UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DAJUANNA ERBY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:24-CV-953 SRW
	)	
QUIKTRIP CORPORATION, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

This matter comes before the Court on Defendants' Motion for Summary Judgment (ECF No. 28). The parties have consented to the jurisdiction of the undersigned United States Magistrate Judge pursuant to Title 28 U.S.C. § 636(c). The Court will grant the motion.

I. BACKGROUND

On March 2, 2024, as Plaintiff Dajuanna Erby walked across the parking lot to the store at a QuikTrip gas station in Florissant, Missouri she slipped on a slick oily substance. A few months later, she filed suit against Defendants QuikTrip Corporation and David Wolfe in the Circuit Court of St. Louis County seeking damages for her injuries. Plaintiff asserted a count of negligence against each defendant. Shortly thereafter, Defendants removed the matter to this Court and the case proceeded to discovery. Defendants now seek summary judgment and dismissal of all counts.

II. STANDARD

Federal Rules of Civil Procedure 56(a) provides that "[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." In ruling on a motion for summary judgment,

the Court is required to view the evidence in the light most favorable to the non-moving party and must give that party the benefit of all reasonable inferences to be drawn from the underlying facts. *Lombardo v. City of St. Louis*, 38 F.4th 684, 689 (8th Cir. 2022). The moving party bears the initial burden of showing both the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); Fed. R. Civ. P. 56(a).

In response to the proponent's showing, the opponent's burden is to "come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (emphasis omitted) (quoting Fed. R. Civ. P. 56(e)). Self-serving, conclusory statements without support are insufficient to defeat summary judgment. *Viewpoint Neutrality Now! v. Bd. of Regents of Univ. of Minn.*, 109 F.4th 1033, 1038 (8th Cir. 2024). Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

III. UNDISPUTED MATERIAL FACTS

Plaintiff alleges, on March 2, 2024, she slipped and fell on the parking lot of a QuikTrip store located at 2015 N. Highway 67 in St. Louis County, Missouri. She alleges Defendant QuikTrip maintained exclusive control over the premises at the time of her fall. She contends she slipped and fell on an oil spot while walking to enter the store.

Plaintiff does not know of any other person who has fallen at the subject QuikTrip. She does not know of any person that reported the substance at issue to QuikTrip before she fell. She does not know how the substance came to be in the parking lot at the QuikTrip. Nor does she

know how long it was there before her fall. Plaintiff does not know if the substance was observed by any QuikTrip employees before her fall.

As far as she is aware, on March 2, Plaintiff did not speak to Defendant Wolfe. Nor has any person told Plaintiff that Defendant Wolfe knew about the substance on the parking lot before her fall. Defendant Wolfe did not own the QuikTrip on March 2, nor did he lease the premises on that date. He was not the operator of the premises either.[1]

Defendant Wolfe had not worked at the subject QuikTrip in any capacity prior to Plaintiff's fall. He was not on the premises at any point on March 2, nor had he ever been on the premises before March 2.[2] Defendant Wolfe was not responsible for maintenance of the parking lot on March 2.[3] He did not see the substance on the parking lot before Plaintiff's fall and no person reported its presence to him. He did not create the substance at issue or place the substance on the ground before Plaintiff's fall.

IV. DISCUSSION

Defendants ask the Court to grant summary judgment on all counts in Plaintiff's petition. Defendant Wolfe asserts Plaintiff cannot establish he had full and complete control of the premises at the time of the incident, that he caused, created, knew, or should have known of the allegedly dangerous substance, or that he breached a duty that he owed to Plaintiff. Defendant QuikTrip argues Plaintiff cannot prevail on a claim of negligence based on premises liability

[1] Plaintiff denies this statement of fact asserting that Defendant Wolfe was the store manager on March 2. However, Plaintiff has not provided any facts to support her assertion that being the store manager means he also was the operator of the premises on March 2.
[2] Plaintiff denies this statement of fact asserting that Defendant Wolfe was the store manager on March 2. However, Plaintiff has not provided any facts to support her assertion that Defendant Wolfe had been on the subject premises before the date of the incident. Being named store manager does not necessarily mean he had been present on the premises.
[3] Plaintiff denies this statement of fact asserting that Defendant Wolfe was the store manager on March 2. However, Plaintiff has not provided any facts to support her assertion that the store manager was responsible for maintenance of the parking lot.

because Plaintiff has no evidence that it knew or had reason to know of the allegedly dangerous substance.

A. Plaintiff's Exhibits

In support of her response to Defendants' Statement of Material Facts, Plaintiff submitted five exhibits: a photo of the substance she allegedly slipped on, a video from the QuikTrip on the date of her fall, a document listing relevant events in the video with time stamp information, an incident report sent to Defendant QuikTrip, and an aerial photo of the subject QuikTrip from Google Maps. Defendant objects to the admission of these exhibits asserting they do not comply with Federal Rule of Civil Procedure 56 because Plaintiff did not authenticate any of the exhibits. Therefore, according to Defendants, the Court cannot consider them when deciding the motion for summary judgment. In a surreply, Plaintiff attached affidavits supporting the exhibits and argues the exhibits produced by Defendant do not need separate authentication.

"To be considered on summary judgment, documents must be authenticated by and attached to an affidavit made on personal knowledge setting forth such facts as would be admissible in evidence or a deposition that meets the requirements of Fed. R. Civ. P. 56(e). Documents which do not meet those requirements cannot be considered." *Stuart v. Gen. Motors Corp.*, 217 F.3d 621, 635-36 n.20 (8th Cir. 2000); *see also Shanklin v. Fitzgerald*, 397 F.3d 596, 602 (8th Cir. 2005). The Court finds the exhibits are admissible because Plaintiff has sufficiently authenticated them.

The first exhibit at issue is a photograph of the substance on which Plaintiff slipped. Plaintiff filed an affidavit wherein she stated the photograph accurately depicts the substance she slipped on and was taken shortly after she fell. This affidavit authenticates the photograph.

The next exhibit is surveillance footage of the QuikTrip premises from the date of her injury. Defendant QuikTrip produced this video in discovery. Because Defendant QuikTrip produced the video, it is properly authenticated. "The act of production is an implicit authentication of documents produced." *See Hammer v. JP's Sw. Foods, LLC*, 2014 WL 2759089 at *2 (W.D. Mo. Jun. 18, 2014) (citations omitted); *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 776 (9th Cir. 2002) ("[W]hen a document has been authenticated by a party, the requirement of authenticity is satisfied as to that document with regards to all parties."). Defendants cannot have it both ways. They cannot voluntarily produce documents and then contend those same documents cannot be relied on by Plaintiff. *Radiance Cap. Receivables Eighteen, LLC v. MBO Invs., LLC*, 2019 WL 330463 at *4 (E.D. Mo. Jan. 25, 2019) *vacated on other grounds by Radiance Cap. Receivables Eighteen, LLC v. MBO Invs., LLC*, 2022 WL 3224558 (E.D. Mo. Jun. 27, 2022). Additionally, Plaintiff reviewed the surveillance footage and stated in her affidavit that it accurately depicts the events that occurred on that date. The footage is properly authenticated and admissible.

The following exhibit is a summary of what occurs in the surveillance footage. Plaintiff reviewed the footage and compared it with the summary, verifying its accuracy, to which she attested in her affidavit. The summary is admissible.

Next is the incident report submitted to Defendant QuikTrip about Plaintiff's fall. Defendant QuikTrip produced this document in its initial disclosures. For this reason, it is authenticated and admissible.

The final exhibit at issue is an aerial photograph of the subject QuikTrip from Google Maps. Plaintiff's counsel submitted an affidavit to authenticate the photograph stating the

photograph accurately depicts the store on the date of the incident. Plaintiff's counsel authenticated the exhibit, and it is admissible.

B. Plaintiff's Negligence Claim against Defendant Wolfe

"In any action for negligence, a plaintiff must establish the defendant owed a duty of care to the plaintiff, the defendant breached that duty, and the defendant's breach proximately caused the plaintiff's injury." *Wieland v. Owner-Operator Servs., Inc.*, 540 S.W.3d 845, 848 (Mo. 2018). When a plaintiff sues an employee of a company for negligence that occurred on the company's premises, the plaintiff must show that the employee had or assumed full and complete control of his employer's premises or that he breached a duty he owed to the plaintiff. *State ex rel. Kyger v. Koehr*, 831 S.W.2d 953, 956 (Mo. Ct. App. 1992). The test in the second situation is whether the employee "has breached his legal duty or been negligent with respect to something over which he did have control." *Id*.

There is a genuine issue of material fact as to whether Defendant Wolfe was the manager on March 2. However, even if Defendant Wolfe was the store manager on March 2, Plaintiff has not established that Defendant Wolfe was in full and complete control of the premises on that date or that as a manager, he breached a duty owed to Plaintiff with respect to something over which he did have control. In fact, Plaintiff alleges in her Petition that QuikTrip maintained exclusive control over the premises, not Defendant Wolfe. Plaintiff offers no evidence of what duties Defendant Wolfe had as store manager, or what his responsibilities were. She does not offer any evidence that Defendant Wolfe had any control over the parking lot where Plaintiff fell.

In *Reeb v. Wal-Mart Stores, Inc.*, this Court found that a manager who had only been manager for three days before the plaintiff's fall, had not been in the department where the accident took place, had no prior knowledge of the alleged defective condition that caused the

accident, and was not in the store or on duty as a manager at the time of the accident could not be found liable for negligence. 902 F. Supp. 185, 188-89 (E.D. Mo. 1995). The Court reaches a similar conclusion in this case. Plaintiff has not provided any evidence to show Defendant Wolfe had full and exclusive control of the QuikTrip at the time of Plaintiff's fall, was present at the QuikTrip, or had prior knowledge of the substance on which Plaintiff slipped and fell. There are no facts in the record that support Plaintiff's negligence claim against Defendant Wolfe. The Court will grant summary judgment in Defendant Wolfe's favor and dismiss any claims against him.

C. Plaintiff's Negligence Claim against Defendant QuikTrip

To establish Defendant QuikTrip's liability, Plaintiff must show "(1) a dangerous condition existed on [Defendant QuikTrip's] premises which involved an unreasonable risk; (2) [Defendant QuikTrip] knew or by using ordinary care should have known of the condition; (3) [Defendant QuikTrip] failed to use ordinary care in removing or warning of the danger; and (4) [Plaintiff] sustained injuries as a result of such condition." *Steward v. Baywood Vills. Condo. Ass'n*, 134 S.W.3d 679, 682 (Mo. Ct. App. 2004). "Ordinary care means that degree of care that an ordinarily careful person would use under same or similar circumstances." *Lopez v. Three Rivers Elec. Coop., Inc.*, 26 S.W.3d 151, 156 (Mo. 2000) (quoting MAI 11.05).

In *Roberson v. AFC Enters., Inc.*, the plaintiff slipped and fell on an oil or grease spot in the parking lot of a fast-food restaurant. 602 F.3d 931, 934 (8th Cir. 2010). The Eighth Circuit applied Missouri law and concluded that because the plaintiff's only evidence was her own testimony that she slipped and fell in what she believed was an oil or grease spot, and she did not provide any evidence of the restaurant's business practices or procedures of how it monitors the parking lot or any prior complaints about this specific oil spot or oil spots in general, or any other

dangerous condition in the parking lot, the plaintiff failed to establish her negligence claim. *Id*. The same conclusion applies in this case.

Plaintiff has provided no evidence to support that Defendant QuikTrip is liable for her injuries. She has provided no evidence to show Defendant QuikTrip knew or should have known of the substance on the ground, what the substance on the ground was, or even what her injuries are. Without any evidence to support that Defendant QuikTrip knew or should have known of the substance on which Plaintiff slipped or of its failure to use ordinary care in removing or warning of the danger, Plaintiff fails to establish a claim of negligence against Defendant QuikTrip. The Court will grant summary judgment in Defendant QuikTrip's favor and dismiss any claims against it.

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment (ECF No. 28) is **GRANTED**. This matter is **DISMISSED**, with prejudice.

So Ordered this 17th day of July, 2025.

STEPHEN R. WELBY
UNITED STATES MAGISTRATE JUDGE