STATE OF MICHIGAN

COURT OF APPEALS

SARAH LAM,

Plaintiff-Appellant,

v

MEIJER, INC.,

Defendant-Appellee

and

JOHN DOE,

Defendant.

UNPUBLISHED
December 19, 2025
9:19 AM

No. 372340
Wexford Circuit Court
LC No. 2023-030844-NO

Before: O'BRIEN, P.J., and BOONSTRA and WALLACE, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's decision to grant summary disposition in favor of defendants, Meijer, Inc. and John Doe, on plaintiff's claims of negligence and premises liability. We affirm.

I. BACKGROUND

This appeal arises out of a slip and fall that occurred in a bottle-return area on Meijer's premises. There are no factual disputes surrounding the circumstances of plaintiff's fall because a surveillance video captured the events leading up to and including the fall. The video depicts Meijer's bottle-return area on the date of plaintiff's fall—April 21, 2021. The entrance to the area is on the bottom right of the screen, and there are six bottle-return machines on the wall across from the entrance, with two more on the far-side wall. Near the entrance is a tall yellow caution sign. Defendant submitted a picture of the showing that the sign said, "Caution Wet Floor," with a symbol depicting a person slipping.

The video shows that at 2:35 p.m.[1] on April 21, 2021, a Meijer employee grabs a mop and started mopping the floor of the bottle-return area, focusing on one particular area where a puddle of liquid had gathered. Over the next 15 minutes, customers continue returning bottles at the machines at on the wall opposite the door, and two puddles of liquid can be seen forming. The puddles started near the bottle-return machines and flowed towards the middle of the bottle-return area. By 2:50 p.m., two puddles of liquid had clearly formed in the middle of the bottle-return area, with streaks showing that they began immediately in front of the bottle-return machines on the wall opposite the bottle-return area's entrance.

Plaintiff can be seen entering the bottle-return area at 2:53 p.m. Over the next six minutes, plaintiff stands in front of a bottle-return machine on the wall opposite the bottle-return area's entrance, returning bottles and cans. At 2:59 p.m., an employee—later identified as Preston Bruner—can be seen coming out of a door of an employee area at the far end of the bottle-return area, grabbing a cart, and walking towards the bottle-return area's entrance at the bottom right of the screen. Bruner explained at his deposition that he grabbed a cart to put it outside. The video shows that, as Bruner was walking out of the bottle-return area, he turned his head and looked at the ground near plaintiff's feet where the two puddles had formed. Bruner explained that he indeed saw the puddles at plaintiff's feet and "was going to take care of [those puddles] after [he] got that cart outside."

The video shows that, seconds after Bruner walked out of the bottle-return area, plaintiff—who by this time had finished her returns—grabbed a bag of trash out of her cart and began walking through one of the puddles. Plaintiff explained at her deposition that she was walking her trash to a nearby garbage bin. As shown in the video, though, as soon as plaintiff stepped in the puddle, she fell to her knee, then lay on the ground, writhing in pain. Plaintiff was later diagnosed with a broken kneecap.

Plaintiff testified at her deposition that she did not see any liquid on the floor before she fell but saw the puddle afterwards. Plaintiff acknowledged that she saw the caution sign near the entrance when she entered, and said that she interpreted the sign to mean "be cautious" and "to walk slowly" and "pay attention," which she claims she did but still did not see any puddles. Plaintiff also said that it was "common sense" that "you need to be careful" in a bottle-return area because "there could be liquid" on the ground.

Plaintiff filed her complaint on April 28, 2023, alleging counts of premises liability and negligence.[2] Following discovery, defendants moved for summary disposition, arguing that plaintiff's negligence claim must fail because her claim sounded solely in premises liability, and that her premises liability claim must fail because there was no question of fact that Meijer did not breach its duty to plaintiff as an invitee on Meijer's premises because Meijer placed the caution

[1] There is a timestamp in the bottom left of the video, and the times stated in this opinion correspond to the timestamps shown in the video.

[2] Plaintiff also alleged a claim of res ipsa loquitor, but the trial court dismissed that claim, and plaintiff does not contest that dismissal on appeal.

sign at the entrance of the bottle-return area, warning plaintiff of the hazardous condition on Meijer's premises—the wet floor—that caused plaintiff's injury.

The trial court agreed with defendants that plaintiff's negligence claim was not distinct from her premises liability claim, and eventually agreed with defendants that, on the undisputed facts of this case, plaintiff's claim sounding in premises liability must fail because there was no question of fact that Meijer did not breach its duty to plaintiff, as it warned plaintiff about the wet floor that caused her injury.

This appeal followed.

II. STANDARD OF REVIEW

The trial court's decision to grant or deny summary disposition is reviewed de novo. *Neal v Wilkes*, 470 Mich 661, 664; 685 NW2d 648 (2004). Defendants moved for summary disposition under MCR 2.116(C)(8) and (10). A motion brought under MCR 2.116(C)(8) "tests the legal sufficiency" of a complaint. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). A (C)(8) motion considers the pleadings alone, and when a court reviews such a motion, it must accept all well-pleaded allegations as true. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). A motion filed under MCR 2.116(C)(8) "should be granted if no factual development could possibly justify recovery." *Feyz*, 475 Mich at 672. "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A (C)(10) motion is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). "A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue on which reasonable minds could differ." *Campbell v Kovich*, 273 Mich App 227, 229; 731 NW2d 112 (2006). When reviewing a motion brought under MCR 2.116(C)(10), a court is to consider "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion." *Maiden*, 461 Mich at 119-120.

III. PREMISES LIABILITY

Plaintiff first contends that the trial court erred by dismissing her premises liability claim because, under the undisputed facts, a reasonable juror could find defendants liable for such a claim.

Premises liability is a species of negligence, so the elements for a premises liability claim are the same as the elements of an ordinary negligence claim: the plaintiff must prove (1) that the defendant owed the plaintiff a duty, (2) that the defendant breached that duty, and (3) that the defendant's breach of its duty caused injury to the plaintiff. See *Estate of Trueblood v P&G Apartments, LLC*, 327 Mich App 275, 285; 933 NW2d 732 (2019). The duty in a premises liability action arises from the special relationship that exists between owners and occupiers of land and visitors on that land. *Bailey v Schaaf*, 494 Mich 595, 604; 835 NW2d 413 (2013). The contours of this duty depend on the visitor's status on the land. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). A business customer like plaintiff here is considered an invitee. See *Hoffner v Lanctoe*, 492 Mich 450, 460 n 8; 821 NW2d 88 (2012). A premises

possessor owes an invitee a duty to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Estate of Trueblood*, 327 Mich App at 285. A land possessor breaches this duty when the land possessor "knows or should know of a dangerous condition on the premises of which the invitee is unaware and fails to fix the defect, guard against the defect, or warn the invitee of the defect." *Hoffner*, 492 Mich at 460.

Defendants argued, and the trial court agreed, that there was no genuine issue of material fact that Meijer did not breach its duty to plaintiff as an invitee because Meijer knew about the dangerous condition on its premises—the slippery floor in the bottle-return area—and warned plaintiff of this defect by placing a sign at the entrance of the bottle-return area that said, "Caution Wet Floor" with a symbol showing someone slipping. This sign plainly alerted anyone entering the bottle-return area that the area's floor was wet and posed a slipping hazard. Contrary to plaintiff's assertion, the sign at issue was not "a generic, general warning sign." Rather, it identified a particular hazard (the wet floor) and warned of the risk posed of this hazard (slipping).

Plaintiff spends a good bit of her brief explaining the unremarkable proposition that a jury-triable issue exists if, despite the underlying facts being undisputed, reasonable minds could differ as to the legal effect of those facts. Yet, plaintiff fails to adequately explain why Meijer's placement of the "Caution Wet Floor" sign at the bottle-return area's entrance did not have the legal effect of warning plaintiff about the dangerous condition on Meijer's land that caused plaintiff's injury—the wet floor and the slipping hazard that it posed. Indeed, plaintiff confirmed during her deposition that she saw the warning sign at the bottle-return entrance, understood its meaning, and thought it was "common sense" that there could be liquid on the ground in the bottle-return area.

Plaintiff insists that there is a question of fact whether defendants are liable to plaintiff because Bruner walked by plaintiff and did not warn her of the nearby puddle or offer to her help walk away from the puddle. But plaintiff does not explain how the fact that defendants could have theoretically done more to warn plaintiff about the wet floor creates a jury-triable issue. The caution sign at the bottle-return area's entrance already warned plaintiff about that dangerous condition, and a plaintiff can almost always argue that a land possessor could do more to warn about a hazardous condition on the land, which is presumably why that is generally not the relevant inquiry. "Perfection is neither practicable nor required by the law," and courts cannot impose a requirement on a landowner "to make ordinary [conditions] foolproof." *Hoffner*, 492 Mich at 460 (quotation marks and citation omitted; second alteration in original). Wet floors are a common occurrence, especially in bottle-return areas, and the caution sign at the bottle-return area's entrance warned plaintiff that the bottle-return area's floor was wet and posed a fall risk. By placing this sign at the entrance of its bottle-return area, Meijer satisfied its duty to warn plaintiff, an invitee, of the known dangerous condition on Meijer's premises. See *id*. The trial court therefore properly dismissed plaintiff's claim sounding in premises liability.

IV. NEGLIGENCE

Plaintiff next contends that the trial court erred by dismissing her negligence claim.

The principle difference between a claim sounding in premises liability and one sounding in negligence is that a defendant's duty in a premises liability action arises out of his ownership or

possession of the land, *Jahnke v Allen*, 308 Mich App 472, 475; 865 NW2d 49 (2014), whereas a defendant's duty in a negligence action generally arises "from a statute, a contractual relationship, or by operation of the common law," *Hill v Sears, Roebuck & Co*, 492 Mich 651, 660-661; 822 NW2d 190 (2012). If supported by the facts of the case, a plaintiff can pursue liability under both a theory of premises liability and a theory of ordinary negligence. *Laier v Kitchen*, 266 Mich App 482, 493; 702 NW2d 199 (2005) (opinion by NEFF, J.). For instance, a claim for ordinary negligence based on the [d]efendant's *conduct*" can form a "basis of liability, independent of premises liability." *Id*. at 493-494.

Plaintiff argues that defendants are liable in negligence because Bruner's conduct was negligent in two ways—(1) Bruner left plaintiff standing in the puddle despite seeing the puddle and (2) he placed the caution sign near the door instead of closer to the wet areas of the floor so that customers could more easily navigate their carts into the bottle-return area. Both arguments fail for the simple reason that, assuming these allegations could establish a breach of duty, the duty arises from Meijer's possession of the land. For her first argument, plaintiff frankly admits that the duty that Bruner allegedly breached by leaving plaintiff standing in the puddle was the "duty of reasonable care . . . owed to [Meijer's] customers (invitees)." The placement of the caution sign similarly is only relevant because Meijer had a duty to warn invitees about known dangerous conditions on its land. Plaintiff again admits as much, saying "that Meijer breached a standard of care on how to mitigate the hazard posed by *spills and/or liquids on the floor* and where to place caution signs *in relation to those hazards*." Because both of plaintiff's negligence arguments actually sound in premises liability, the trial court properly dismissed plaintiff's negligence claim.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Mark T. Boonstra

STATE OF MICHIGAN

COURT OF APPEALS

SARAH LAM,

Plaintiff-Appellant,

v

MEIJER, INC.,

Defendant-Appellee,

and

JOHN DOE,

Defendant.

UNPUBLISHED
December 19, 2025
9:19 AM

No. 372340
Wexford Circuit Court
LC No. 2023-030844-NO

Before: O'BRIEN, P.J., and BOONSTRA and WALLACE, JJ.

WALLACE, J. (*concurring in part and dissenting in part*).

I concur with the majority opinion's affirmance of the trial court's grant of summary disposition as to plaintiff's claim of ordinary negligence, because this case sounds in premises liability, not ordinary negligence.

Turning to plaintiff's premises liability claim, the majority finds that defendant's placement of a yellow "caution wet floor" cone near the entrance to its bottle-return room alone permits a finding that defendant did not breach its duty as a matter of law under the facts of this case. Properly viewing the direct and circumstantial evidence in the light most favorable to the non-movant, and likewise making all reasonable inferences in the non-movant's favor, as this Court must when conducting a de novo review of a motion for summary disposition pursuant to MCR 2.116(C)(10), I do not agree with that conclusion. As a result, I respectfully dissent.

The majority opinion relies on statements of premises liability law from *Estate of Trueblood v P&G Apts, LLC*, 327 Mich App 275, 285; 933 NW2d 732 (2019), and *Hoffner v Lanctoe*, 492 Mich 450, 460; 821 NW2d 88 (2012), both of which predate the Michigan Supreme Court's decision in *Kandil-Elsayed v F&E Oil, Inc*, 512 Mich 95; 1 NW3d 44 (2023). *Kandil-Elsayed* eliminated the common law "open and obvious doctrine and any exceptions to it under

the element of duty," and instead found that "the open and obvious nature of a danger—i.e., whether it is 'reasonable to expect that an average person with ordinary intelligence would have discovered it upon casual inspection[]'—is relevant to the defendant's breach and the plaintiff's comparative fault." *Kandil-Elsayed*, 512 Mich at 103-104, 144, 153 (internal citation omitted), quoting *Hoffner*, 492 Mich at 461.

> Because an 'open and obvious' analysis frequently includes an analysis of the plaintiff's own behavior—a failure to see a danger, appreciate a danger, or avoid a danger—situating the doctrine in the breach/comparative-fault analysis will allow the plaintiff's potentially negligent response to an open and obvious danger to reduce their damages, rather than cut off all recovery. [*Kandil-Elsayed*, 512 Mich at 144.]

Kandil-Elsayed additionally overruled the special aspects doctrine for premises liability claims that was the basis for the *Hoffner* decision. It held that, "[r]ather than conduct a narrow analysis of whether an obvious danger is 'effectively unavoidable' or poses an 'unreasonable risk of severe harm,' the fact-finder should consider whether 'the possessor should anticipate the harm despite such . . . obviousness," and further made clear that "whether a land possessor should anticipate harm from an otherwise open and obvious danger is a relevant inquiry under *breach*, not duty." *Kandil-Elsayed*, 512 Mich at 147-148, quoting 2 Restatement Torts, 2d, § 343A, p 218.

Notably, "the question whether the defendant owes an actionable legal duty to the plaintiff is one of law which the court decides,"[1] whereas "the question of breach—whether defendants' conduct in the particular case is below the general standard of care—is a question of fact for the jury." *Kandil-Elsayed*, 512 Mich at 112 (quotation marks and citations omitted). *Kandil-Elsayed* expressly overruled *Lugo v Ameritech Corp, Inc*, 464 Mich 512; 629 NW2d 384 (2001), and returned to decades of precedent predating *Lugo* by "reaffirm[ing] the traditional duty owed to invitees: the 'duty to exercise reasonable care to protect [them] from an unreasonable risk of harm caused by a dangerous condition of the land.' " *Id*. at 143 (second alteration in original), quoting *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988).

Kandil-Elsayed implicitly overruled the holding from *Riddle v McLouth Steel Prods Corp*, 440 Mich 85; 485 NW2d 676 (1992), that there is "no duty to warn of an open and obvious danger." *Riddle*, 440 Mich at 95-100. Again, whether a hazardous condition presents an open and obvious danger is no longer tied to the plaintiff's obligation to demonstrate defendant owed them a duty as a matter of law. Rather, whether a defendant's conduct (including any placement of signage or other warnings or precautions) is a breach of their duty of reasonable care is a factual issue for the jury's determination, unless considering all the evidence (and the reasonable inferences to be

[1] "Duty is a threshold question of law for the court to decide before a case can get to a jury." *Id*. at 133.

drawn therefrom) in the non-movant's favor, no reasonable jury could conclude the defendant breached this general duty.[2]

> [A]s has always been true, a land possessor need only exercise *reasonable* care under the circumstances. As part of the breach inquiry, the fact-finder may consider, among other things, whether the condition was open and obvious and whether, despite its open and obvious nature, the land possessor should have anticipated harm to the invitee. If breach is shown, as well as causation and harm, then the jury should consider the plaintiff's comparative fault and reduce the plaintiff's damages accordingly. A determination of the plaintiff's comparative fault may also require consideration of the open and obvious nature of the hazard and the plaintiff's choice to confront it. [*Kandil-Elsayed*, 512 Mich at 148-149.]

> [I]n practice, the plaintiff's own account of their response to the danger is a key piece of evidence used by courts to determine whether, objectively, a danger was open and obvious. And this makes good sense. An actual person's response to a danger, in most cases, will be relevant to what a reasonable person might perceive about a danger. [*Id*. at 144-145.]

Turning to the facts of the present case, I would find that whether the yellow "caution wet floor" cone near the entrance to the bottle-return room is sufficient to fulfill defendant's duty of reasonable care, in light of the totality of the circumstances presented here, presents a question of fact for the jury's resolution.

The majority opinion contends that the yellow warning cone "plainly alerted anyone entering the bottle-return area that the area's floor was wet and posed a slipping hazard," and "plaintiff fails to adequately explain why [that warning] . . . did not have the legal effect of warning plaintiff about the dangerous condition." I respectfully disagree because, in my opinion, that analysis does not consider the adequacy or sufficiency of that warning or precaution as to the specific hazard that plaintiff encountered in the light most favorable to plaintiff.

> Included in the analysis of whether defendant breached a duty is whether the condition was open and obvious. The consideration of defendant's precautions and the analysis of the open and obvious nature of the condition go hand-in-hand, as the precautions were aimed at increasing the visibility of the step. [*Huss v Albert Chevrolet, Inc*, unpublished opinion per curiam of the Court of Appeals, issued December 9, 2024 (Docket No. 368428), p 6.[3]]

---

[2] MCR 2.116(G)(5); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999); *Downey v Charlevoix Co Bd of Road Comm'rs*, 227 Mich App 621, 626; 576 NW2d 712 (1998); *Bergen v Baker*, 264 Mich App 376, 387; 691 NW2d 770, 777 (2004).

[3] "Although MCR 7.215(C)(1) provides that unpublished opinions are not binding under the rule of stare decisis, a court may nonetheless consider such opinions for their instructive or persuasive

Likewise, here the placement of the yellow "caution wet floor" cone near the entrance to the bottle-return room is aimed at increasing invitees' awareness and thus the visibility of potential wet floor conditions in that room.

In this case, plaintiff offered evidence (and argument based thereon) as to why such warning was inadequate and insufficient to establish that no reasonable jury could conclude the defendant breached its general "duty to exercise reasonable care to protect [invitees] from an unreasonable risk of harm caused by a dangerous condition of the land." *Id*. at 143 (quotation marks and citation omitted). Plaintiff notes that the bottle-return room surveillance video depicts an employee of defendant who previously mopped up fluid that had leaked onto the floor in front of the bottle-return machines approximately 25 minutes before her fall. At his deposition, that employee testified that, just seconds before plaintiff's fall, he walked through the bottle-return room, grabbed a cart to clear it out of the area, noted the accumulation of additional fluid in that area of the floor at that time, and indicated his intent to again take care of it upon returning from removing the cart—thereby acknowledging the dangerous condition that needed to be addressed. Thus, instead of actually remedying the dangerous condition, the employee continued to wheel the cart out of the room. Further, he acknowledged that he provided no warning to plaintiff, who was using a bottle-return machine in the immediate vicinity of that imminent danger, at that time. This employee also testified (and the surveillance video confirms) that the yellow warning cone was not placed in the immediate vicinity of the area in front of the bottle-return machines where the fluid was continuously accumulating and seeping toward the center of the room, but rather, near the entrance of the room, many feet away. This made the yellow warning cone more of a general warning that the floor could be wet in the room rather than a specific warning as to a specific puddle of fluid adjacent to the specific area where plaintiff was standing. The employee claimed the yellow warning cone was placed there to allow people to navigate their carts towards the machine, but that "ideally" he would have the cone placed near to where the floor actually got wet, i.e., such placement would be more adequate and effective in providing invitees with a warning regarding the ongoing hazardous condition.

Plaintiff testified during her deposition that she had not previously seen liquid on the floor in previous use of that store's bottle-return room and likewise did not see any fluid accumulation on the floor the day of her fall, until after she was writhing in pain on the floor. She also noted that the yellow warning cone was not anywhere near the liquid she slipped on and that "it really should have been right on the puddle of liquid." She further testified that she was walking carefully, paying attention, looking where she was going, and being alert while walking in the bottle-return room, but that she nonetheless did not observe the puddle of fluid that she slipped on until after she fell (such that it was not to be seen upon casual inspection).

Plaintiff acknowledged that she saw the caution sign near the entrance when she entered, and testified that she interpreted the sign to mean "to be cautious" and "to walk slowly" and "pay attention." Plaintiff also said that it was "common sense" that "you need to be careful" in a bottle-return area because "there could be liquid" on the ground. She testified that she acted accordingly

---

value." *Kennard v Liberty Mut Ins Co*, 341 Mich App 47, 53 n 2; 988 NW2d 797 (2022) (quotation marks and citation omitted).

and was careful to watch for and avoid stepping into wet spots on the floor, but that she nonetheless did not see any accumulation of fluid on the ground prior to her fall.

The majority opinion asserts that "a plaintiff can almost always argue that a land possessor could do more to warn about a hazardous condition on the land, which is presumably why that is generally not the relevant inquiry." It then quotes the Michigan Supreme Court decision in *Hoffner*, that, again, addressed the special aspects doctrine for premises liability claims that *Kandil-Elsayed* overruled: "Perfection is neither practicable nor required by the law," and courts cannot impose a requirement on a landowner "to make ordinary [conditions] foolproof." *Hoffner*, 492 Mich at 460 (quotation marks and citation omitted) (alteration in original).[4]

But, in light of *Kandil-Elsayed*, the adequacy or sufficiency of any warning or precaution and whether other actions or precautions were readily available and appropriate in light of the dangerous condition presented is evaluated in the totality of the circumstances in determining whether there is an issue of material fact as to the element of breach. *Kandil-Elsayed*, 512 Mich at 148. Further, finding an issue of material fact for the jury's consideration as to the element of breach in light of this evaluation *does not* amount to demanding perfection or that the conditions of the premises be foolproof. Defendants owe this duty to plaintiff regardless of plaintiff's knowledge of the hazard by way of a warning or other precaution (such as the yellow warning

[4] *Hoffner* held that an icy sidewalk at the sole entrance to a gym was not a special aspect of the condition that imposed an obligation on the premises possessor to remedy the condition despite its open and obvious nature, meaning that the possessor did not owe any duty to the plaintiff in that case. The decision in *Kandil-Elsayed* implicitly overruled the *holding* in *Hoffner* (that the special aspects doctrine, as an exception to the open and obvious doctrine, was inapplicable on its facts). Despite that implicit overruling, the Court indicated that it still agreed with *Hoffner* regarding two principles (1) the preexisting common law principle that landowners are not insurers; and (2) that the doctrine of comparative negligence requires both landowners, and those who come upon the land, to exercise reasonable care. More specifically, the Court noted that, "[w]e agree with the notion that 'landowners are not insurers.'" *Kandil El-Sayed*, 512 Mich at 147, quoting *Hoffner*, 492 Mich at 459,. That common law principle was already a fundamental rule in Michigan more than 80 years ago. *Bradley v Burdick Hotel Co*, 306 Mich 600, 604; 11 NW2d 257 (1943) ("While it is a fundamental rule needing no citations that the one in lawful control of premises is not an insurer of the safety of an invitee . . .") The Court also agreed that " 'both the possessors of land and those who come onto it' must 'exercise common sense and prudent judgment when confronting hazards on the land.' " *Kandil El-Sayed*, 512 Mich at 147, quoting *Hoffner*, 492 Mich at 459. The Court went on to hold that "[w]hile the open and obvious nature of a condition, assessed by asking whether 'it is reasonable to expect that an average person with ordinary intelligence would have discovered [the dangerous condition] upon causal [sic: casual] inspection,' remains relevant, it is a question of breach and comparative fault, not duty." *Kandil-Elsayed*, 512 Mich at 153 (second alteration in original), quoting *Hoffner*, 492 Mich at 461. Thus, to the extent that *Hoffner* remains good law, it appears to be limited to recitations of preexisting common law that were not overruled by *Kandil El-Sayed* and the issue of comparative negligence. *Id*. at 147, 153.

cone at the entrance to the bottle-return room) or whether the condition was open and obvious upon casual inspection. Again, the issue of whether defendant breached that duty is a question of fact unless no reasonable jury could conclude that defendant breached that general duty when viewing the evidence in the light most favorable to the nonmovant. Could a reasonable jury find that, when the employee was confronted with the puddle of fluid on the floor, he breached the duty to protect invitees from that dangerous conditions when he failed to clean up the puddle and, instead, continued to remove a cart from the room? Yes, I believe a reasonable jury could certainly make that finding because it is consistent with *Kandil-Elsayed* and the decades of precedent predating *Lugo*, upon which *Kandil Elsayed* relies. Could a reasonable jury find that, when the employee was confronted with the puddle, it was not reasonable for the employee to fail warn plaintiff, or anyone else standing close by, about that specific puddle of liquid in the vicinity? Yes, a reasonable juror could likewise make that finding because it is also consistent with current Michigan law, as described herein. Considering the facts of this case, a jury should determine whether defendant exercised reasonable care to protect plaintiff from "an unreasonable risk of harm caused by a dangerous condition of the land" and, if not, the jury should likewise evaluate what percentage of comparative negligence, if any, should be attributed to plaintiff. *Kandil-Elsayed*, 512 Mich at 143 (quotations marks and citation omitted).

For the foregoing reasons, while I concur with the majority's decision to affirm the grant of summary disposition to defendant as it pertains to plaintiff's claim of ordinary negligence, I respectfully dissent from the majority's decision to affirm the trial court's grant of summary disposition regarding plaintiff's premises liability claim pursuant to MCR 2.116(C)(10) and would instead reverse and remand for further proceedings on that claim.

/s/ Randy J. Wallace