2012 IL App (2d) 110186
No. 2-11-0186
Order filed April 11, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

TAMMY ELLIS,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 06-L-172
	)	
WALMART, INC.,	)	Honorable
	)	Kevin T. Busch,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

Held: The circuit court properly granted summary judgment in slip-and-fall case where plaintiff could not establish constructive notice because she presented no evidence regarding the length of time the substance was on the floor before she fell.

¶ 1 Plaintiff, Tammy Ellis, appeals from an order of the circuit court granting summary judgment to defendant, Walmart, Inc., in this negligence action for injuries Ellis sustained in a slip and fall while in defendant's store. On appeal, Ellis claims that the circuit court erred in granting summary judgment because a jury should decide whether: (1) defendant had constructive notice of the hazard; (2) defendant is liable for using inappropriate and dangerous flooring tiles and for not having mats

on the floor when it knew that the aisle posed an unreasonable risk to customers; (3) defendant is liable under a voluntary undertaking theory; and (4) the danger posed by the spilled liquid was open and obvious. We affirm.

¶ 2 I. BACKGROUND

¶ 3 On October 8, 2009, plaintiff filed a complaint seeking monetary damages for injuries incurred as a result of slipping and falling in an aisle in defendant's store in Elgin, Illinois. Plaintiff alleged she was a business invitee of defendant on July 30, 2005. Defendant owed her a duty to use ordinary and reasonable care and caution with respect to its premises. Defendant allegedly breached that duty by allowing or permitting "debris to be and remain on the floor in one of its aisles." Defendant breached its duty by negligent operation, management, maintenance and control of its premises; failure "to inaugurate and maintain necessary and proper safety standards"; failure to inspect the premises, place barricades or other signs or to warn plaintiff of the dangerous condition of the floor, to clean and dry the floor and to provide a non-slip surface; and permitted the debris to remain on the floor when it knew or should have known that people would be walking in the aisle.

¶ 4 In her discovery deposition, plaintiff testified that she and her mother went to defendant's store to buy household supplies. The store was busy. Plaintiff slowly pushed a shopping cart down the detergent aisle looking for a particular brand of fabric softener called Fabuloso. When plaintiff was about three-fourths down the aisle she saw the Fabuloso close to the top of the shelf and as she attempted to grab it, her left foot slid forward and she started to slide. Plaintiff fell on her buttocks and back and she also struck her head. She was lying in a big spill of blue liquid fabric softener.

¶ 5 A customer, Arturo Cuevas, testified in his discovery deposition that he was in the same aisle for at least a couple of minutes before plaintiff's fall. As he walked into the detergent aisle, the spill

was right in front of him; he noticed it when he was halfway through the aisle. He described it as "a mess"; there was a puddle about one to two feet wide which reached across the entire aisle from rack to rack. The puddle would probably have been visible from the main aisle. The puddle was not created while he was in the aisle. Cuevas did not hear a bottle drop or see anyone pour the liquid out of a bottle.

¶ 6 On October 5, 2010, defendant filed a motion for summary judgement, arguing that plaintiff cannot establish that defendant had actual or constructive notice of the substance on the floor where plaintiff slipped. Defendant further argued, in the alternative, that defendant had no duty of care to protect plaintiff from the alleged dangerous condition because it was open and obvious.

¶ 7 The parties also deposed a number of defendant's employees. Jeremy Beyer, a support manager at the Elgin store, testified that he worked the day of the incident and that the store was busy that day. Beyer testified that employees cleaned spills if they saw them. He estimated that the store would conduct about four safety sweeps in an eight-hour period, but he did not recall whether the safety sweeps were called or performed at regular intervals or not. When a safety sweep is called every associate walks up and down every aisle and looks for spills and hazards. Beyer did not know the "specifics" regarding safety sweeps regarding the day of the incident. Beyer testified that as part of his duties on a busy Saturday he walked through the store to look for spills. If he saw a spill that was too big to clean up himself he would page maintenance. In addition, there are typically two associates assigned to the "paper goods and chemical department," where the detergent aisle is located.

¶ 8 Another support manager at defendant's Elgin store, Juan Carillo, testified in his discovery deposition that he was working the day of plaintiff's fall. Carillo could not recall when the last safety sweep had been performed prior to plaintiff's fall.

¶ 9 The manager of defendant's Elgin store, Ross Alm, testified in his discovery deposition that he could not recall whether he worked the day of the incident. Alm was asked, "And there was no set time when—no specific set interval of time in which a member of the safety team would be touring the store to look from action alleys from the detergent aisles?" Alm answered, "No, there wasn't a specific time. It varied." Alm did not know what time safety sweeps were done on the day of the incident.

¶ 10 Plaintiff's disclosed forensic engineer expert, Lloyd Sonenthal, testified at his deposition that slip-resistant tile, abrasive-surfaced or textured flooring or mats would have been safer than the smooth tile upon which plaintiff slipped and fell. Sonenthal testified that he did not perform any study to determine whether or not abrasive or textured flooring would have been slip-resistant if it had been covered with fabric softener. Sonenthal's opinion was based on his reading of the "technical literature" that indicated that such flooring would have made "it less slippery." He also testified that, if the flooring plaintiff slipped on had been slip-resistant, "I cannot say that [plaintiff] would not have fallen."

¶ 11 Plaintiff filed a response to defendant's motion for summary judgment. Plaintiff argued that defendant had constructive notice of the slippery tiles and propensity for spills. In support of this argument, plaintiff stated that in the two years prior to plaintiff's fall there were seven other falls that were caused by slippery wet tiles and resulted in injury. Plaintiff stated that two of these seven falls were "specifically due to slippery wet tiles and resulted in injury." Plaintiff attached WalMart claim

summary reports to its response to support this statement. These documents indicate the following incidents. On July 24, 2005, a customer slipped on tile flooring on Mountain Dew soda in the soft drinks aisle. On July 9, 2005, a customer slipped and fell on tile flooring on water; the report does not indicate in which part of the store the incident occurred. On June 27, 2004, a customer slipped on water; the report does not indicate in which part of the store the incident occurred or on what type of surface. On February 26, 2004, a customer slipped and fell on dry tile flooring on an unidentified substance; the report does not indicate in which part of the store the incident occurred. On November 11, 2004, a customer slipped on tile flooring on water; the report does not indicate in which part of the store the incident occurred. On November 18, 2003, a customer slipped on tile flooring on water; the report does not indicate in which part of the store the incident occurred. On November 1, 2003, a customer slipped on tile flooring on dish soap; the report does not indicate in which part of the store the incident occurred. On October 15, 2003, a customer slipped and fell on carpet after his "cart wheels locked and he let go"; the report does not indicate in which part of the store the incident occurred. On October 14, 2003, a customer slipped and fell on tile flooring on liquid soap; the report does not indicate in which part of the store the incident occurred.

¶ 12 Plaintiff attached a report of forensic engineer, Lloyd Sonenthal, who opined that "[Defendant] permitted the aisle to be in a wet, slippery condition knowing that the chemical aisle was in an area where there was a 'greater' chance of a spill." Further, "[defendant] permitted the aisle to be in a wet, slippery condition knowing that the chemical aisle was an area where there was a 'greater' chance of a spill, and made no provision to cover the walkway with a mat or runner, or apply a slip resistant coating[,]" rather than the smooth tile that was applied.

¶ 13 Plaintiff also attached defendant's "Store Housekeeping-Floor Care-Policy" that provided in part:

"The Store Manager is responsible for the following practices in the store's housekeeping to ensure the safety of Customers ***.

Floor Care

All Stores are to have an in-store floor care program. *** Each Manager must be personally involved with the maintenance of his/her store.

The Procedures outlined in the Wal-Mart Maintenance Manual are mandatory for all stores.

* * *

Assign stockmen to safety sweep.

* * *

The daytime Associates will only be used to clean floor spills and perform safety sweeps.

* * *

General Housekeeping

- Spills (Safety cones should be available for use.)

  when a liquid or granular substance is spilled, the area must be cordoned off until the floor is clear and the floor is safe for Customer traffic. The spill must be cleaned immediately."

Defendant's Slip, Trip and Fall Guidelines" provided, in part:

"Follow these guidelines to help prevent slips, trips and falls within one's store.

- Maintain good housekeeping standards throughout the facility by practicing the clean-as-you-go method.

* * *

- Clean up spills in a timely manner.
- Complete safety sweeps on a regular basis to help keep the sales floor free of slip and trip hazards.

* * *

- Utilize maintenance associates to increase floor care coverage during times of increased customer traffic.

* * *

- Locate and maintain floor mats in areas such as Produce * * * and the vestibule where liquids can cause a slip and fall hazard."

Defendant's "Risk Control Module" provided, in part, "Do not leave spills unattended." It also provided, "Respond to spills with a sense of urgency."

Defendant's "Safety Sweep Program Policy" provided, in part:

> "All Associates have a responsibility to conduct Safety Sweeps. Safety Sweeps should be conducted periodically throughout the day.
>
> A Safety Sweep has 3 parts:
>
> 1. A Safety Sweep is called over the P.A.
>
> 2. All Associates (Management and Hourly) should stop what they are doing (unless immediately involved in customer service), and walk the aisles and Action Alleys around the area they are working in, and look for things people might slip on or trip over such as merchandise, debris, or liquid on the floor.

3. Immediately correct any opportunities identified by cleaning up any spill on the floor, picking up on merchandise, debris, or pallets on the floor, and covering stockbase and endcap base corners."

¶ 14 After hearing the argument of the parties, the circuit court granted defendant's motion for summary judgment. The court's written order provides in part:

"9. It is the burden of Plaintiff to point to some evidence to support her claim of constructive notice, the Court finding there being no such evidence;

10. The Court declining to render an opinion on the issue of open and obvious—as this decision is based on notice;

11. Summary Judgment is granted on behalf of Defendant; this cause is dismissed."

¶ 15 Plaintiff appealed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, plaintiff argues that the circuit court erred by granting defendant's motion for summary judgment. Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Adames v. Sheahan*, 233 Ill. 2d 276, 295 (2009). When determining whether a genuine issue of a material fact exists, the court must construe all pleadings, depositions, admissions, exhibits, and affidavits strictly against the movant and in favor of the nonmoving party. *Id*. at 295-96. Summary judgment is a drastic means of ending litigation and should be granted only when the right of the moving party is free from doubt. *Id*. at 296. In addition, this court may affirm a circuit court's grant of summary judgment on any basis apparent in the record, regardless of whether the circuit court relied on that basis or whether the court's reasoning was correct. *Salerno v. Innovative Surveillance Technology, Inc.*, 402 Ill. App. 3d

490, 496 (2010). We review the circuit court's grant of summary judgment *de novo*. *Adames*, 233 Ill. 2d at 296.

¶ 18 To recover on a negligence claim, the plaintiff must establish that defendant owed plaintiff a duty of care, the defendant breached that duty, and an injury proximately resulted from that breach. *Bajwa v. Metropolitan Life Insurance Co.*, 208 Ill. 2d 414, 421 (2004). If the plaintiff cannot establish each element of her cause of action, summary judgment for the defendant is proper. *Wallace v. Alexian Brothers Medical Center*, 389 Ill. App. 3d 1081, 1085 (2009). The question of whether the defendant owed the plaintiff a duty of care is a question of law to be determined by the court. *Bajwa*, 208 Ill.2d at 422.

¶ 19 Where an injury is allegedly caused by a condition on a defendant's property, our courts consider foreseeability. *LaFever v. Kemlite Co., a Division of Dyrotech Industries, Inc.*, 185 Ill. 2d 380, 389 (1998). A business owner breaches its duty to an invitee who slips on a foreign substance if: (1) the substance was placed there by the negligence of the proprietor; or (2) its servant knew of its presence; or (3) the substance was there a sufficient length of time so that, in the exercise of ordinary care, its presence should have been discovered; *i.e.*, the proprietor had constructive notice of the substance. *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1063 (2001).

¶ 20 Plaintiff argues that the circuit court improperly granted summary judgment because the jury should decide whether defendant had constructive notice of the hazard. Defendant argues that, because plaintiff cannot establish how long the fabric softener was on the floor before she fell, she cannot establish constructive knowledge as a matter of law.

¶ 21 Where the plaintiff alleges constructive notice, the time element is a material factor. *Hayes v. Bailey*, 80 Ill. App. 3d 1027, 1030 (1980). Thus, the plaintiff is required to "establish that the

foreign substance was on the floor long enough to constitute constructive notice to the proprietor." *Id.* at 1030.

¶ 22 In *Hayes*, the court affirmed a directed verdict where the plaintiff slipped and fell in a puddle of water in a restaurant restroom. *Id.* at 1029. The restroom had been inspected by the defendant's employee approximately two and one-half hours earlier on the night of the occurrence. *Id.* There was no evidence of how long the water had been on the floor. *Id.* at 1030. The appellate court held that the time element to establish constructive notice is a material factor and that it was incumbent upon the plaintiff to establish that the water had been on the floor long enough to constitute constructive notice to the defendant. *Id.* The court stated:

> "In the instant case, there is no evidence at all as to how long the water had been on the floor of the restroom. Plaintiff simply testified that she slipped and fell and that after she was on the floor she noticed she was wet. In the absence of any evidence tending to show constructive notice we believe it was proper not to submit the case to the jury and to direct a verdict for the defendant." *Id.*

¶ 23 In this case, plaintiff offered no evidence to establish that the liquid fabric softener was on the floor long enough to constitute constructive notice. The only evidence in this case regarding time is that of a customer who testified that he saw the liquid puddle "a couple of minutes" before plaintiff fell in it. As a matter of law, this amount of time is insufficient to establish constructive notice. See *Hresil v. Sears, Roebuck & Co.*, 82 Ill. App. 3d 1000 (1980) (circuit court properly held that evidence showing foreign substance upon which plaintiff allegedly slipped and fell could only have been on the floor for 10 minutes failed to provide store owner with constructive notice).

Therefore, there was no evidence of constructive notice and the circuit court properly granted defendant's motion for summary judgment.

¶ 24 Plaintiff contends that "there is one genuine issue of material fact precluding summary judgment—whether [defendant's] staff failed either to discover the spilled fabric softener during the required safety sweep or whether the workers failed to conduct the required walk-through." Plaintiff fails to understand that the failure to show how long the fabric softener had been on the floor was a failure to not only establish constructive notice, but also a failure to establish proximate cause. See *Hayes*, 80 Ill. App. 3d at 1031. Even if defendant had properly performed a required safety sweep and/or walk-through, proximate cause cannot be established without knowing how long the fabric softener was on the floor. In the absence of any evidence showing that the fabric softener had been on the floor "a substantial period of time," there is no evidence that defendant's alleged failure to properly perform its required safety sweep and/or walk-through caused the fabric softener to remain on the floor and caused plaintiff to slip and fall. Therefore, there was no evidence of proximate cause. See *Id.* at 1031.

¶ 25 Plaintiff cites the following cases to support its argument, *Newsom-Bogan v. Wendy's Old Fashioned Hamburgers of New York, Inc.*, 2011 IL App (1st) 092860, *Canales v. Dominick's Finer Foods, Inc.*, 92 Ill. App. 3d 773 (1981), and *Buchanan v. Whole Foods Market Group, Inc.*, No. 07 C 4189, 2009 WL 1514655 (N.D. Ill. May 27, 2009). These cases are distinguishable from the case at bar. In *Newsom-Bogan*, 2011 IL App (1st) 092860, the plaintiff slipped and fell on a greasy substance on a tile floor at the defendant's restaurant. *Id.* ¶ 5. The defendant's training manual required a manager or employee to complete a walk-through every 15 minutes "to make sure everything is up to par." *Id.* ¶ 7. The defendant moved for summary judgment on the basis of lack

of constructive notice. *Id.* ¶ 8. The plaintiff stated in an affidavit that, before her fall, she had been sitting in the restaurant for 20 minutes and did not see anyone perform a walk-through and did not see anyone spill anything. *Id.* ¶ 9. The circuit court granted the defendant's motion for summary judgment. *Id.* ¶ 10. The appellate court reversed, reasoning, in part:

> "Defendant's written manual is sufficient to create a duty to inspect every 15 minutes, and when plaintiff testified that she observed no one inspecting the area for 20 minutes, that testimony is sufficient to create a triable issue of fact as to constructive notice." *Id.* ¶ 19.

¶ 26 In this case, defendant's written policy did not include a time provision regarding safety sweeps. Thus, defendant did not have a duty to inspect at specified times. Further, the only evidence plaintiff provided regarding the length of time the fabric softener was on the floor was from a customer who stated that he saw the puddle a couple of minutes before plaintiff fell. In addition, there was no evidence that the fabric softener had been on the floor for any significant length of time; there was no debris in the substance or wheel or foot print tracks in the substance or outside of the puddle. Thus, *Newsom-Bogan*, is distinguishable from this case.

¶ 27 In *Canales*, the plaintiff slipped and fell on an open and crushed tube of Ben-Gay that was on the defendant's floor. *Canales*, 92 Ill. App. 3d at 775. "[T]he tube was stepped on, causing its contents to be forced out of its bottom; that the contents were tracked over an area about one foot wide and three feet long by a person or persons walking through it; and that because of its description as being greasy or pasty, the contents could not of itself spread over such an area" and "there were five or six footprints extending out from the ointment." *Id.* at 776. The employee responsible for inspecting and cleaning the area had not worked on the day the plaintiff fell. *Id.* at 776. The appellate court affirmed the circuit court's denial of the defendant's motion for a directed

verdict and judgment nothwithstanding the verdict. *Id*. at 776. The court stated that it was reasonable to infer that the Ben-Gay tube was on the floor for more than a few minutes. *Id*. at 777. In this case, plaintiff has provided no evidence to reasonably infer that the fabric softener was on the floor for more that a few minutes. There was no evidence of footprints, tracks or debris. There was no evidence that the bottle of fabric softener was crushed, run over, or stepped on. Thus, *Canales*, is distinguishable from this case.

¶ 28 Plaintiff also cites *Buchanan*, No. 07 C 4189, 2009 WL 1514655. Although federal district courts decisions may be persuasive, such decisions are not binding on this court. See *Rockford Police Benevolent and Protective Association, Unit No. 6 v. Morrissey*, 398 Ill. App. 3d 145, 153 (2010). Further, *Buchanan*, is not persuasive in this instance because it is distinguishable from this case. In *Buchanan* the plaintiff slipped and fell on a Dixie cup and tea on the floor of the defendant's grocery store. *Buchanan*, No. 07 C 4189, 2009 WL 1514655 at 1. The defendant "and its employees knew that individuals were handing out samples of Argo Tea and, therefore, knew that some of those samples might find their way onto Defendant's floor." *Id*. at 5. "[O]ne of Defendant's employees was physically present in the aisle where the Dixie cup was located" and "the employee walked past the Dixie cup." *Id*. at 5. Therefore, the court held that there was a genuine issue of material fact regarding whether the defendant should have known about the presence of the Dixie cup. *Id*. at 5. In this case, there is no evidence that defendant gave open samples of fabric softener to customers or that one of its employees walked past the spill before plaintiff's fall. Thus, *Buchanan*, is distinguishable from the case at bar.

¶ 29 Next, plaintiff argues that a jury should decide if defendant is liable for using inappropriate and dangerous floor tiles and for not having mats on the floor. Plaintiff contends that defendant

knew of the unreasonable risk to customers because, in the two years prior to plaintiff's incident, there were seven slips and falls in the same store and two slips and falls in the same detergent aisle. We note that plaintiff fails to support this factual allegation with citation to the record, and we cannot find support for this allegation in the record. None of the reports of prior slips and falls attached to plaintiff's response to defendant's motion for summary judgment indicate that the incidents occurred in the detergent aisle.

¶ 30 Further, plaintiff fails to cite to relevant authority. Plaintiff cites *Grewe v. West Washington County Unit District No. 10*, 303 Ill. App. 3d 299 (1999), and *Van Holt v. National R.R. Passenger Corp.*, 283 Ill. App. 3d 63 (1996), to support her argument. In *Grewe* the two prior similar incidents occurred within one hour prior to the plaintiff's fall and an employee knew of the two prior incidents. *Id*. at 304. Therefore, the defendant had actual notice. *Id*. at 305. In this case, there is no evidence of that plaintiff had actual notice. Thus, *Grewe* is distinguishable from the case at bar.

¶ 31 In addition, we are puzzled by plaintiff's reliance on *Van Holt*, 283 Ill. App. 3d 63, because the court held that evidence of the *absence* of prior accidents was inadmissible to establish the *lack* of notice. *Id*. at 73. In this case, plaintiff argues that evidence of prior accidents establishes notice. Thus, *Van Holt* is inapplicable to this case. Accordingly, plaintiff's cannot support this theory of constructive knowledge because she has neither factual nor legal support.

¶ 32 Further, plaintiff notes that her forensic engineer expert, Sonenthal, testified that slip-resistant tile or mats would have been safer than the smooth tile upon which plaintiff slipped and fell. Plaintiff ignores that Sonenthal failed to establish that a slip-resistant floor would have prevented her injuries. Rather, Sonenthal testified that if the flooring plaintiff slipped on had been slip-resistant

"I cannot say that [plaintiff] would not have fallen." Therefore, plaintiff failed to establish that defendant's failure to have slip-resistant flooring proximately caused her injuries.

¶ 33 Plaintiff also argues that a jury should determine if defendant is liable under a voluntary undertaking theory. Defendant argues that this theory is forfeited because plaintiff raises it for the first time on appeal. Plaintiff counters that she raised the theory as "part and parcel of [the] constructive notice argument." Plaintiff notes that defendant's training and safety manuals show that it had a duty to keep its floors free from debris.

¶ 34 The relevant sections of the Restatement, cited by plaintiff in her appellate brief, provide as follows:

> "§ 323. Negligent Performance Of Undertaking To Render Services
>
> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.
>
> * * *
>
> § 324A. Liability To Third Person For Negligent Performance Of Undertaking
>
> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if:

(a) his failure to exercise reasonable care increases the risk of such harm, or

(b) he has undertaken to perform a duty owed by the other to the third person, or

(c) the harm is suffered because of reliance on the other or the third person upon the undertaking." Restatement (Second) of Torts §§ 323, 324A (1965).

Under the voluntary undertaking theory involving nonfeasance, a plaintiff must prove her reliance on the defendant's promise. *Bourgonje v. Machev*, 362 Ill. App. 3d 984, 997 (2005).

¶ 35 Illinois Supreme Court Rule 341(h)(7) (eff. Sept.1, 2006) provides that the argument section of an appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone. See *Housing Authority of Champaigne County v. Lyles*, 395 Ill. App. 3d 1036, 1040 (2009). In this case, plaintiff fails to support her contention with argument beyond bald assertion. She states only that:

"[Defendant] voluntarily undertook a duty of care of checking its store to minimize the risk of harm to its customers and its workers and it negligently performed that duty.

* * *

There is no question that [defendant] recognized the need to conduct safety sweeps of the store for the protection of its customers and workers."

¶ 36 Plaintiff quotes sections 323 and 324A of the Restatement (Second) of Torts (1965). But she fails to cite to any facts in the record to support this theory. Plaintiff also fails to apply any particular subsection of section 323 or 324A to any fact that would preclude summary judgment. Further,

plaintiff fails to offer relevant case citation. Accordingly, plaintiff has forfeited the voluntary undertaking theory. See *In re Marriage of Bates*, 212 Ill. 2d 489, 517 (2004) ("A reviewing court is entitled to have issues clearly defined with relevant authority cited."); see also, *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011) (Appellant forfeited argument because she failed to failed to cite to relevant authority and failed to support her argument beyond "bald assertion.").

¶ 37 Forfeiture aside, plaintiff failed to establish that defendant expressed its safety policy to its customers. Thus, plaintiff could not and did not establish that she changed her position as a result defendant's safety policy. Accordingly, plaintiff cannot establish liability based on a voluntary undertaking theory. *Bell v. Nutsell*, 2011 IL 110724, ¶ 27 (2011).

¶ 38 Lastly, plaintiff argues that a jury should decide whether the danger posed by the spilled fabric softener was open and obvious. Because we have already determined that the circuit court properly granted summary judgment in defendant favor on other bases, and a determination of this issue is not necessary for the resolution of this appeal, we need not address this issue.

¶ 39 III. CONCLUSION

¶ 40 For these reasons, the judgment of circuit court of Kane County is affirmed.

¶ 41 Affirmed.