IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IVAN CORONA, Plaintiff, v. QUIKTRIP CORPORATION, ABC CORP., and JOHN DOES 1-5, Defendants.	Civil Action No. 1:22-cv-00171-VMC

ORDER

Before the Court is the Motion of Quiktrip Corporation ("QT" or "QuikTrip") for Summary Judgment ("Motion," Doc. 16). Plaintiff Ivan Corona filed a Response to the Motion ("Response," Doc. 18). Based on the foregoing briefs and all matters properly of record, the Court will grant the Motion.

Background[1]

Mr. Corona seeks to recover for personal injuries he claims to have suffered in an incident that occurred on May 1, 2020 at QuikTrip Store #721, located at 3249

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[1] QuikTrip included with its Motion a Statement of Material Facts pursuant to Local Rule 56.1 ("SMF," Doc. 16-7). "Local Rule 56.1 demands that the non-movant's response contain individually numbered, concise, non-argumentative responses corresponding to each of the movant's enumerated material facts." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1302 (11th Cir. 2009) (citing LR 56.1(B)(2)(a), NDGa). "Where the party responding to a summary judgment motion does not directly refute a material fact set forth in the movant's Statement of Material Facts with specific citations to evidence, or otherwise fails to state a valid objection to

Buford Highway NE, Atlanta, DeKalb County, Georgia 30329. (SMF ¶ 1). On that date, Mr. Corona was heading to a friend's house and stopped by the subject QuikTrip store to see if his friend needed him to pick up something. (*Id.* ¶ 2). In his Complaint, Mr. Corona alleges the following:

> On May 1, 2020, Plaintiff was an invitee at the Gas Station. While at the Gas Station as an invitee, Plaintiff slipped and fell on a spilled substance on the floor, which had spilled in the presence of Gas Station employees.

(*Id.* ¶ 3). During his deposition, Mr. Corona testified that "it was a slippery floor. It was a slippery substance, a slippery pine solution or whatever on the floor" that caused his fall. (*Id.* ¶ 4).

At 8:06:50 p.m., store video captures QT employee, part-time clerk Aaliyah Grier, pushing out a large, yellow rolling mop bucket with a mop inside down the soda fountain/Freezoni aisle. (*Id.* ¶ 5). A wet floor signed was also placed at the top of the soda fountain/Freezoni aisle prior to Grier mopping:

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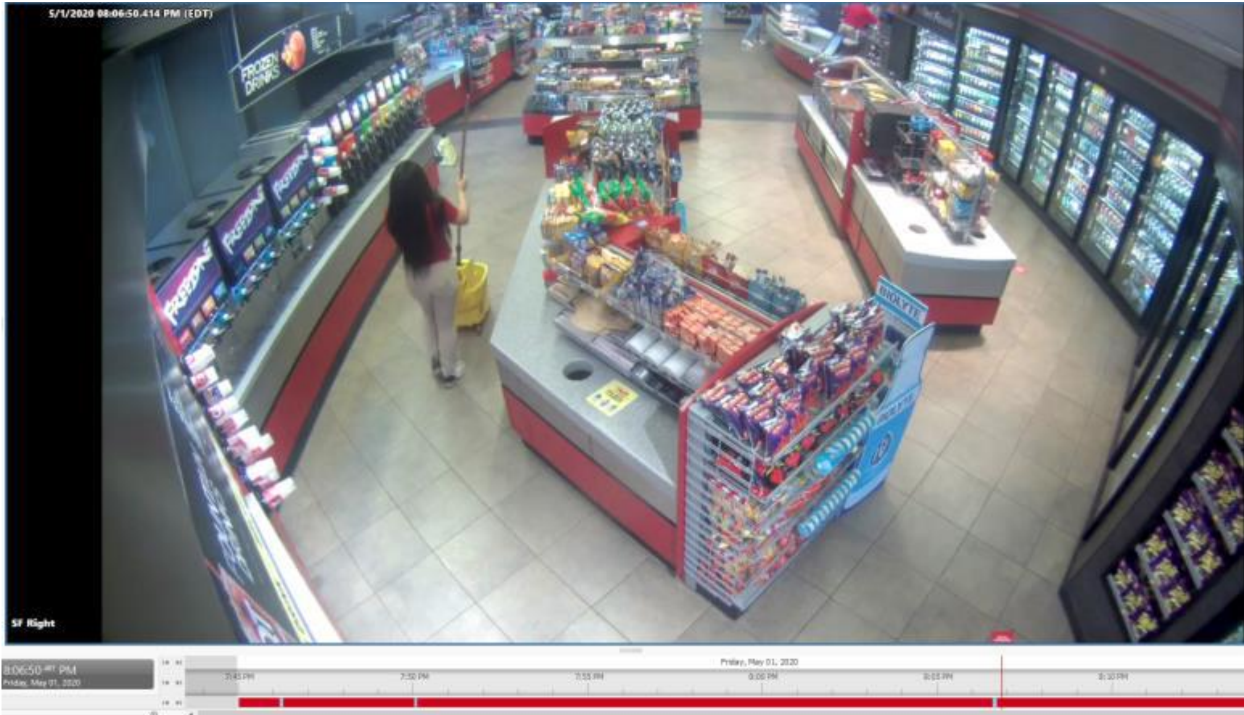
the material fact pursuant to Local Rule 56.1B(2), such fact is deemed admitted by the respondent." *Id.* (citing LR 56.1(B)(2)(a)(2), NDGa).

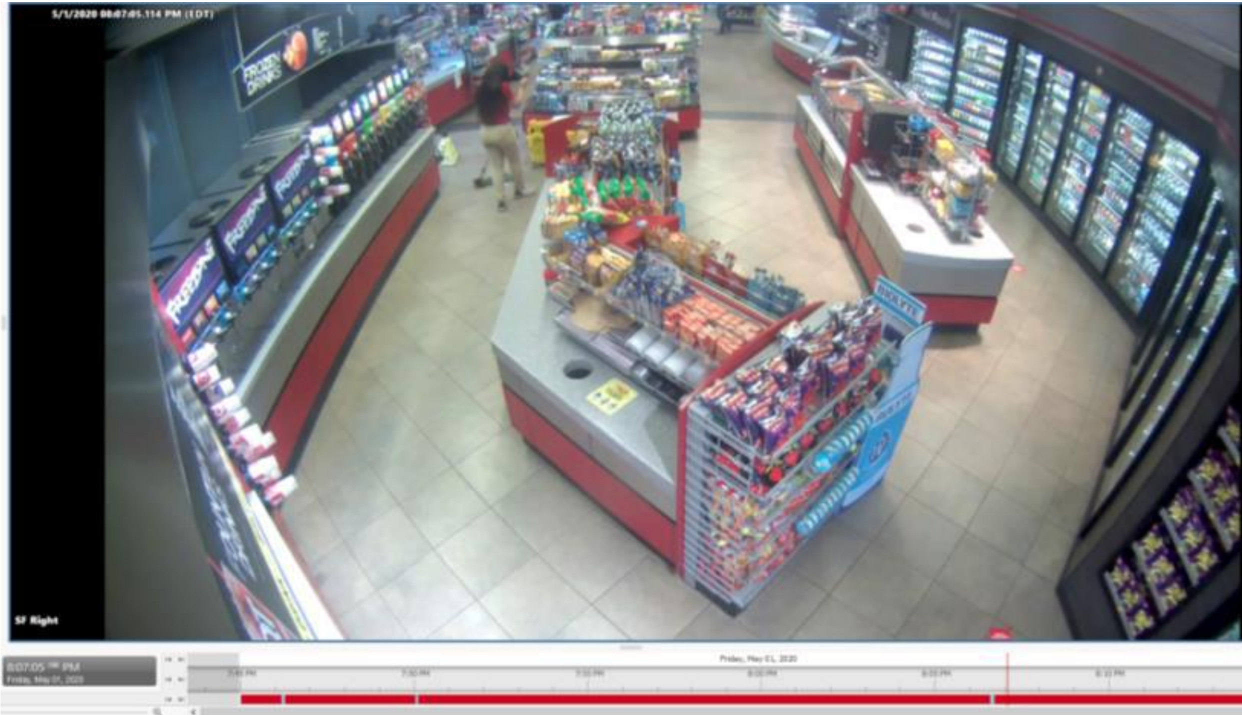
Mr. Corona did not file a response corresponding by number to the SMF and thus did not comply with this rule. As a result, all of QuikTrip's statements are deemed admitted and the attached security footage is also deemed authentic. Nonetheless, Mr. Corona did file a "Statement of Material Facts for Jury Determination" ("SAMF," Doc. 19) in which he raises purported factual disputes in a general sense without citation to the record. Moreover, at the beginning of his Response, he raises two specific issues with QuikTrip's recitation of the evidence. The Court will consider these arguments where relevant and will still view the evidence in the light most favorable to Mr. Corona, as the nonmovant.



(*Id.* ¶ 6).[2]

At 8:07:01, Grier places the large, yellow mop bucket at the top of the soda fountain/Freezoni aisle, parallel to the yellow wet floor sign to the left, and begins mopping down the aisle and over to the grilled foods aisle:

[2] Mr. Corona asserts that "[a]t 8:03:46, Defendant's employee Grier is seen sweeping the floor in the area she is about to mop. As she passes the Wet Floor sign, she pushes the sign further toward the entrance door and further away for the aisle she is about to mop." (Resp. at 2).

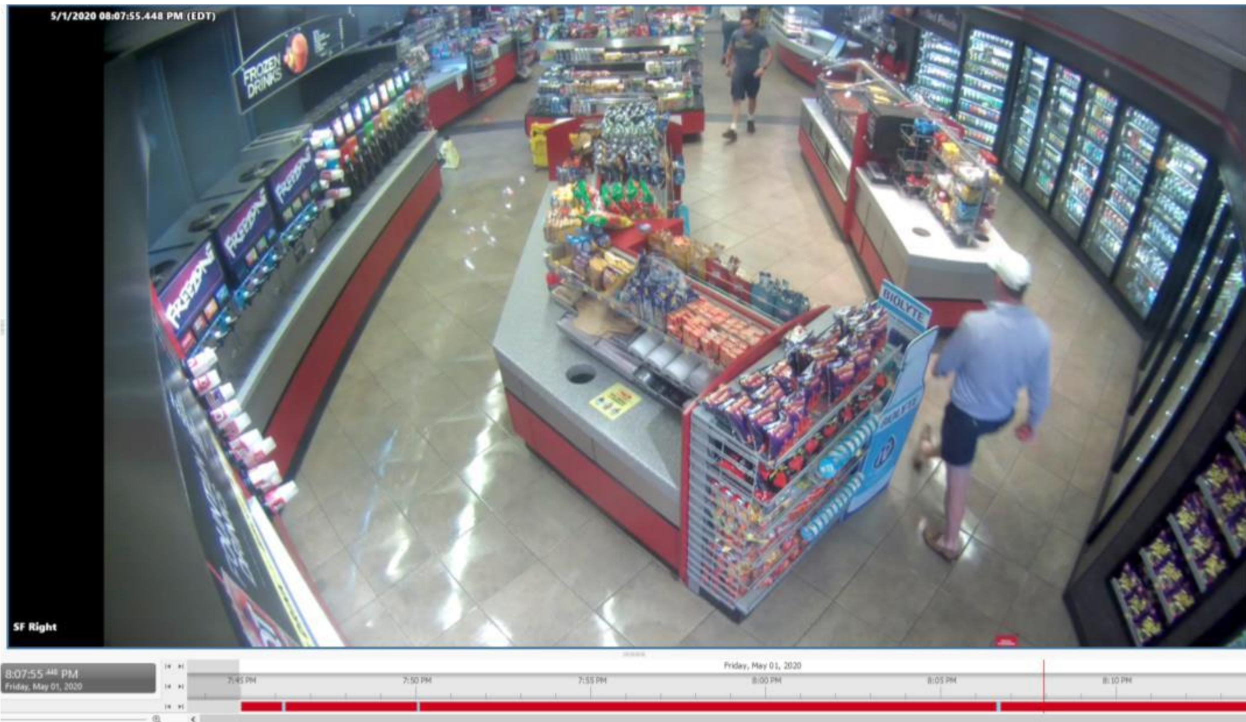


(*Id.* ¶ 7).

As he entered the store through the left-sided door, Mr. Corona planned to stop by the restroom to wash his hands, so he proceeded to the right past the checkstand. (*Id.* ¶ 8). At 8:07:55, less than a minute after Grier began mopping, Mr. Corona walks past Grier, who is mopping to his left on the grilled foods aisle. (*Id.* ¶ 9).

After walking past the checkstand, Mr. Corona testified that he "noticed that there was a girl that was mopping in the back." (*Id.* ¶ 10). Mr. Corona further testified the QT employee was mopping to his left and he "…made eye contact

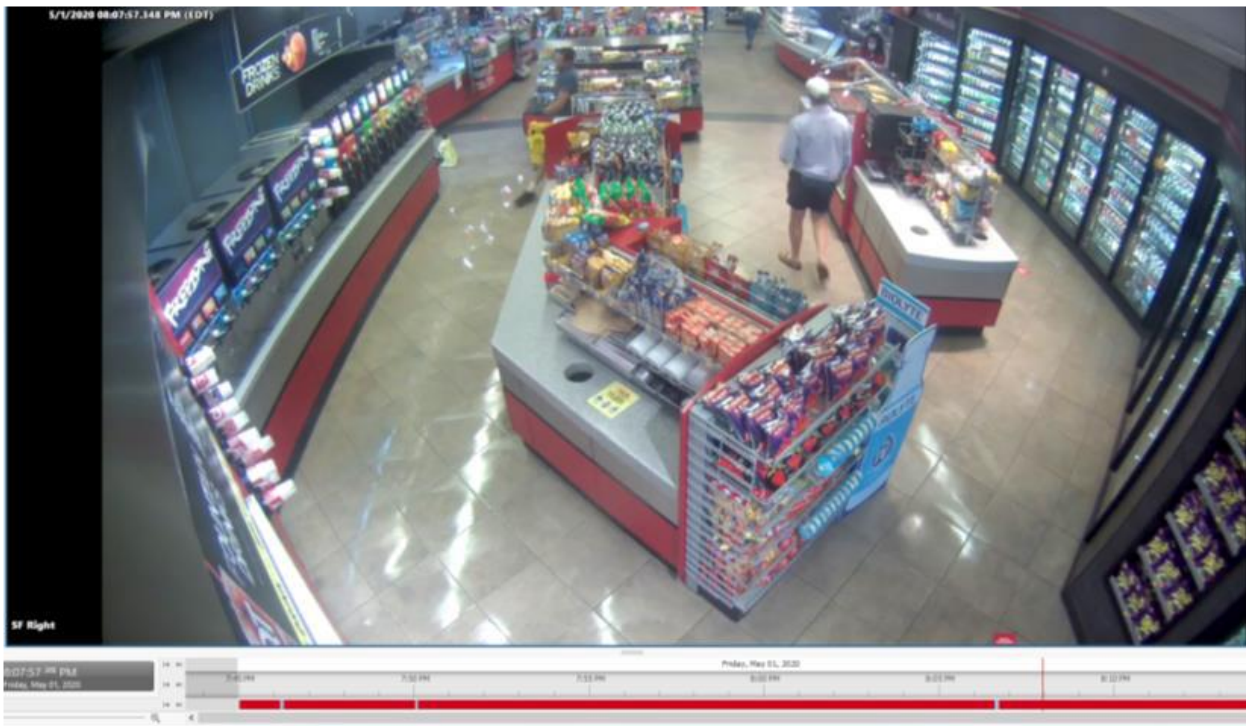
with the girl that was mopping on the opposite side of the store…" (*Id.*).[3] Mr. Corona also acknowledged seeing the yellow mop bucket with wheels and even considered the large, yellow mop bucket a "tripping hazard." (*Id.* ¶ 11). The below picture depicts, from top-left to top-right, the yellow wet floor sign, mop bucket, Mr. Corona, and (near top-right, in the red shirt), the QT employee.



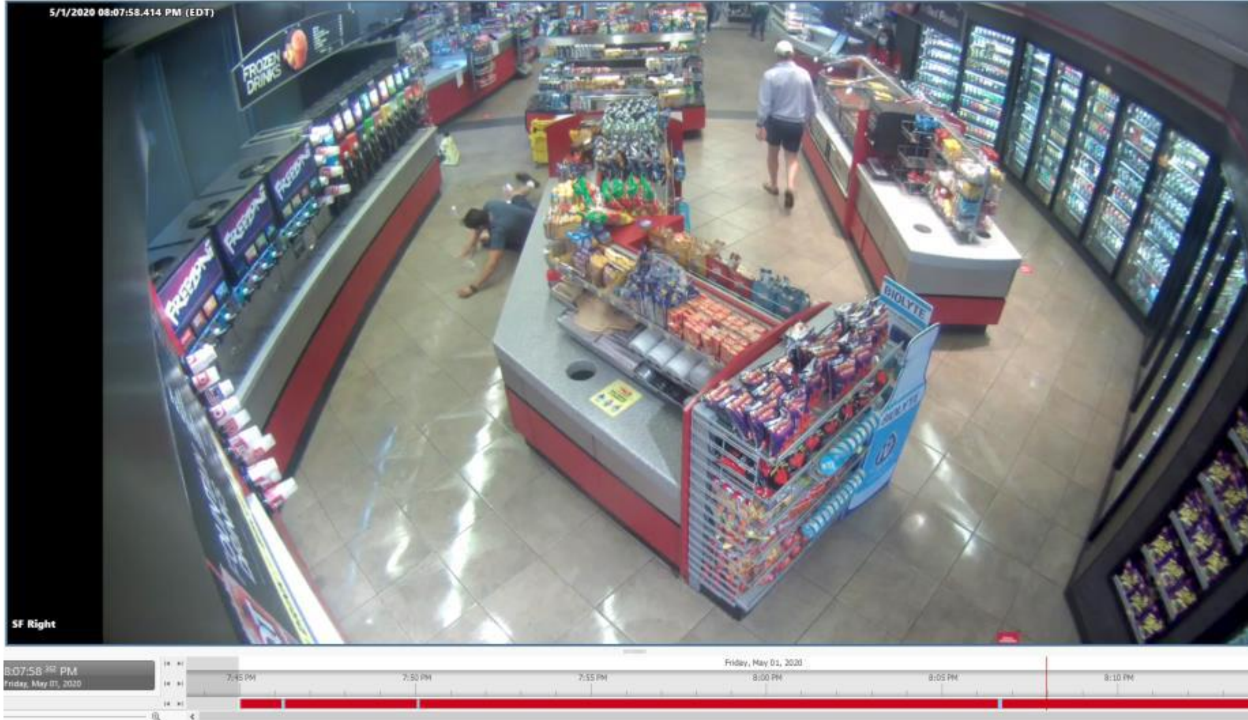
(*Id.*).

[3] Mr. Corona asserts that "Defendant's employee Grier, who Plaintiff admitted seeing mopping on the other side of the store before he entered the area where he fell, was not an indicator of a wet floor in the area where Mr. Corona was headed, per the testimony of assistant store manager Antonius Bush." (Resp. at 2–3).

After Mr. Corona walks past Grier mopping, he turns right, walking toward the large, yellow mop bucket and wet floor sign. (*Id.* ¶ 12).[4] As Mr. Corona takes one step past the large, yellow mop bucket onto the soda fountain/Freezoni aisle that Grier mopped less than a minute before, his left foot appears to slip and he trips and falls:

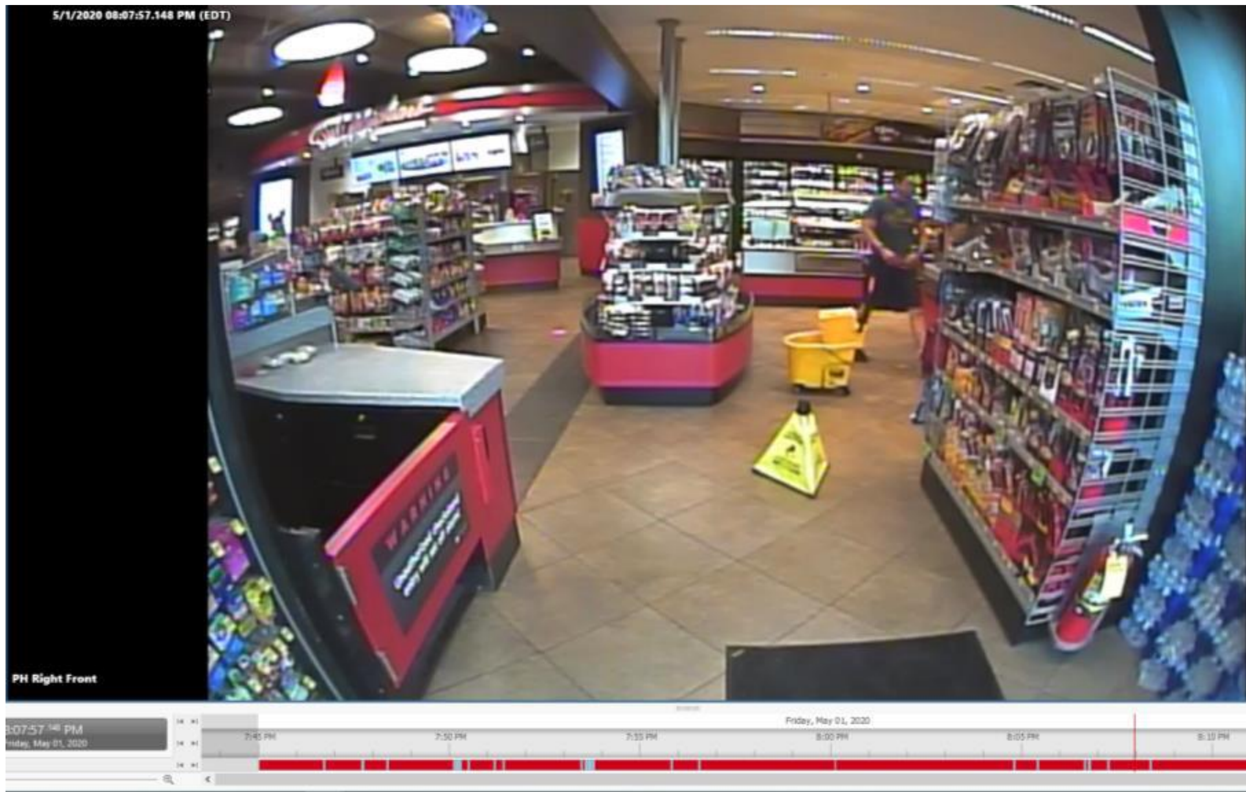


[4] Mr. Corona asserts that the mop bucket and wet floor sign were on dry floor. (SAMF ¶ 1, Doc. 19).



(*Id.* ¶¶ 12, 14). Mr. Corona denied seeing any wet floor signs in the area of his fall. (*Id.* ¶ 13). He further denied that there was anything obstructing his view of his pathway or the floor. (*Id.*).

Another angle of store video captured Mr. Corona walk past both the large, yellow mop bucket and onto the soda fountain/Freezoni aisle just one second before his fall:



(*Id.* ¶ 15).

Antonius Bush was the on-duty manager at the subject QT at the time of Mr. Corona's fall. (*Id.* ¶ 16). Mr. Bush testified that it was QT standard procedure that a wet floor sign be placed out before the mopping begins and that the placement of the large, yellow mop bucket and wet floor sign were in compliance with QT's policies and procedures. (*Id.*). Mr. Bush testified that the large, yellow mop bucket was "maybe one foot" from the area that Mr. Corona fell. He also testified that the wet floor sign was "maybe three or four feet away" from the area where Mr. Corona fell, both in "very close" vicinity to the area of his fall. (*Id.* ¶ 17).

Legal Standard

Federal Rule of Civil Procedure 56(a) provides "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

A factual dispute is genuine if the evidence would allow a reasonable jury to find for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is "material" if it is "a legal element of the claim under the applicable substantive law which might affect the outcome of the case." *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

The moving party bears the initial burden of showing the court, by reference to materials in the record, that there is no genuine dispute as to any material fact that should be decided at trial. *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The moving party's burden is discharged merely by "'showing'—that is, pointing out to the district court—that there is an absence of evidence to support [an essential element of] the nonmoving party's case." *Celotex*, 477 U.S. at 325. In determining whether the moving party has met this burden, the district court must view the evidence and all factual inferences in the light most favorable to the party opposing the motion. *Johnson v. Clifton*, 74 F.3d 1087, 1090 (11th Cir. 1996). Once the moving party has adequately supported its motion, the non-movant then has the burden

of showing that summary judgment is improper by coming forward with specific facts showing a genuine dispute. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). All reasonable doubts should be resolved in the favor of the non-movant. *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). In addition, the court must "avoid weighing conflicting evidence or making credibility determinations." *Stewart v. Booker T. Washington Ins.*, 232 F.3d 844, 848 (11th Cir. 2000). When the record as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine dispute for trial. *Fitzpatrick*, 2 F.3d at 1115 (citations omitted).

Discussion

Under Georgia law,[5] "to recover for injuries sustained in a slip-and-fall action, an invitee must prove (1) that the defendant had actual or constructive knowledge of the hazard; and (2) that the plaintiff lacked knowledge of the hazard despite the exercise of ordinary care due to actions or conditions within the control

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[5] In an action, such as this one, premised on diversity of citizenship subject matter jurisdiction, a federal court "must apply the controlling substantive law of the state" in which it sits. *Cambridge Mut. Fire Ins. Co. v. City of Claxton, Ga.*, 720 F.2d 1230, 1232 (11th Cir. 1983) (citing *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)). Moreover, because this incident occurred in Georgia, Georgia substantive law applies. *Mullins v. M.G.D. Graphics Sys. Grp.*, 867 F. Supp. 1578, 1580 (N.D. Ga. 1994) (citing *Risdon Enters., Inc. v. Colemill Enters., Inc.*, 172 Ga. App. 902, 903, 324 S.E.2d 738 (1984) ("Under Georgia's choice of law rules, the substantive law to be applied in a tort case is governed by the doctrine of lex loci delicti, the law of the place of the wrong.")).

of the owner/occupier." *Robinson v. Kroger Co.*, 493 S.E.2d 403, 414 (Ga. 1997). However, "an owner or occupier of land is not an insurer of the safety of its invitees" and the "mere occurrence of an injury does not create a presumption of negligence." *Lee v. Food Lion,* 534 S.E.2d 507, 508 (Ga. Ct. App. 2000) ("The owner/occupier is not required to warrant the safety of all persons from all things."); *All Am. Quality Foods, Inc. v. Smith*, 797 S.E.2d 259, 261 (Ga. Ct. App. 2017) ("It is axiomatic that proof of a fall, without more, does not give rise to liability on the part of a proprietor."). A defendant "is entitled to summary judgment if there is no evidence that it had superior knowledge or the undisputed evidence demonstrates that the plaintiff's knowledge of the hazard was equal to or greater than that of the defendant." *Norman v. Jones Lang Lasalle Ams., Inc.*, 627 S.E.2d 382, 385 (Ga. Ct. App. 2006).

QuikTrip contends that it is entitled to summary judgment for two reasons. First, it argues that under the plain view doctrine, Mr. Corona had constructive knowledge of the hazard of the wet floor. Second, it argues that Mr. Corona failed to exercise ordinary care.

The Georgia Supreme Court narrowed the plain view doctrine in *Robinson*, observing that "it has been used in such a manner as to remove any reasonable limits on its application when it has repeatedly been held that a hazard which was not seen by the invitee before the fall but which could have been seen by the invitee

had the invitee looked at the floor," and holding that the fact "that one inspecting a post-fall scene can observe a hazard from a standing position is not dispositive of whether or not the injured invitee was exercising ordinary care for personal safety before the fall." 493 S.E.2d at 410 (citations omitted). Instead, it explained that:

> The "plain view" doctrine is the equivalent of the "constructive knowledge" aspect of voluntary negligence on the part of the plaintiff. Voluntary negligence is applicable when the invitee knew or should have known of the hazard and proceeded . . . , and the "plain view" doctrine is applied to a hazard in plain view at a location where it is customarily found and can be expected to be, but which the invitee professes not to have seen prior to the fall. Even though the invitee had no actual knowledge of the hazard before being injured, the invitee should have known of the hazard's presence.

Id. In essence, it is not enough to say the hazard itself could have been seen, but an invitee may still be charged with constructive knowledge of the hazard if the invitee saw enough details to put two and two together such that a person exercising ordinary care would realize that a hazard is potentially present. As the Georgia Supreme Court noted above, the purpose of this exercise is to determine whether "the undisputed evidence demonstrates that the plaintiff's knowledge of the hazard was equal to or greater than that of the defendant." *Norman*, 627 S.E.2d at 385.

In this case, QuikTrip asserts it is entitled to summary judgment because Mr. Corona "observed an employee mopping and saw the large, yellow mop bucket prior to his fall," and because "there was also a wet floor sign in close vicinity to the area of his fall." (Br. Supp. Mot. at 16–17). As such, QuikTrip contends Mr. Corona had equal knowledge of the hazard.[6] QuikTrip points to a Georgia Court of Appeals case which it asserts upheld summary judgment in a similar circumstance, *Allen v. ABM Aviation, Inc.*, 847 S.E.2d 13, 15 (Ga. Ct. App. 2020). In that case, the plaintiff

> testified that she saw the employee cleaning another section of the floor and saw a "wet floor" sign as she exited the escalator. Additionally, contemporaneous photos of the area show a wet floor sign in the vicinity of [her] fall. Although the parties dispute the number of signs in the area, it is undisputed that [she] observed both the employee cleaning the floor and one "wet floor" sign before she fell. Moreover, [the plaintiff] testified that she was looking straight ahead as she walked down the hall, the lighting was fine, and nothing obscured her vision. As such, the plain and undisputed evidence shows that [she] had equal knowledge of the risk.

Id.

In response, Plaintiff asserts that QuikTrip's photographs show that "the location and orientation of the mop bucket and wet floor sign that show they are

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[6] The Court "presume[s] [the defendant] had knowledge of the water because its employee had recently mopped the floor." *Allen v. ABM Aviation, Inc.*, 847 S.E.2d 13, 15 (Ga. Ct. App. 2020) (citing *Mairs v. Whole Foods Market Grp.*, 694 S.E.2d 129 (Ga. Ct. App. 2010)).

both oriented toward the entrance door to the store" and that "[b]oth items are in the aisle heading to the door, and neither item is directly in front of or impeding entry into the aisle where Mr. Corona falls." (Resp. at 6). "The floor around both items is dry, and thus provide no information to Mr. Corona that he should be aware of a recently mopped floor." (*Id.*). Thus, he contends, a jury question is present on whether he had equal knowledge.

The Court disagrees. A person exercising ordinary care would have knowledge of the existence of a wet floor in the proximity had they observed an employee mopping and a mop bucket, putting aside the issue of whether Plaintiff saw the wet floor sign or the wet floor. As Mr. Bush testified, the mop bucket was "maybe one foot" from the area that Mr. Corona fell, in "very close" vicinity to the area of his fall. (SMF ¶ 17).

While the Court agrees with Plaintiff that the photographs appear to indicate the placement of the bucket and wet floor sign near the entrance of the store, even assuming this portion of the store was not wet, this does not create a genuine dispute of fact. This is because Plaintiff does not contend that the signs were not visible from the site of the hazard or the surrounding areas. Accordingly, the Court finds that the undisputed evidence shows that Plaintiff had equal knowledge of the hazard to QuikTrip and therefore QuikTrip is entitled to

judgment as a matter of law. The Court therefore need not address QuikTrip's remaining argument.

Conclusion

For the above reasons, it is

ORDERED that Defendant's Motion for Summary Judgment (Doc. 16) is **GRANTED**. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff and to close the case.

SO ORDERED this 22nd day of May 2023.

Victoria Marie Calvert
United States District Judge