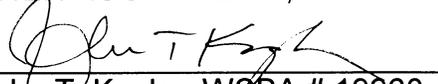
16 by depositing a copy in first class U.S. Mail, postage pre-paid, to the following attorneys:

17 S. Christine Kim  
18 Erica B. Buckley  
19 Buckley & Associates, PS, Inc.  
675 South Lane St., Suite 300  
Seattle, WA 98104

20 I declare under penalty of perjury under the laws of the State of Washington that  
21 the foregoing is true and correct.

22 Dated: August 6, 2015.

23 TURNER KUGLER LAW, PLLC

24 By:   
John T. Kugler, WSBA # 19960  
25 Attorney for Respondent Albertson's LLC

