

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

LINDA DAWSON,

Plaintiff,

vs.

HY-VEE, INC.,

Defendants.

CI 16 – 1549

ORDER

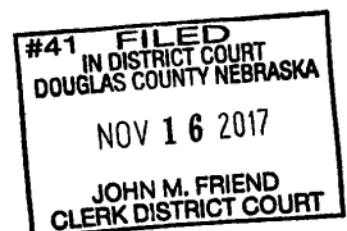
This matter came on for hearing before the Court on the 20<sup>th</sup> day of September, 2017 on the Motion for Partial Summary Judgment filed by the Plaintiff and the Motion for Summary Judgment filed by the Defendant. The Plaintiff appeared through counsel, Michael J. Mullin, and the Defendant appeared through counsel, Damien Wright. Evidence was adduced and the matter submitted to the Court, at which time the Court took the matter under advisement.

The Court has reviewed all of the evidence herein, specifically Exhibits 1 through 12. The Court has further reviewed Exhibit 11 multiple times for the reason that Exhibit 11 is a video tape of the actual incident itself. Having reviewed all of the evidence herein, the Court is satisfied that there is no question of material fact relating to the operation of the automatic sliding doors in the Hy-Vee Store on the date of this incident. The video evidence shows the doors to be working properly. The video evidence further shows the Plaintiff entering the doorway at the extreme right hand side while the doors were just beginning to close and as the doors touched the Defendant, they immediately re-opened. This Court is of the view that there is no material question of fact relating to the operation of the doors and further, that *res ipsa loquitur* does not apply. The uncontroverted visual evidence shows Plaintiff stepping into the closing door which thereafter automatically re-opened immediately as it was designed to do.

Based on above, the Plaintiff's Motion for Partial Summary Judgment must be denied and the Defendant's Motion for Summary Judgment must be granted.



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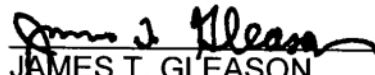
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Partial Summary Judgment be and the same is hereby denied.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment is granted and judgment is granted in favor of the Defendant against the Plaintiff.

Matter disposed of.

DATED this 16<sup>th</sup> day of November, 2017.

BY THE COURT:

  
\_\_\_\_\_  
JAMES T. GLEASON  
DISTRICT COURT JUDGE

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on November 17, 2017 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

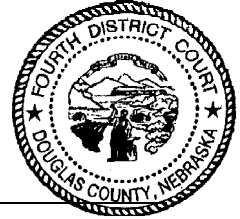
Damien J Wright  
damien@welchlawfirm.com

Michael J Mullen  
mmullen@womglaw.com

Date: November 17, 2017

BY THE COURT:

*John M. Friend*  
CLERK



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA


LINDA DAWSON,	)	CASE NO. CI 16 -1549
	)	
Plaintiff,	)	
	)	<b>PRAECIPE FOR TRANSCRIPT</b>
v.	)	
	)	
HY-VEE, INC.,	)	
	)	
Defendant.	)	

TO: CLERK OF THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

Pursuant to Neb. Ct. R. App. Pract. § 2-204, Plaintiff Linda Dawson hereby requests that you prepare a transcript in the above-captioned case, and that the certified transcript be filed with the Clerk of the Nebraska Supreme Court and Court of Appeals, consisting of:

1. Plaintiff's Complaint, filed on or about February 26, 2016.
2. Defendant's Answer filed on or about April 6, 2016.
3. Plaintiff's Motion for Partial Summary Judgment filed on or about August 1, 2017.
4. Defendant's Motion for Summary Judgment filed on or about August 1, 2017.
5. Defendant's Amended Notice of Hearing filed on or about August 23, 2017.
6. Plaintiff's Amended Notice of Hearing filed on or about August 24, 2017.
7. The Court's Order of Continuance filed on or about September 12, 2017.
8. The Court's Motion Under Advisement filed on or about October 5, 2017.
9. Order on Summary Judgment filed on or about November 16, 2017.
10. All other docket and/or journal entries in the court file.

LINDA DAWSON, Plaintiff

By:   
Michael J. Mullen #22941  
Valentine O'Toole, LLP  
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P.O. Box 540125  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Praecipe for Transcript was E-Filed and sent by regular U.S. mail, postage prepaid, on December 15, 2017, to the following:

Daniel Welch  
Damien Wright  
WELCH LAW FIRM  
1299 Farnam Street, Ste. 1220  
Omaha, NE 68102  
*ATTORNEYS FOR DEFENDANT*

  
\_\_\_\_\_

# Certificate of Service

I hereby certify that on Friday, December 15, 2017 I provided a true and correct copy of the Praecipe-Appeal Transcript to the following:

Hy-Vee Inc represented by Catherine Dunn Whittinghill (Bar Number: 20273) service method: Electronic Service to katie@welchlawfirm.com

Hy-Vee Inc represented by Welch, Daniel J., (Bar Number: 21553) service method: Electronic Service to dan@welchlawfirm.com

Hy-Vee Inc represented by Wright, Damien James (Bar Number: 23256) service method: Electronic Service to damien@welchlawfirm.com

Signature: /s/ Michael Joseph Mullen (Bar Number: 22941)