Rel: January 16, 2026

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2025-2026

CL-2025-0576

Shoe Show, Inc., d/b/a/ Shoe Dept. Encore

v.

Lillie Kay Tissier

Appeal from Walker Circuit Court
(CV-21-900250)

MOORE, Presiding Judge.

On November 29, 2019, Lillie Kay Tissier fell while trying on a shoe in a shoe store operated by Shoe Show, Inc. ("Shoe Show"). Tissier commenced a civil action in the Walker Circuit Court ("the trial court") against Shoe Show to recover damages for the personal injuries she

allegedly sustained from the fall. After a bench trial, the trial court entered a judgment in favor of Tissier for $50,000 in compensatory damages on the theory that Tissier's fall was caused by Shoe Show's negligence in failing to maintain its premises in a reasonably safe condition. We reverse the trial court's judgment and render a judgment for Shoe Show.

The Evidence

The evidence pertinent to this appeal consists of the following.

Tissier testified that she went shopping for new shoes at a store operated by Shoe Show on November 29, 2019, which was a "Black Friday." Tissier testified that she "noticed the store was sort of cluttered up and [that] it was very crowded." In her answers to interrogatories, Tissier stated: "There were shoe boxes l[y]ing everywhere." Tissier said that she observed numerous black and white shoe boxes lying on the floor. She said that the shoe boxes were visible, and that "[she] thought to [her]self, when [she] was trying on shoes, they should keep this store up a little bit better."

According to Tissier, she selected a pair of shoes to try on that "zipped up the back." She asked someone in the store whether there was

a place to sit down because the "one little bench was covered up," but there was not another bench available. Tissier said that "[t]here was nowhere to sit down." Tissier testified that she stood on one foot and slipped the shoe on her other foot while she "held on to the side" of something. She said that, when she "reach[ed] down to zip [the shoe] up, [she] put her foot back down and then [her] foot hit something behind [her], some boxes or shoes. [She] went straight back and hit [her] head first."

Kaila Brand testified that she was the manager at the store where Tissier fell and that she spoke to Tissier after Tissier fell. Brand stated that Tissier had told her "that she knew she should have sat down before trying to take the boot off rather than just holding on to the end cap." Brand was asked whether, during her time working for Shoe Show, she had told her employees to keep the aisles clear, and she replied: "Always." When asked why that was, Brand replied: "To allow room for strollers and wheelchairs and to [e]nsure people did not trip and fall." Brand testified that it had appeared to her that Tissier had stepped back to the right, had tripped, and had fallen, striking her head on a display shelf that was protruding from a main shelf before she settled on the floor.

The Judgment

The trial court entered a judgment in favor of Tissier that included the following pertinent findings of fact and conclusions of law:

"**FINDINGS OF FACT**

"1. The [c]ourt finds that [Tissier] is a resident citizen Jasper, Walker County, Alabama ... and current age of 72 years.

"2. The [c]ourt finds that [Tissier] was an invitee on the premises of [Shoe Show] on November 29, 2019, as she entered the store to shop during Black Friday sales with her husband. ...

"3. The [c]ourt finds that on November 29, 2019, while trying on shoes at the Shoe Show store in the Jasper Mall, [Tissier] stepped back and struck an object on the floor causing her to lose balance and fall. The [c]ourt further finds that the fall resulted in injuries to her head, back, and a right radial arm fracture at the elbow.

"....

"10. The [c]ourt finds that testimony from [Tissier] and [Brand] confirmed the presence of shoe boxes and shoes on the floor of the store. [Brand] acknowledged that there were items on the floor and sticking out from beyond a shelf near [Tissier] at the time of the fall. The [c]ourt further finds [Tissier] stepped back while trying on shoes and stepped on one of the objects behind her and to the right which she had not before seen.

"....

"19. The [c]ourt finds that [Shoe Show] failed to maintain its premises in a reasonably safe condition by allowing shoe boxes and shoes to remain on the floor, creating a hazardous condition for customers. [Shoe Show]'s failure to remove or warn of these hazards directly caused [Tissier]'s injuries.

"20. The [c]ourt finds that in McClurg v. Birmingham Realty Co., 300 So. 3d 1115 (Ala. 2020), the Supreme Court of Alabama reversed summary judgment in a premises liability case involving an 82-year-old woman who stepped backwards into a pothole while retrieving a shopping cart, and her heel went into the pothole measuring 4 to 5 inches wide, 16 inches long, and 4.5 inches deep. The Court in McClurg held that the evidence did not establish that the pothole that caused [p]laintiff's fall was an open and obvious danger as a matter of law. Id. at ... 1120-[]21.

"21. The [c]ourt finds that the hazard was not open and obvious to [Tissier] because, like in McClurg, the object she struck was behind her and had not been seen or recognized by [Tissier].

"22. The [c]ourt finds that [Tissier] exercised reasonable and ordinary care while present on [Shoe Show]'s premises and is not guilty of contributory negligence.

"....

"**CONCLUSIONS OF LAW**

"24. The [c]ourt concludes that [Tissier] was present on the premises of [Shoe Show] as an invitee.

"25. The [c]ourt concludes that [Shoe Show] owed a duty to [Tissier] 'to use reasonable care and diligence to keep the premises in a safe condition, or, if the premises are in a dangerous condition, to give sufficient warning so that, by the

use of ordinary care, the danger can be avoided.' Armstrong v. Georgia Marble Co., 575 So. 2d 1051, 1053 (Ala. 1991); McClurg v. Birmingham Reality [Co.], 300 So. 3d 1115 (Ala. 2020).

"26. The [c]ourt concludes that the duty of [Shoe Show] to [Tissier] ['"]is limited to hidden defects which are not known to the invitee and would not be discovered by him in the exercise of ordinary care.["'] Ex parte Mountain Top Indoor Flea Market, Inc., 699 So. 2d 158, 161 (Ala. 1997) (quoting Sisk v. Heil Co., 639 So. 2d 1363, 1365 (Ala. 1994), quoting in turn Harvell v. Johnson, 598 So. 2d 881, 883 (Ala. 1992)).

"27. [Shoe Show] bears the burden to prove that the danger was open or obvious -- i.e., whether [Tissier] should have noticed it. McClurg v. Birmingham Realty Company, 300 So. 3d at 1118-19. The [c]ourt concludes that the evidence failed to establish that the shoes and boxes on the floor behind her and sticking out from beyond shelves when she stepped backwards were open or obvious hazards because they had not been seen or recognized by [Tissier]. See [id.], at 1115.

"28. The [c]ourt concludes that evidence established that [Shoe Show] breached its duty owed to [Tissier] to use reasonable care and diligence to keep the premises in a safe condition, or give sufficient warning so that, by the use of ordinary care, the danger could be avoided.

"29. The [c]ourt concludes that evidence established that [Tissier]'s injuries and damages were directly and proximately caused by [Shoe Show]'s negligence in failing to use reasonable care and diligence to keep its premises in a safe condition or give sufficient warning so that, by the use of ordinary care, the danger could be avoided.

"30. The [c]ourt concludes that the evidence failed to establish that [Tissier] was guilty of contributory negligence.

> The [c]ourt further concludes that [Tissier] exercised reasonable and ordinary care while present on [Shoe Show]'s premise. ..."

(Capitalization and bold typeface in original; emphasis added.)

Issue

Shoe Show argues, among other things, that the trial court erred in entering a judgment for Tissier because, it says, as a matter of law, Tissier's fall was caused by an open and obvious danger. We agree.

Standard of Review

The circumstances of Tissier's fall were established by undisputed evidence. Tissier testified that she tripped over shoes or shoe boxes lying on the floor when she stepped backward while trying on a shoe. Shoe Show offered no evidence to the contrary. When the material facts are established by undisputed evidence, this court reviews de novo the application of the law to the facts. Englund v. Dauphin Island Prop. Owners Ass'n, [Ms. SC-2024-0414, Aug. 29, 2025] ___ So. 3d ___ (Ala. 2025).

Analysis

At the time of the accident, Tissier was a business invitee of Shoe Show. "'"In order to be considered an invitee, the plaintiff must have

been on the premises for some purpose that materially or commercially benefited the owner or occupier of the premises."'" Dolgencorp, Inc. v. Taylor, 28 So. 3d 737, 741 (Ala. 2009) (quoting Ex parte Mountain Top Indoor Flea Mkt., Inc., 699 So. 2d 158, 161 (Ala. 1997), quoting in turn Sisk v. Heil Co., 639 So. 2d 1363, 1365 (Ala. 1994)). In McClurg v. Birmingham Realty Co., 300 So. 3d 1115, 1118-19 (Ala. 2020), our supreme court explained:

> "'The owner of premises owes a duty to business invitees to use reasonable care and diligence to keep the premises in a safe condition, or, if the premises are in a dangerous condition, to give sufficient warning so that, by the use of ordinary care, the danger can be avoided.' Armstrong v. Georgia Marble Co., 575 So. 2d 1051, 1053 (Ala. 1991).
>
> "The owner's duty to make safe or warn is obviated, however, where the danger is open and obvious -- that is, where 'the invitee ... should be aware of [the danger] in the exercise of reasonable care on the invitee's part.' [Ex parte Mountain Top [Indoor Flea Mkt., Inc.], 699 So. 2d [158,] 161 [(Ala. 1997)]. The test is an objective one: '[W]hether the danger should have been observed [by the plaintiff], not whether in fact it was consciously appreciated [by him or her].' Jones Food Co. v. Shipman, 981 So. 2d 355, 362 (Ala. 2006); see Sessions v. Nonnenmann, 842 So. 2d 649 (Ala. 2002). Furthermore, the issue of open and obvious danger is an affirmative defense. See Barnwell v. CLP Corp., 235 So. 3d 238, 244 (Ala. 2017); Dolgencorp, Inc. v. Taylor, 28 So. 3d 737, 742 (Ala. 2009). Thus, the premises owner bears the burden of proving that the danger was open and obvious. Barnwell, 235 So. 3d at 244."

"'"[T]he question whether a danger is open and obvious is generally one of fact."'" McClurg, 300 So. 3d at 1119 (quoting Barnwell v. CLP Corp., 235 So. 3d 238, 244 (Ala. 2017), quoting in turn Howard v. Andy's Store for Men, 757 So. 2d 1208, 1211 (Ala. Civ. App. 2000)). However, this court can hold that a danger is open and obvious as a matter of law when reasonable minds could not differ regarding the obviousness of the danger. Id. In Dolgencorp, for example, our supreme court reversed a judgment for a customer of a Dollar General discount store who had tripped and fallen while stepping backward into two cases of merchandise lying on the floor beside her because it determined that, as a matter of law, the fall was caused by an open and obvious hazard. Because Dolgencorp is so similar to this case, we discuss it in detail.

The evidence in Dolgencorp showed that Arlie Taylor, who was then 68 years old, was shopping for laundry products in the store. Taylor testified that the aisle where the laundry products were located was cluttered with boxes of merchandise, which, Taylor said, she had navigated her shopping cart around. Taylor said that, when she stepped out from behind her shopping cart to reach for fabric softener on a top shelf, she tripped over two boxes of merchandise that were stacked on top

of one another. Taylor testified that, although the boxes were knee or thigh high, she did not see them before stepping into them. In analyzing whether the boxes presented an open and obvious hazard, the supreme court said:

> "It seems evident that the presence of cases of merchandise -- each of which was at least 12-13 inches high and 15-16 inches wide -- in the aisles of the store presents an open and obvious hazard of a fall. No evidence was presented indicating that the cases of merchandise were in any way obscured or hidden from view; rather, the evidence clearly established that the cases of merchandise had been placed in the aisles in plain view of anyone attempting to navigate the aisles. The application of an objective standard ... compels the conclusion that such a hazard was open and obvious. The condition of the premises was open and obvious for all to see, and it is undisputed that Taylor had noticed and maneuvered around several cases of merchandise in the aisles before her fall."

Dolgencorp, 28 So. 3d at 744-45.

In this case, on a busy shopping day, Tissier observed the clutter on the floor of the store, which was visible as she navigated through the aisles of the store. While trying on a shoe in a standing position, Tissier stepped backward onto shoes or shoe boxes lying on the floor. As the trial court found, Tissier did not see the particular items she tripped over before stepping backward, but nothing in the record indicates that they were obscured or hidden from view. As in Dolgencorp, the condition of

the premises was open and obvious for all to see, and it was undisputed that Tissier had noticed that condition and had maneuvered around the clutter before her fall.

In the judgment, the trial court concluded that the hazard leading to Tissier's fall was not open and obvious because Tissier did not see the items before stepping backward. However, in deciding whether a hazard is open and obvious, the test is not whether the invitee saw and consciously appreciated the danger but whether, objectively speaking, the danger should have been observed by the invitee. See Jones Food Co. v. Shipman, 981 So. 2d 355, 362 (Ala. 2006). In this case, the hazard should have been observed by Tissier because the items were lying on the floor in plain view. Therefore, the danger was open and obvious. The trial court misapplied the law to the facts when it concluded otherwise.

Tissier argues that the judgment should be affirmed based on McClurg. In McClurg, Rose McClurg, a business invitee, fell while retrieving a shopping cart in the parking lot of a Dollar Tree discount store. Once McClurg reached the cart, she stepped backward into an unmarked and unguarded pothole, which was 4 to 5 inches wide, 16 inches long, and 4.5 inches deep and of the same color and material as

the surrounding asphalt. 300 So. 3d at 1117, 1120. The supreme court held that a reasonable jury could find that the pothole was not an open and obvious hazard because of its dimensions, location, and color, along with its unmarked condition. Thus, it concluded that, under the circumstances, the pothole was not an open and obvious hazard as a matter of law.

In McClurg and in this case, an invitee stepped backward and tripped over a hazardous condition that she did not see. However, in McClurg, the supreme court did not hold that it was the failure of the invitee to observe the hazard while stepping backward that created a question of fact as to whether the hazard was open and obvious. The court explained that it was the obscure condition of the pothole that raised a question as to whether it was a hidden defect and not an open and obvious danger. This case differs from McClurg because Tissier did not step into a hole or other defect in the premises that blended into the surrounding area. Tissier testified that she stepped onto shoes or shoe boxes lying on the floor. Like in Dolgencorp, under the objective test, Tissier should have observed those items, which were visible.

Conclusion

We conclude that the danger of tripping on shoes or shoe boxes should have been observed, even if Tissier did not actually see -- or consciously appreciate -- the specific objects that she tripped over. Because the hazard was open and obvious, Shoe Show's duty to make the premises safe or to warn of the hazard was obviated. McClurg, 300 So. 3d at 1118. Consequently, the trial court erred by entering a judgment in Tissier's favor. Dolgencorp, 28 So. 3d at 745. Accordingly, we reverse the trial court's judgment and render a judgment in favor of Shoe Show.

REVERSED AND JUDGMENT RENDERED.

Edwards, Hanson, Fridy, and Bowden, JJ., concur.