

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Patrick Fant, III, Circuit Court Judge

Appellate Case No. 2025-001344

Civil Case No. 2023-CP-23-01912

Patricia Diehl,

v.

Home Depot Store SW #1127,

Appellant,

Respondent.

APPELLANT'S INITIAL BRIEF

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December 2, 2025

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in granting summary judgment where a genuine issue of material fact existed as to whether the pallet's placement created a hidden and unreasonable hazard.
2. Whether the trial court improperly weighed conflicting evidence in favor of the moving party, rather than construing the facts in the light most favorable to the nonmoving party, as required under Rule 56.

STATEMENT OF CASE

This appeal challenges the Honorable Patrick Fant's Order granting summary judgment where genuine issues of material fact should have been left to a jury. Judge Fant concluded that a pallet haphazardly placed in the middle of a retail aisle posed no unreasonable risk as a matter of law. But the record tells a different story.

A witness described the pallet at issue as extending well beyond the merchandise stacked above it—offset, protruding, and situated differently from other pallets nearby. During his deposition, he recalled that it disrupted the walking path and left more than enough space underneath for a customer's foot to become trapped. Whether this condition was open and obvious or a concealed hazard is not a question for the bench. It is a question for the jury. Yet instead of viewing the evidence in the light most favorable to the nonmoving party, the Court resolved those factual disputes in the moving party's favor. In doing so, the court exceeded the bounds of summary judgment and deprived Appellant of her right to trial.

Procedural History

This case arises out of a trip and fall incident that occurred at Home Depot Store SE #1127 in Greenville, South Carolina, on May 18, 2021. Appellant filed her Summons and Complaint in April 2023, asserting claims for negligence and premises liability based on injuries sustained in the fall.

Respondent denied liability and moved for summary judgment, arguing that (1) the pallet constituted an open and obvious condition; (2) there was no defect or negligent placement; and (3) Appellant could have avoided the hazard. Respondent filed its motion in September 2024, and both parties submitted memoranda in December 2024. A hearing was held on February 27, 2025.

Judge Fant granted summary judgment by written order entered April 17, 2025. Appellant timely filed a Motion to Reconsider, which was denied in May 2025. This appeal followed. The amount in controversy arises from a personal injury claim for damages related to physical injuries and medical expenses.

Factual History

Appellant contends she entered Respondent's store and tripped and fell when her foot got caught by a wooden pallet located in the middle of an aisle. Appellant sustained injuries when she fell face-first onto the ground. Appellant was deposed twice and a witness, Edward Andrew McCue, once.

According to Mr. McCue's testimony, the pallet in question was not centered beneath the merchandise stacked above it. McCue Dep., p. 19, ln 9-10. He described the pallet as protruding outward more than ten inches past the edge of the product. McCue Dep., p. 24, ln 15-17. He further stated that it was sitting differently than other pallets nearby. McCue Dep., p. 28, ln 9-10 ("This [pallet] was sitting off compared to where the rest [were] sitting"). McCue also testified that the placement of the pallet required him to alter his walking path. McCue Dep., p. 28, ln 11-12 ("...you actually had to kind of walk around [the palette]...when we went by it"). He observed Appellant's foot entirely underneath the pallet. McCue Dep., p. 48, ln 4-5. Mr. McCue also provided an affidavit which largely fell in line with his deposition testimony.

Judge Fant's Order neither reflects nor evaluates any of this testimony regarding the pallet's orientation, its protrusion, or its relation to other pallets in the store. Instead, the Order references perceived inconsistencies between McCue's and Appellant's testimony, and expressly finds that McCue's observations are not sufficient to create a genuine issue of material fact.

STANDARD OF REVIEW

An appellate court reviews the grant of summary judgment under the same standard applied by the trial court. *Williams v. Jeffcoat*, 444 S.C. 224, 233 (2024). Summary judgment is only proper when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In an appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising from the evidence in the light most favorable to the non-moving party. *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653 (2008). Summary judgment is not proper when further inquiry into the facts is necessary to clarify the application of the law. *Williams*, 444 S.C. at 234.

ARGUMENT

I. The Trial Court Erred in Granting Summary Judgment Where a Genuine Issue of Material Fact Existed as to Whether the Pallet's Placement Was Open and Obvious.

Summary Judgment is inappropriate when, as here, there are genuine issues of material fact or when further inquiry into the facts is desirable to clarify the application of law. *Middleborough Horizontal Property Regime Council of Co-Owners v. S.p.A.*, 320 S.C. 470, 479 (Ct. App. 1995). To establish a cause of action for negligence, a plaintiff must prove (1) a duty owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damages proximately resulting from the breach. *Shaw v. City of Charleston*, 351 S.C. 32, 40 (Ct. App. 2002).

A store, like Respondent here, owes a duty of care to invitees “to keep the premises reasonable safe and warn of any unreasonable dangers.” *Fountain v. Fred’s, Inc.*, 436 S.C. 40, 50 (2022). An owner generally does not owe a duty to warn of open and obvious conditions on the property. *Larimore v. Carolina Power & Light*, 340 S.C. 438, 446 (Ct. App. 2000). An owner can still be liable for injuries to an invitee, “despite an open and obvious defect” if the owner should anticipate that the invitee will encounter the condition or that the invitee is likely to be distracted. *Fountain* at 52 (an elevated walkway may be open and obvious but owner should have anticipated an invitee would not notice the condition); *Callander v. Charleston Doughnut Corp.*, 305 S.C. 123, 126 (1991)(holding that owner should “have anticipated the harm despite such knowledge or obviousness” of a stool not having a top because, in part, customers customarily backed up to the stools in order to sit down).

Here, the orientation of the pallet is not a trivial detail—it is a material fact that bears directly on the foreseeability and visibility of the hazard. Judge Fant’s Order treats the pallet generically, as though all pallets in a retail store are inherently open and obvious. Mr. McCue described this particular pallet as extending more than ten inches beyond the merchandise stacked on it, positioned askew compared to others nearby, and placed in such a way that it disrupted the walking path. McCue Dep., pp. 24, 28. This testimony supports a reasonable inference that the pallet was not positioned as a typical, expected store fixture. Whether a customer would notice such a condition—and whether a retailer should anticipate someone missing it—cannot be decided as a matter of law on this record. Because the trial court failed to consider these facts when evaluating duty and obviousness, summary judgment was improperly granted.

Although Mr. McCue’s testimony raised a genuine issue of material fact, the trial court concluded otherwise. Without addressing the record evidence—including his deposition and

affidavit—concerning the pallet’s orientation, placement, or deviation from other store fixtures, the court determined simply that the condition was open and obvious as a matter of law. In doing so, the court did not apply the law to undisputed facts. It made factual findings of its own and summary judgment does not permit that. As the next section explains, the trial court improperly weighed conflicting evidence and resolved factual ambiguities in favor of the moving party.

II. The Trial Court Improperly Weighed Conflicting Evidence in Favor of the Moving Party Rather than Construing the Facts in the Light Most Favorable to the Nonmoving Party as Required under Rule 56.

Summary judgment is not license for the trial court to resolve factual disputes or assess credibility of witnesses. Yet that is what occurred here. South Carolina courts have long held that summary judgment is improper when the facts are disputed or when the inferences drawn from facts are contested. *S.C. Prop & Cas. Guar. Ass’n v. Yensen*, 345 S.C. 512, 518 (Ct. App. 2001). The party adverse to a motion for summary judgment must produce evidence setting forth specific facts showing there is a genuine issue for trial. *John Deere Constr. & Forestry Co. v. N. Edisto Logging, Inc.*, 443 S.C. 424 (Ct. App. 2024).

Here, the trial court flattened the factual record—treating the pallet as a standard fixture and assuming its placement posed no unreasonable risk, rather than analyzing the specific testimony that it was misaligned, protruding, and atypical. Judge Fant’s Order makes no mention of the pallet’s orientation, its extension more than ten inches beyond the merchandise, or McCue’s testimony that it sat differently than other pallets in the store and disrupted the walking path. These details are not minor. They inform whether the hazard was open and obvious, as Judge Fant concluded, or hidden and unreasonable. By omitting this evidence entirely from the Order, the court expressly accepted the Respondent’s characterization of the pallet and implicitly rejected

conflicting Appellant’s conflicting evidence. Effectively, Judge Fant stepped into the role of factfinder. This is not permissible at the summary judgment stage.

This omission is more than a gap in analysis, it is legal error. Summary judgment requires the court to view evidence and all reasonable inferences in the light most favorable to the nonmoving party. Instead, by omitting key evidence, Judge Fant’s Order weighed credibility and resolved factual disputes in favor of Respondents. Because the trial court resolved a material dispute by ignoring the testimony that created it, reversal is warranted.

CONCLUSION

The trial court erred in granting summary judgment by failing to evaluate key testimony, drawing inferences in favor of the moving party, and resolving material factual disputes that should have been reserved for the jury. The evidence regarding the pallet’s unusual placement, protrusion, and orientation created genuine issues of material fact that preclude judgment as a matter of law. Because the trial court did not view the evidence in the light most favorable to Appellant—as Rule 56 requires—its decision must be reversed.

Appellant respectfully requests that this Court reverse the trial court’s grant of summary judgment and remand this matter for trial.

Dated: December 2, 2025

Respectfully Submitted,

POULIN | WILLEY

/s/ J. Jacob Nixon

J. Jacob Nixon

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