



## News

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### "Damp Pants" Cannot Defeat Summary Judgment

#### News

3.8.2016

In March 2013, plaintiff Rebecca Pouncy was shopping at Winn-Dixie and fell “while entering the store on standing water on the floor.” Three days after her fall, she sued Winn-Dixie and its employees under Louisiana’s Merchant Liability Statute, La. R.S. 9:2800.6 (pdf), alleging that they “did not place adequate mats out during a rain storm and did not warn customers or prevent the floor from becoming very slippery.”

In her deposition, Ms. Pouncy testified that she had “no idea” what caused her to fall and that she did not see any substance on the ground when she fell. She also testified that her clothes “felt damp,” but were not actually wet after the fall. Furthermore, her testimony indicated that there was a green wet floor sign “right at the entrance of the door,” and the sign was “always there” in the same spot when she visited the store.

Winn-Dixie filed a motion for summary judgment, arguing that Ms. Pouncy could not satisfy her burden of proof under La. R.S. 9:2800.6. Specifically, Winn-Dixie argued that, based on her deposition testimony, there was no way Ms. Pouncy could prove either the existence of an unreasonably dangerous condition in the store, or that Winn-Dixie had actual or constructive notice of an unreasonably dangerous condition. Ms. Pouncy opposed the motion, arguing that because she was not aware of all of the technical reasons a floor may be dangerously slick, the court should not rely on her deposition testimony. The trial court granted Winn-Dixie’s motion for summary judgment, and Ms. Pouncy appealed, arguing that there were genuine issues of material fact regarding the presence of water on the floor and Winn-Dixie’s constructive notice of the water.

The Fifth Circuit Court of Appeal affirmed and cited *Alonzo v. Safari Car Wash, Inc.*, in support of its holding that Ms. Pouncy’s deposition testimony that her clothes were damp was insufficient to establish that she would be able to prove the existence of a condition that presented an unreasonable risk of harm. The Court also held that Ms. Pouncy’s testimony regarding the green wet floor sign was insufficient to prove that Winn-Dixie had constructive notice of an unreasonable risk of harm.

## "Damp Pants" Cannot Defeat Summary Judgment

**Take-Away:** A plaintiff's allegation that her clothes felt "damp" after falling on a merchant's premises is insufficient to satisfy her burden of proving the existence of an unreasonably dangerous condition under Louisiana's Merchant Liability Statute.

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