

IN THE FOURTH DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA

4th DCA CASE NO.: 4D2023-2499
L.T. CASE NO. 50-2022-CA-
007802XXXMB
Palm Beach County, Civil Division

JEAN WILLIAMS
Appellant/Plaintiff,

v.

TARGET CORPORATION
Appellee/Defendant.

ANSWER BRIEF

DERREVERE STEVENS BLACK & COZAD
JON D. DERREVERE, ESQ.
E-mail: jdd@derreverelaw.com
Florida Bar No.: 0330132
SHIRLEY JEAN MCEACHERN
E-mail: sjm@derreverelaw.com
Florida Bar No. 321044
Attorneys for APPELLEE/DEFENDANT
2005 Vista Parkway, Suite 210
West Palm Beach, Florida 33411
Telephone: 561-684-3222
Facsimile: 561-640-3050
cprasad@derreverelaw.com
eservice@derreverelaw.com

ACKNOWLEDGMENTS

Appellant/Plaintiff JEAN WILLIAMS shall be referred to herein as “WILLIAMS”.

Appellee/Defendant TARGET CORPORATION shall be referred to herein as the “TARGET”.

References to the Record on Appeal shall be designated as “R” followed by the Record/PDF page number and where applicable, the line number. The Transcript of the Summary Judgment Hearing on June 29, 2023 is found at R. 0900-0925.

TABLE OF CONTENTS

1.	Acknowledgment	II
2.	Table of Contents	II
3.	Table of Citations	III
4.	Statement of the Case and of the Facts	1
5.	Summary of Argument	10
6.	Standard of Review	11
7.	Legal Argument	14

**TARGET IS ENTITLED TO JUDGMENT AS A MATTER OF LAW;
THE FINAL JUDGMENT (“FJ”) DOES NOT CONSTITUTE
REVERSIBLE ERROR AND SHOULD BE AFFIRMED**

A. TARGET’s duty of care and Florida’s “open an obvious doctrine”14

B. TARGET maintained its premises in a reasonably safe condition; as a matter of law, a curb stop is an “open and obvious” condition.18

C. As a matter of law, the curb stop was “open and obvious” and not a “dangerous condition.”26

8. Conclusion 34

9. Certificate of Service..... IX

10. Certificate of Compliance with Rule 9.045 and 9.210(g)X

TABLE OF CITATIONS

Cases:

Page No.

<i>Aaron v. Logro Corp.</i> , 226 So. 2d 8 (Fla. 3d DCA 1969)	27
<i>Allen v. Tyson Foods, Inc.</i> , 121 F.3d 642, 646 (11th Cir. 1997)	24
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	12
<i>Aventura Mall Venture v. Olson</i> , 561 So. 2d 319, 320 (Fla. 3d DCA 1990)	17
<i>Becksted v. Riverside Bank of Miami</i> , 85 So.2d 130 (Fla. 1956)	28
<i>Belden v. Lynch</i> , 126 So. 2d 578 (Fla. 2d DCA 1961)	15
<i>Bellini v. Gypsy Magic Enterprises, Inc.</i> , 112 A.D. 3d 867, 978 N.Y.S. 2d 73 (2d Dept. 2013)	30
<i>Bowles v. Elkes Pontiac Co.</i> , 63 So.2d 769 (Fla. 1952)	16, 27, 28
<i>Brady v. State Paving Corp.</i> , 693 So. 2d 61 (Fla. 4 th DCA 1997)	19, 20
<i>Brooks v. Sears, Roebuck & Co.</i> , 302 Mass. 184, 19 N. E. 2d 39 (1939)	29
<i>Cardia v. Willchester Holdings, LLC</i> , 35 A.D.3d 336, 337, 825 N.Y.S.2d 269 (2d Dept. 2006)	30
<i>Casby v. Flint</i> , 520 So. 2d 281 (Fla. 1988)	16

<i>Circle K Convenience Stores, Inc. v. Ferguson</i> , 556 So. 2d 1207 (Fla. 5 th DCA 1990)	16, 17, 26
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317 (1986).	12, 13
<i>Cook v. MillerCoors, LLC</i> , 829 F. Supp. 2d 1208 (Fla. M.D. Fla. 2011)	25
<i>Craven v. TRG-Boynton Beach, Ltd.</i> , 925 So. 2d 476 (Fla. 4 th DCA 2006)	11
<i>Crawford v. Miller</i> , 542 So. 2d 1050 (Fla. 3 rd DCA1989)	16
<i>De Cruz-Haymer v. Festival Food market, Inc.</i> 127 So. 3d 885 (Fla. 4 th DCA 2013)	19
<i>Delgado v. Laundromax, Inc.</i> , 65 So. 3d 1087 at 1989 (Fla. 3d DCA 2011)	14
<i>Dominguez v. Publix Super Mkts., Inc.</i> , 187 So. 3d 892 (Fla. 3d DCA 2016)	15
<i>Ellis v. England</i> , 432 F. 3d 1321 (11 th Cir. 2005)	13
<i>Encarnacion v. Lifemark Hospitals of Florida, Inc.</i> , 211 So. 3d 275 (Fla. 3d DCA 2017)	14
<i>Espinoza v. Target Corporation</i> , 2020 WL 2813134 (S.D. Fla. 2020), per curiam affirmed 2021 WL 164507 (11 th Cir. 2021)	24
<i>First Fed. Savings & Loan Assoc. of Miami v. Wylie</i> , 46 So. 2d 396 (Fla. 1950)	15
<i>Fla. Fuels v. Belcher Oil.</i> , 717 F. Supp. 1528 (S.D. Fla. 1989).	12

<i>Friedrich v. Fetterman & Associates, P.A.</i> , 137 So. 3d 362, 365 (Fla. 2013)	15
<i>Furano v. Sunrise Inn of Warren, Inc.</i> , 2009 WL 11845228 (Ct. of Appls. 11 th Dist. OH 2009)	31
<i>Gallub v. Popei's Clam Bar, Ltd., of Deer Park</i> , 98 A.D.3d at 560, 949 N.Y.S.2d 467 (2d Dept. 2012)	30
<i>Glarum v. Lasalle Bank Nat. Ass'n.</i> , 83 So. 3d 780 (Fla. 4th DCA 2011)	13
<i>Glasscox v. City of Argo</i> , 903 F.3d 1207, 1213 (11th Cir. 2018)	24
<i>Gomez Cruz v. Wal-Mart Stores East, LP</i> , 268 So. 3d 796 (Fla. 4 th DCA 2019)	21, 22
<i>Ibarra v. Ross Dress or Less, Inc.</i> , 350 So. 3d 465 (Fla. 3d DCA 2022)	12
<i>Isbell v. Carnival Corp.</i> , 462 F. Supp.2d 1232 (S.D. Fla. 2006)	24
<i>Jacques v. Wal-Mart Stores East, L.P.</i> , No. 18-60072, 2019 WL 7370964, at *2 (S.D. Fla. Oct. 17, 2019)	15
<i>Jones v. UPS Ground Freight</i> , 683 F.3d 1283 (11 th Cir. 2012)	24
<i>Krol v. City of Orlando</i> , 778 So.2d 490 (Fla. 5 th DCA 2001)	16
<i>Leigh v. Warner Bros., Inc.</i> , 212 F.3d 1210 (11 th Cir. 2000).	13

<i>Martin v. Wal-Mart Stores East, LP</i> , 2022 WL 1686914 (S.D. Fla. 2022)	14
<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986)	12, 13
<i>Morse v. Home Depot U.S.A., Inc.</i> , 2019 WL 2008588 at *2 (S.D. Fla. 2019)	17
<i>Murdoch v. City of Jacksonville Beach</i> , 197 So. 2d 845 (Fla. 1 st DCA 1967)	28
<i>Porfilio v. United States</i> , No. 16-21763, 2017 WL 7796061, at *2 (S.D. Fla. Oct. 20, 2017)	16
<i>Potash v. Orange County Lake Country Club, Inc.</i> , Case No. 6:03CV1652ORL18KRS, 2005 WL 1073926, at *2 (M.D.Fla.2005)	17, 26
<i>Ramsey v. Home Depot U.S.A., Inc.</i> 124 So. 3d 415 (Fla. 1 st DCA 2013)	16, 31, 32, 33
<i>Sammon v. Target</i> , 2012 WL 3984728 (M.D. Fla. 2012)	15, 25
<i>Schoen v. Gilbert</i> , 436 So.2d 75, 76 (Fla.1983)	26
<i>Shaw v. City of Selma</i> , 884 F.3d 1093, 1098 (11th Cir. 2018)	24
<i>Slavin v. Kay</i> , 108 So. 2d 462 (Fla. 1958)	20, 21
<i>Stern v. River Manor Care Ctr., Inc.</i> , 106 A.D.3d at 991, 965 N.Y.S.2d 377 (2d Dept. 2013)	30
<i>Ugaz v. American Airlines</i> , 576 F. Supp. 2d 1354 (S.D. Fla. 2008)	16, 17

<i>Walker v. Darby</i> , 911 F.2d 1573 (11 th Cir. 1990)	13
<i>Westchester Exxon v. Valdez</i> , 524 So. 2d 452 (Fla. 3d DCA 1988)	15
<i>Wilson-Greene v. City of Miami</i> , 208 So. 3d 1271 (Fla. 3d DCA 2017)	14
<i>Winn Dixie Stores, Inc. v. Gaines</i> , 542 So.2d 432 (Fla. 4 th DCA 1989)	25
<i>Yaque v. JC Penney Corp.</i> , 2009 WL 10666693 (S.D. Fla. 2009)	15

Statutes:

Page No.

Fla. Stat. §768.79	9
--------------------	---

Rules:

Page No.

Fla. R. App. P. 9.030(b)(1)(A)	1
Fla. R. App. P. 9.110(a)(1)(b)	1
Fla. R. Civ. P. 1.510	11
Fla. R. Civ. P. 1.510(c)(2)	10

STATEMENT OF THE CASE AND OF THE FACTS

WILLIAMS appeals the *Order Granting Defendant's Motion for Final Summary Judgment and Final Judgment in favor of Defendant Target Corporation* rendered by the Court on October 4, 2023, by virtue of the Clerk's entry of the *Order on Motion for Rehearing*. R. 0831-0832; 0898; 0899. The Court has jurisdiction pursuant to Fla. R. App. P. 9.030(b)(1)(A) and 9.110(a)(1)(b).

WILLIAMS sued TARGET seeking damages for personal injuries sustained when she allegedly tripped over a concrete bumper stop and fell in the parking lot of the Delray Beach Store located at 1200 Linton Boulevard, Delray Beach, Florida. R. 0010-0012. The incident occurred on February 15, 2022. R. 0011, ¶5. To support her claim, WILLIAMS alleged that TARGET allowed a "dangerous condition" to exist on its premises by "permitting a concrete curb stop/parking block to exist in a state of disrepair in its parking lot," causing her to fall. R. 0011, ¶7-8. WILLIAMS alleged that TARGET was negligent in its failure to maintain the premises in a safe condition and in failing to warn her of the condition. R. 0011, ¶9. TARGET answered denying fault, liability and negligence; TARGET affirmatively asserted that it

did not owe a duty to warn WILLIAMS of the condition because the curb stop was open and obvious and further, that per Florida law, a curb stop does not constitute a “dangerous condition.” R. 0015, Fifth Affirmative Defense. Following completion of discovery, TARGET moved for Final Summary Judgment (the “MFSJ”). R. 0130-0394. Therein, TARGET asserted that “Based upon the undisputed Summary Judgment Evidence, Plaintiff, JEAN WILLIAMS, (“WILLIAMS”), cannot demonstrate that a ‘dangerous condition’ caused her fall. TARGET had no duty to warn WILLIAMS of an open and obvious condition. If WILLIAMS had been using her own senses and paying attention to where she was walking, the incident she describes in her Complaint would not have occurred. WILLIAMS has adduced no record evidence supporting her contention that TARGET failed to maintain its premises in a reasonably safe condition.” R. 0130, ¶1; 130-0394.

In her Answers to TARGET’s First Set of Interrogatories, WILLIAMS described the incident as follows:

I was walking out of Target after shopping. As I left the sidewalk and proceeded to my vehicle, I tripped over a piece of rebar sticking out from the top of a parking stop; the piece of rebar was

painted the same color 'blue' as the parking stop, which concealed the piece of rebar. There was nothing I could have done to prevent the incident.

The Defendant allowed the parking stop/lot to exist in a state of disrepair. The Defendant allowed a dangerous condition to exist on its premises.

R. 131, ¶6; R. 295, (Answer No. 7); R.271-275: Close-up Photos of blue curb stop and blue rebar (Composite Ex. 2 to Deposition of WILLIAMS).

WILLIAMS returned to the Store the day after the incident.

R.132, ¶7. At that time, TARGET Team Leader Tomi Blom completed a Guest Incident Report (the "GIR") with information provided by WILLIAMS. R. 276. As set forth in the GIR, the incident occurred at approximately 12.34 P.M. and was described as follows:

Handicap spot (second spot)

She went to put away a riding cart and slipped/tripped on the parking stone. She fell and hit the ground on her stomach. She hurt her right elbow and knee and right foot, hip.

R. 276. (The GIR is Ex. 3 to WILLIAMS' Deposition, attached to the MFSJ as Ex. 3 which begins at R. 152. The GIR is also attached as Ex.1 to the Deposition of Felicia van Dunk (R. 298-324) which is attached to the MFSJ as Ex. 4.

WILLIAMS testified in her deposition (R. 152-218; the deposition exhibits begin at R. 219) to the following:¹

- On the day of the incident, WILLIAMS' daughter Tohne drove her to the Delray Beach store. R. 162, L9-17.
- It was a sunny day. R. 167, L2.
- Tohne's boys were with them. R. 163, L2.
- WILLIAMS went to TARGET to pick up a prescription. R. 162, L25.
- Tohne parked the SUV in a handicap parking place. R.163, L18-20.
- Tohne parked the SUV "straight into the parking space." R.175, L1-3.
- WILLIAMS got out of the car and went into the store; Tohne stayed in the car. R. 164, 1-4.
- When she first entered the store, a team member helped WILLIAMS obtain a "scooter"; she drove the scooter to the pharmacy. R. 164, L15-22.
- After she got her prescription, WILLIAMS drove the scooter back to Tohne's car. R. 165, L15- R.166, L1.
- Still shots (attached as Ex. 1 to her depo. are found at R. 219-270) from a store surveillance camera depict the parking lot and WILLIAMS. When WILLIAMS exited the store, she proceeded in the left driveway aisle. R.168, L5-12.
- Page 36 (R. 254) of the still shots (Ex. 1 to depo.) depicts WILLIAMS on the scooter. R. 171, L5-22.
- Page 37 (R. 255) of the still shots depicts WILLIAMS on the scooter near a tree. R. 172, L3-9.
- WILLIAMS cannot remember if she approached Tohne's vehicle from the left or from the right front. R. 174, L20-21.

¹Page references to depositions refer to the deposition PDF page numbers in the Record on Appeal.

- WILLIAMS parked the scooter on the sidewalk. Williams drove the scooter down the sidewalk; she pulled it to the side and got out of the scooter. R. 183, L25-R.185.
- WILLIAMS remembers falling; her shoe “caught on a piece of iron on the blue parking stump”. R. 179, L17-R. 180, L5. WILLIAMS was facing Tohne’s car. R. 181, L1-3; R.182, L5. Composite Ex. 2 to her deposition are photos of the blue curb stop and blue rebar are found at R. 271- 275.
- The scooter was not next to her when she fell. R.188, L25-R. 189, L1.
- WILLIAMS fell forward on her stomach on the passenger side of Tohne’s vehicle. R. 187, L2-4; R. 187, L7-14.
- Tohne took WILLIAMS home. R. 190, L7-24.
- WILLIAMS returned to the store, the same day or the day after the incident; she informed a TARGET Team Member about what happened and helped fill out some paperwork. R. 191, L9-17; R. 198, L3-6.
- WILLIAMS’ signature is on the GIR. R. 195, L20-R. 196, L9.
- Other than tripping over the blue parking bumper, WILLIAMS does not remember anything about her fall. She does not remember where the scooter was located, if she fell facing the front or the back of Tohne’s car, or if she approached the car from the sidewalk that runs down the middle of the parking lot. R. 199, L6-R. 200.

In her deposition, (R. 345-377; Ex. 5 to TARGET’s MFSJ) Tohne testified to the following:

- Tohne took WILLIAMS to TARGET. R. 355, L16-18. Tohne’s sons, ages 3 and 4, were with them. R. 357, L11-16.

- Tohne parked the car in the second handicap space. R. 356, L5-7; R. 356, L 23-25.
- It was a “nice” day; it had not rained. R. 358, L-4.
- Tohne parked the car “close to the stone” (the parking bumper). R. 358, L19-22.
- Tohne and her children did not get out of the car. R. 359, L15-16.
- WILLIAMS went into the Store. R. 360, L1-4.
- WILLIAMS was in the Store for 30-45 minutes. R. 360, L5-7.
- Tohne was in the driver’s seat; the kids were in the back seat; Tohne dozed off. R. 362, L7-13.
- WILLIAMS exited the Store using an electric scooter. R. 360, L20.
- WILLIAMS was in front of their parked car; WILLIAMS was at no point in the driveway. R. 361, L22-25.
- Tohne did not see WILLIAMS fall. R. 362, L14-17. Tohne did not get out of the car until her son said “grandma fell.” R. 361, L15-17; R. 362, L2-3.
- Tohne ran around the back of the car. WILLIAMS was laying close to the passenger side of the car on the ground; WILLIAMS’ feet were pointed to the front of the car; WILLIAMS was lying face down on the ground. R. 362, L21-R. 363, L11-18.
- Tohne does not know how WILLIAMS fell; WILLIAMS told Tohne that she got caught on the “stone” (the parking bumper). R. 364, L20-R. 365, L14.
- At the time of the incident, WILLIAMS’ purchases were still in the scooter. R. 368, L4-6.

TARGET’s Expert Derrek-Ian Verlaan (“Verlaan”), executed an Affidavit in support of the MFSJ (R. 379-380; attached as Ex. 6 to the MFSJ) which provides as follows:

- The 2021 Palm Beach County Aerial Photographs of the Delray Target Store's Accessible Parking and nominal dimensions from the site photographs is as follows:



- The width of the handicap parking spaces complies with the intent of the 2020 and 2017 Florida Building Code. Verlaan Aff. ¶8.
- The width and marked access aisle adjacent to the handicap parking spaces complies with Section 502.2 of the Florida Building Code. Verlaan Aff. ¶8.
- The access aisle adjacent to the handicap parking space is connected to an accessible route complying with 502.3 of the Florida Building Code. Verlaan Aff. ¶8.
- The identification of the handicap spaces includes signage and the use of blue paint as provided in 502.6 of the Florida Building Code. Verlaan Aff. ¶8.
- The spaces and access aisles are designed to prevent parked vehicles from reducing the clear width of accessible routes as provided in 502.7 of the Florida Building Code. Verlaan Aff. ¶8.
- The subject Delray Target Store utilizes wheel stops painted blue in the accessible parking spaces to prevent

reducing the clear width of the accessible route as detailed in the 2020 and 2017 Florida Building Code. Verlaan Aff. ¶8.

In its MFSJ, TARGET relied upon the following undisputed record:

- On February 15, 2022, WILLIAMS was a business invitee at the Delray Beach Store.
- Tohne drove WILLIAMS to the Store and parked in the handicap parking second space.
- Tohne waited in the car while WILLIAMS went into the store.
- Upon returning to the car, WILLIAMS tripped on a parking curb/bumper and fell.
- Tohne did not see her mother fall.
- At the time of the incident the parking curb/bumper was painted blue.
- The parking curb/bumper was open and obvious.
- The parking curb/bumper was not a dangerous condition.
- TARGET did not have a duty to warn WILLIAMS about the parking curb/bumper.
- There is no record evidence of negligence on the part of TARGET which caused WILLIAMS to trip and fall.
- TARGET was not negligent and did not cause WILLIAMS' damages.

R. 130-0394.

In her Response to the MFSJ, WILLIAMS asserted that there was a disputed issue of fact as to whether a portion of the parking bumper (the blue rebar) made it a dangerous condition precluding

Summary Judgment. R. 0805-0816.² Upon consideration of the Summary Judgment Evidence and argument made by Counsel at the June 29, 2023 Hearing (R. 902-921) (including review of the phot depicting the blue parking bumper), the Honorable Luis Delgado granted TARGET’s MFSJ on the Record (R. 919). Per Judge Delgado’s July 18, 2023 Order, Final Judgment was rendered in favor of TARGET and against WILLIAMS; Judge Delgado reserved jurisdiction to consider of timely-filed Motions for Attorneys’ Fees and Costs.³ R. 831- 832. In granting the MFSJ and entering Final Judgment in favor of TARGET, Judge Delgado made the following findings of fact and conclusions of law:

4. It was undisputed that Plaintiff fell on a concrete bumper in handicap parking on a sunny day. Plaintiff did not present any evidence in her Response demonstrating that the parking bumper violates any applicable codes or standards.

² Per the Order dated July 11, 2023, the Court granted WILLIAMS’ Motion for Leave to File an untimely Response to the MFSJ and deem it timely for purposes of the June 29, 2023 Hearing on TARGET’s MFSJ. R. 839.

³ The Docket reflects that on August 3, 2023, TARGET filed its Motion for an Award of Attorneys’ Fees and Costs and Supporting Memorandum of Law pursuant to Fla. R. Civ. P. 1.442 and Fla. Stat. §768.79, which included as Exhibit 4 thereto, the supporting Affidavit of Jon D. Derrevere, Esquire. Docket: (R.00005); Affidavit: (R. 853-897)

5. Based on the foregoing and a review of photos depicting the parking bumper, the Court finds the following in accordance with Rule 1.510(c)(2):
- The blue “concrete curb stop/parking bumper” is an open, obvious, common, clearly visible, and ordinary condition.
 - The blue “concrete curb stop/parking bumper” is not an inherently dangerous condition. Target had no duty to warn Plaintiff of the parking bumper.
 - There was no dangerous condition at the Defendant’s premises which caused Plaintiff’s damages.
 - There was no negligence on the part of Target in maintaining its parking lot in a reasonably safe condition.
6. Final Summary Judgment is hereby entered in favor of Defendant, TARGET CORPORATION, and against Plaintiff, JEAN WILLIAMS. Plaintiff shall take nothing by this action and Defendant shall go hence without day.
R. 831- 832.

Judge Delgado denied WILLIAMS’ Motion for Rehearing in an Order dated October 4, 2023. R. 0833-0838; 0898-0898. WILLIAMS timely filed her Notice of Appeal on October 17, 2023. R. 899.

SUMMARY OF ARGUMENT

In response to the MFSJ, WILLIAMS failed to offer an Expert opinion or any other probative evidence sufficient to create a disputed issue of material fact in support her claim that the curb stop is a “dangerous condition”. Based upon the undisputed Summary Judgment Evidence, WILLIAMS cannot demonstrate that a

“dangerous condition” caused her fall. As a matter of law, a curb stop is deemed an open and obvious condition. Notwithstanding the foregoing, the blue curb stop, and the rebar affixing it, were open and obvious. In support of the MFSJ, TARGET offered an Affidavit from Verlaan confirming that the curb stop and rebar affixing it complied with the Building Code and were painted blue to provide contrast with the asphalt parking lot. Verlaan’s Affidavit is undisputed. The Summary Judgment Evidence confirms that TARGET had no duty to warn WILLIAMS of open and obvious condition. If WILLIAMS had been using her own senses and paying attention to where she was walking, the incident would not have occurred. TARGET is entitled to Judgment as a matter of law. The Final Judgment should be affirmed.

STANDARD OF REVIEW

The standard of review of a summary judgment is *de novo*. *Craven v. TRG-Boynton Beach, Ltd.*, 925 So. 2d 476 (Fla. 4th DCA 2006). Fla. R. Civ. P. 1.510 mandates that the Summary Judgment Standard “shall be construed and applied in accordance with the federal summary judgment standard.”

Per the Summary Judgment Standard, the movant bears the initial burden to demonstrate the absence of any genuine issues of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). Where the non-moving party bears the burden of proof on an issue at trial, the movant may simply point out to the Court that there is an absence of evidence to support the nonmoving party's case. *Id.* A complete failure of proof concerning a necessary element of a nonmoving party's case renders all other facts immaterial. *Fla. Fuels v. Belcher Oil.*, 717 F. Supp. 1528 (S.D. Fla. 1989).

After the movant has met its burden, the burden shifts to the non-moving party to establish there is a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986). The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment because the requirement is that there will be no genuine issue of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). The Plaintiff "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita; Ibarra v. Ross Dress or Less, Inc.*, 350 So. 3d 465 (Fla. 3d DCA 2022). Conclusory allegations based on subjective beliefs are insufficient to

create a genuine issue of material fact. *Leigh v. Warner Bros., Inc.*, 212 F.3d 1210 (11th Cir. 2000). The non-moving party may not rest upon the mere allegations in the pleadings but must come forward with “specific facts showing there is a genuine issue for trial.” *Matsushita*. Mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion. *Ellis v. England*, 432 F. 3d 1321 (11th Cir. 2005). “A mere ‘scintilla’ of evidence supporting the opposing party’s position will not suffice; there must be enough of a showing that the jury could reasonably find for that party.” *Walker v. Darby*, 911 F.2d 1573 (11th Cir. 1990). If the non-moving party fails to make a sufficient showing on an essential element of her case on which she has the burden of proof, the moving party is entitled to a judgment as a matter of law. *Celotex*.

Inadmissible hearsay evidence cannot support summary judgment; summary judgment based upon inadmissible hearsay is reversible error. *Glarum v. Lasalle Bank Nat. Ass’n.*, 83 So. 3d 780 (Fla. 4th DCA 2011).

LEGAL ARGUMENT:

**TARGET IS ENTITLED TO JUDGMENT AS A MATTER OF LAW;
THE FINAL JUDGMENT (“FJ”) DOES NOT CONSTITUTE
REVERSIBLE ERROR AND SHOULD BE AFFIRMED**

**A. TARGET’s duty of care and Florida’s “open an obvious
doctrine”**

Pursuant to Florida law, a negligence claim has four elements: (1) a duty owed by the defendant to the plaintiff to conform to a standard of conduct; (2) a breach by the defendant of the duty owed to the plaintiff; (3) a causal connection between the breach and injury to plaintiff; and (4) loss or damage sustained by the plaintiff. *Encarnacion v. Lifemark Hospitals of Florida, Inc.*, 211 So. 3d 275 (Fla. 3d DCA 2017); *Wilson-Greene v. City of Miami*, 208 So. 3d 1271 (Fla. 3d DCA 2017); *Delgado v. Laundromax, Inc.*, 65 So. 3d 1087 at 1989 (Fla. 3d DCA 2011).

In Florida, a business owner owes two duties to its invitees: (1) to warn of latent and concealed dangers which are or should be known to the owner and which are unknown to the invitee and cannot be discovered by the invitee through the exercise of reasonable care, and (2) to use ordinary care to maintain the premises in a reasonably safe condition. *Martin v. Wal-Mart Stores*

East, LP, 2022 WL 1686914 (S.D. Fla. 2022); *Friedrich v. Fetterman & Associates, P.A.*, 137 So. 3d 362, 365 (Fla. 2013); *Jacques v. Wal-Mart Stores East, L.P.*, No. 18-60072, 2019 WL 7370964, at *2 (S.D. Fla. Oct. 17, 2019).

As a matter of law, an owner is not an insurer of the safety of those who come upon his property; an owner is not required to maintain the property in such a manner that an accident could not possibly happen. *Sammon v. Target*, 2012 WL 3984728 (M.D. Fla. 2012), citing *Belden v. Lynch*, 126 So. 2d 578 (Fla. 2d DCA 1961); *Westchester Exxon v. Valdez*, 524 So. 2d 452 (Fla. 3d DCA 1988); *Friedrich v. Fetterman & Assocs., P.A.*, 137 So. 3d 362 (Fla. 2013); *Dominguez v. Publix Super Mkts., Inc.*, 187 So. 3d 892 (Fla. 3d DCA 2016); *First Fed. Savings & Loan Assoc. of Miami v. Wylie*, 46 So. 2d 396 (Fla. 1950).

A retailer has the right to assume that invitees will perceive that which would be obvious to them through the ordinary use of their senses. Florida Courts recognize the obvious danger doctrine which provides that “owners and occupiers should be legally permitted to assume that invitees will perceive that which would be obvious to them upon the ordinary use of their own senses.” *Yaque v. JC Penney Corp.*,

2009 WL 10666693 (S.D. Fla. 2009) *citing Krol v. City of Orlando*, 778 So.2d 490 (Fla. 5th DCA 2001); *Ugaz v. American Airlines*, 576 F. Supp. 2d 1354 (S.D. Fla. 2008) *citing Crawford v. Miller*, 542 So. 2d 1050 (Fla. 3rd DCA1989) (holding that an owner is entitled to assume that an invitee will perceive that which would be obvious to her upon the ordinary use of her own senses and is not required to give an invitee notice or warning of an obvious danger).

An invitee has the duty and obligation to use ordinary care for her own safety and to look and see where she is going. *Bowles v. Elkes Pontiac Co.*, 63 So.2d 769 (Fla. 1952). Warning of open and obvious conditions goes beyond the duty of reasonable care owed to an invitee; the open and obvious nature of a hazard discharges a landowner's duty to warn. *See Ramsey v. Home Depot U.S.A., Inc.* 124 So. 3d 415 (Fla. 1st DCA 2013); *Ugaz* at 1371; *Casby v. Flint*, 520 So. 2d 281 (Fla. 1988); *Circle K Convenience Stores, Inc. v. Ferguson*, 556 So. 2d 1207 (Fla. 5th DCA 1990). Where a condition is "so open and obvious, so common and so ordinarily innocuous," the condition does not constitute "a hidden dangerous condition as a matter of law." *Porfilio v. United States*, No. 16-21763, 2017 WL 7796061, at *2 (S.D. Fla. Oct. 20, 2017) (citing *Circle K Convenience Stores, Inc. v. Ferguson*,

556 So. 2d 1207, 1208 (Fla. 5th DCA 1990)). Even where the condition is inherently dangerous, an invitee may be reasonably expected to discover open and obvious conditions and protect herself from them by use of her own ordinary senses. *Morse v. Home Depot U.S.A., Inc.*, 2019 WL 2008588 at *2 (S.D. Fla. 2019); *Aventura Mall Venture v. Olson*, 561 So. 2d 319, 320 (Fla. 3d DCA 1990).

Some conditions are simply so open and obvious, so common and so ordinarily innocuous that they can be held as a matter of law to not constitute hidden dangerous conditions. *Ugaz; Potash v. Orange County Lake Country Club. Inc.*, Case No. 6:03CV1652ORL18KRS, 2005 WL 1073926, at *2 (M.D.Fla.2005); *Circle K. Convenience Stores Inc. v. Ferguson*, 556 So.2d 1207, 1208 (Fla.Dist.Ct.App.1990) (concluding that uneven parking lot surface which caused plaintiff to fall was not a hidden dangerous condition where trip and fall occurred on dry sunny day and nothing obstructed plaintiff's view); *accord Aventura Mall Venture v. Olson*, 561 So.2d 319, 321 (Fla. 3d DCA 1990), *rev. denied*, 574 So.2d 142 (Fla.1990).

B. TARGET maintained its premises in a reasonably safe condition; as a matter of law, a curb stop is an “open and obvious” condition.

WILLIAMS asserts that the curb stop “suffered from design defects” and/or that TARGET failed to maintain its premises in a reasonably safe condition because she tripped over rebar on the top of a blue “parking stop” that was “concealed” because it was also painted blue. See Initial Brief, P18. WILLIAMS’ assertions are unavailing. In opposition to the MFSJ, WILLIAMS failed to present expert testimony to support her assertion that the curb stop suffered from design defects that caused her damages. Based thereon, the opinion provided by TARGET’s Expert’s that the curb stop is code compliant is undisputed.

The undisputed fact that the curb stop was painted blue mandates Judgment in favor of TARGET because the blue rebar is an integral part of the curb stop which itself is open and obvious.

In his Affidavit, Verlaan confirmed that the curb stop is code-compliant (R. 379-380):

- The access aisle adjacent to the handicap parking space is connected to an accessible route complying with 502.3 of the Florida Building Code. Verlaan Aff. ¶8.

- The identification of the handicap spaces includes signage and the use of blue paint as provided in 502.6 of the Florida Building Code. Verlaan Aff. ¶8.
- The spaces and access aisles are designed to prevent parked vehicles from reducing the clear width of accessible routes as provided in 502.7 of the Florida Building Code. Verlaan Aff. ¶8.
- The subject Delray Target Store utilizes wheel stops painted blue in the accessible parking spaces to prevent reducing the clear width of the accessible route as detailed in the 2020 and 2017 Florida Building Code. Verlaan Aff. ¶8.

R. 379-380.

WILLIAMS reliance upon *De Cruz-Haymer v. Festival Food market, Inc.* 127 So. 3d 885 (Fla. 4th DCA 2013) and *Brady v. State Paving Corp.*, 693 So. 2d 61 (Fla. 4th DCA 1997) is inapposite. In *De Cruz-Haymer*, the Court agreed with the Trial Court's conclusion that the mat that Plaintiff tripped over was open and obvious. However, the DCA reversed because an issue of fact existed as to whether the retailer failed to maintain its premises in a reasonably safe condition. Specifically, the Court observed the following:

Linden testified that the hump in the mat occurred when the employee laid the mat down, as opposed to some invitee rumpling it as he or she was entering or leaving. With only one public entrance, invitees had only one route to enter the store. Linden's testimony creates an issue of material fact regarding whether

Bravo should have expected that invitees were likely to trip over a rumpled mat despite the fact the mat's existence and condition was open and obvious. Thus, we reverse entry of summary judgment on this basis and remand for further proceedings. *Id.* at 889.

By comparison, the blue curb stop over which WILLIAMS tripped is a stationary object used to demarcate the handicap parking space to which it is affixed and is code compliant. Clearly, a curb stop is not the equivalent of a rumpled and moveable floor mat placed at the only public entrance to a defendant's store. On this Record there is no evidence that WILLIAMS was obliged to step over the blue curb stop because it was the sole "public entrance" to the store. Based upon the foregoing it was not foreseeable that WILLIAMS would fail to perceive the necessity to avoid the open and obvious blue curb stop.

The issue before the Court in *Brady* was whether the *Slavin* Doctrine⁴ applied to relieve road contractors from liability regarding personal injuries sustained by Plaintiffs who drove through a puddle, lost control of their car and rolled over. The *Brady* Plaintiffs alleged that the puddle was caused by a latent defect in the roadway. The contractors asserted that the defect was patent; per *Slavin*, the

⁴ See *Slavin v. Kay*, 108 So. 2d 462 (Fla. 1958).

contractors claimed that they were relieved of liability since they had completed their work and had turned the road over to the FDOT. The Court reversed the Summary Judgment finding that there was conflicting testimony as to whether the alleged defect was patent or latent; although water on the roadway was obvious, the depth of the water was not.

The *Slavin* Doctrine is not applicable here; WILLIAMS has not adduced expert opinion or any other record evidence supporting the contention that a construction defect caused her damages. To the contrary, Florida Courts have already determined that curb stops are open and obvious conditions as a matter of law.

WILLIAMS' reliance upon *Gomez Cruz v. Wal-Mart Stores East, LP*, 268 So. 3d 796 (Fla. 4th DCA 2019), asserting that compliance with building codes is not conclusive on whether the owner maintained a dangerous condition on its premises, is also misguided. Therein, Gomez Cruz and his wife sued Wal-Mart because he tripped and fell on a raised manhole cover in a Wal-Mart parking lot and was injured.

In its Summary Judgment Motion, Wal-Mart asserted that it did not breach the duty to maintain its premises because the manhole had been inspected and approved by various government agencies; that

because there were no prior incidents involving the manhole, the manhole was open and obvious; and that Gomez Cruz failed to look where he was going. Gomez Cruz opposed the Motion by asserting that government inspections of the manhole were intended solely to confirm that it was built in accordance with approved construction plans and specifications. The record established that the incident occurred at 10:15 P.M.; the lighting was poor; the manhole was in a travel lane in front of the store; the store was busy; and cars were coming and going with their headlights on.

In opposition to the motion, Gomez Cruz offered testimony from a civil engineer who testified that manholes are required to be flush with the pavement, that the Building Code allowed a “construction tolerance” of $\frac{1}{4}$ inch between the pavement and the edge of the manhole cover; and that the manhole cover exceeded the allowable tolerance. The expert testified regarding other building code violations relating to the pavement surrounding the manhole; he also opined that those conditions combined with insufficient lighting and traffic contributed to Gomez Cruz’ fall. A second expert confirmed the opinions of the first expert. Gomez Cruz also offered testimony from a City inspector who confirmed that based on its out of tolerance

condition, the inspector would not have approved the as-built condition of the manhole. Based upon the foregoing, the Court reversed the Summary Judgment entered in favor of Wal-Mart.

Here, WILLIAMS has failed to present any evidence sufficient to support her claim. WILLIAMS did not offer testimony from the Building Official or an expert witness asserting that the curb stop violates the Code. To the contrary, the only testimony in the Record on this subject confirms that the curb stop complies with the Code. At the time WILLIAMS' fell it was a sunny day. There is no Record evidence indicating that the "headlights or traffic" caused WILLIAMS to be unable to see the curb stop. The curb stop was painted blue to contrast its existence with the surrounding parking lot. The curb stop was not located in a traffic lane or in a pedestrian ingress/egress pathway. Simply put, WILLIAMS impermissibly rests upon her assertion that because she fell, TARGET must be subject to liability. Florida law does not support her position.

Under the Summary Judgment Standard, if the movant shows that there is no genuine dispute as to a material fact, the burden shifts to the non-moving party to come forward with specific facts

showing that there is a genuine issue for trial. *Espinoza v. Target Corporation*, 2020 WL 2813134 (S.D. Fla. 2020), per curiam affirmed 2021 WL 164507 (11th Cir. 2021); *Shaw v. City of Selma*, 884 F.3d 1093, 1098 (11th Cir. 2018). The non-moving party does not satisfy this burden “if the rebuttal evidence is merely colorable or is not significantly probative of a disputed fact.” *Jones*, 683 F.3d at 1292 (quotation marks omitted). “Conclusory allegations and speculation are insufficient to create a genuine issue of material fact.” *Glasscox v. City of Argo*, 903 F.3d 1207, 1213 (11th Cir. 2018). The non-moving party must “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.” *Jones v. UPS Ground Freight*, 683 F.3d 1283 (11th Cir. 2012). A mere scintilla of evidence supporting the non-moving party's position will not suffice. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997).

It is well-settled that each element of a claim for negligence, including proximate causation, is essential to a Plaintiff's negligence claim for purposes of defeating a summary judgment motion; to defeat Summary Judgment a Plaintiff cannot rest on the allegations set forth in her complaint. *Isbell v. Carnival Corp.*, 462 F. Supp.2d 1232 (S.D.

Fla. 2006). “The plaintiff has the burden of proof to show the negligence of the defendant and that the negligence caused the Plaintiff’s damages. In order to get to the jury, there must be some evidence of negligence.” *Winn Dixie Stores, Inc. v. Gaines*, 542 So.2d 432 (Fla. 4th DCA 1989). Negligence *may* not be inferred from the mere happening of an accident alone. *Sammon v. Target*, 2012 WL 3984728 (M.D. Fla. 2012).

Under Florida law, the question of proximate cause does not require interpretation by a jury if the facts fail to support Plaintiff’s claim. *Cook v. MillerCoors, LLC*, 829 F. Supp. 2d 1208 (Fla. M.D. Fla. 2011).

On the Record before the Court, it is clear that WILLIAMS failed to present probative evidence sufficient to create a disputed issue of fact supporting her claim that TARGET’s actions or inactions proximately caused her damages. TARGET is entitled to Judgment as a matter of law.

C. As a matter of law, the curb stop was “open and obvious” and not a “dangerous condition.”

WILLIAMS’ assertion that the Trial Court erred in its conclusion that the curb stop was “open and obvious” and not a “dangerous condition” is unsupported in fact and in law.

Numerous Florida courts have found that open and obvious conditions that do not constitute hidden dangers on a number of occasions. The Florida Supreme Court has held as a matter of law that a difference in floor levels, even in dim lighting, is not an inherently dangerous condition requiring a duty to warn. *Schoen v. Gilbert*, 436 So.2d 75, 76 (Fla.1983).

In *Circle K*, the Court found that a directed verdict was proper where a patron stubbed her toe on a raised concrete platform surrounding a gasoline pump because it was open and obvious. 556 So.2d at 1208. In *Potash v. Orange County Lake Country Club*, 2005 WL 1073926, at *2 (M.D.Fla.2005), the plaintiff fell over a tree stump; he testified that the stump was “visible” and “protruding” from the grass on a golf course. 2005 WL 1073926, at *2. The Court found that the stump was “open to observation by Plaintiff in the exercise of due care.” *Id.* Under Florida law, WILLIAMS was obliged to use

ordinary care for her own safety and to look to see where she was going. *Bowles*. WILLIAMS has not adduced any record evidence to demonstrate that she used ordinary care to avoid tripping over the blue curb stop. WILLIAMS testified that the top front of her right foot tripped over the blue bumper. R. 182, L13-20. "I tripped over it and I fell; it happened so fast." R. 182, L22-23. WILLIAMS does not remember anything about the incident other than tripping over the rebar on the blue parking bumper. R. 199, L6-10. "All I remember is I fell, that is all I remember." R. 187, L21-22. WILLIAMS did not testify that she saw the curb stop nor did she explain why she attempted to step over the curb stop. Moreover, WILLIAMS has not adduced any evidence that the blue curb stop or the blue rebar affixed to it were in any manner "out of tolerance."

In *Aaron v. Logro Corp.*, 226 So. 2d 8 (Fla. 3d DCA 1969), Plaintiff sued a restaurant for injuries sustained when she fell over a concrete parking bumper. The parking lot was arranged so that vehicles parked at an angle. The incident occurred during daytime hours; the parking lot was asphalt, and the bumper was painted yellow. Photographs made it apparent that there was sufficient room

between parking spaces for the plaintiff to alight from her vehicle without having to travel into the adjoining parking space.

In affirming Summary Judgment for the restaurant, Judge Barkdull concluded that the bumper stop was “open and obvious; was to be expected to be found in a parking lot” and that there was “no negligence on the part of the defendants in constructing or maintaining the parking lot in question.” Judge Barkdull observed that in *Murdoch v. City of Jacksonville Beach*, 197 So. 2d 845 (Fla. 1st DCA 1967), the First District affirmed a judgment for the City despite the fact that Murdoch fell over a rise in the sidewalk. The Court held that “the step was clearly visible, and a yellow “safety stripe” was painted on the edge of the sidewalk.” Judge Barkdull relied on Florida’s premises liability law as set forth in *Becksted v. Riverside Bank of Miami*, 85 So.2d 130 (Fla. 1956), wherein the Supreme Court affirmed summary judgment for *Riverside*, stated as follows:

* * * Even if it be assumed that plaintiff was a business invitee on the bank's parking lot, it was nonetheless her duty to see that which would be obvious to her upon the ordinary use of her senses and to exercise a reasonable degree of care for her own safety. *Bowles v. Elkes Pontiac Co.*, 1953, Fla.,

63 So.2d 769, 772. * * * The duty which the plaintiff owes to herself is to observe the obvious and apparent condition of the premises. *Matson v. Tip Top Grocery Co.*, 151 Fla. 247, 9 So.2d 366, 368. The drain in question was not a concealed or latent danger, if danger it was. It was plainly visible and could have been seen by plaintiff if she had been looking, and she said that she wasn't looking.

Judge Barkdull also observed that in other jurisdictions the maintenance of parking lot dividers and curbs will not support liability, citing *Brooks v. Sears, Roebuck & Co.*, 302 Mass. 184, 19 N. E. 2d 39 (1939) wherein the Court stated as follows:

‘There is nothing unusual about the use of dividers, ties or bumpers on parking lots to designate and divide the area in which automobiles are to be parked in orderly rows. As was said in *Brooks v. Sears, Roebuck & Co.*, 302 Mass. 184, 19 N.E.2d 39, 41: * * * It is a matter of common knowledge that similarly constructed curbs exist in parking spaces in this Commonwealth. They are incidental to the ordinary and common construction of such places and are structures the plaintiff should have expected to find in the parking space involved. *Cowen v. Kirby*, 180 Mass. 504, 506, 62 N.E. 968; *Heaney v. Colonial Filling Stations, Inc.*, 262 Mass. 338, 341, 159 N.E. 916. They facilitate the orderly parking of motor vehicles and tend to prevent collisions. * * *‘ Nor are such dividers inherently dangerous or unsafe obstructions. On that point it was stated in *Downing v. Drybrough, Ct.App.Ky.*, 249 S.W.2d 711, 712, ‘The appellee insists that the division strip was not a dangerous or unsafe obstruction. We agree that it

was not of itself dangerous or unsafe. It is common knowledge that many parking lots are so constructed and that people use them without injury or inconvenience. * * *” *Id.* at *10.

Generally “[a] wheel stop or concrete parking lot divider which is clearly visible presents no unreasonable risk of harm” (*Stern v. River Manor Care Ctr., Inc.*, 106 A.D.3d at 991, 965 N.Y.S.2d 377 (2d Dept. 2013); *Gallub v. Popei's Clam Bar, Ltd., of Deer Park*, 98 A.D.3d at 560, 949 N.Y.S.2d 467 (2d Dept. 2012); *Cardia v. Willchester Holdings, LLC*, 35 A.D.3d 336, 337, 825 N.Y.S.2d 269 (2d Dept. 2006). In *Bellini v. Gypsy Magic Enterprises, Inc.*, 112 A.D. 3d 867, 978 N.Y.S. 2d 73 (2d Dept. 2013) the Court reversed an order denying summary judgment for the retailer concluding that a wheel stop over which Bellini tripped was open, obvious and not inherently dangerous. In *Bellini*, the plaintiff acknowledged that a photograph depicted the exact location of the wheel stop as it appeared on the day of her accident. The photograph depicted the wheel stop at the edge of the parking lot and adjacent to a walkway. The cement-colored wheel stop was raised several inches above both the walkway and the black-top parking lot. Moreover, Bellini testified that she

noticed wheel stops in the parking lot before her fall; nevertheless, she was consciously trying to step over the wheel stop when her foot made contact with it. The Court reasoned that plaintiff's testimony established that the open and obvious nature of the wheel stop was apparent to her and that she could have avoided the fall by choosing not to step over the wheel stop. The same reasoning applies here; WILLIAMS could have avoided her fall by choosing not to step over the blue parking bumper.

In *Furano v. Sunrise Inn of Warren, Inc.*, 2009 WL 11845228 (Ct. of Appls. 11th Dist. Oh. 2009) the Court determined that the open and obvious doctrine obviated any duty by a restaurant to warn Furano of the obvious hazard presented by a bumper stop. The Court reasoned that any hazard presented by the stop was so open and obvious that anyone exiting a vehicle was reasonably expected to be able to negotiate the stop.

In *Ramsey*, the Court affirmed Summary Judgment for Home Depot. Ramsey tripped over a wheel stop in a handicap parking space. Ramsey sued Home Depot for failing to maintain its premises in a reasonably safe condition and for failure to warn her of a dangerous condition. Home Depot moved for summary judgment,

arguing that because the wheel stop was open and obvious it had no duty to warn Ramsey of its existence and that based thereon, there was no disputed issue of fact for the jury. In affirming, the Court confirmed that as a matter of law a wheel stop which is clearly visible presents no unreasonable risk of harm. At the time of the incident, it was a clear and sunny morning. The wheel stop was located at the top of the parking space and was centered within the parking stripes. A bright yellow concrete bollard was located above the wheel stop. The wheel stop was made of concrete and the parking lot was made of asphalt.

The Court concluded that the wheel stop was open and obvious, that it should have been readily observable to anyone employing their own senses and that Ramsey's failure to look where she was walking rather than an allegedly dangerous condition was the proximate cause of the incident.

The Court concluded that there was no genuine issue of fact as to whether Home Depot complied with its duty to maintain its property in a reasonably safe condition. Home Depot presented photographic evidence of the condition of the parking lot demonstrating that the wheel stop was not inherently dangerous and

expert testimony establishing that the wheel stop complied with the applicable building codes and regulations.

As in *Ramsey* and the other cases discussed herein, photographs depicting the bumper stop demonstrate that it is open and obvious. The bumper stop is bright blue and can readily be seen; it is in stark contrast to the asphalt parking surface. It is undisputed that the bumper stop was not in any manner concealed from WILLIAMS. Verlaan's uncontradicted Affidavit demonstrate that no Code violations exist. There is no Record evidence demonstrating the the bumper stop was in any manner defective or deficient. Photographs depicting the bumper stop demonstrate that any attentive invitee should have seen and avoided the bumper stop. WILLIAMS has admitted that the incident occurred on a clear, sunny day. The bumper stop was open and obvious and not inherently dangerous; if WILLIAMS had been using her own senses, the incident would not have occurred. WILLIAMS' actions were the proximate cause of her fall. The Trial Court did not err in concluding that the curb stop was open and obvious and not a dangerous condition.

CONCLUSION

Based upon the foregoing, WILLIAMS failed to adduce probative record evidence to support her claim sufficient to create a disputed issue of fact. There is no evidence that TARGET failed to maintain its premises in a reasonably safe condition. As a matter of fact and of law, the blue curb stop was not a dangerous condition and TARGET had no duty to warn WILLIAMS of its existence. WILLIAMS' failure to perceive and avoid the bumper stop was the sole proximate cause of her fall.

TARGET respectfully requests that the Court enter a decision which affirms the Final Judgment in favor of TARGET.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed electronically and was sent by E-Mail from the Florida Court's E-Filing Portal system to: Dan W. Moses, Esq. (dan@themoseslegalteam.com; ben@themoseslegalteam.com; chris@themoseslegalteam.com), The Moses Legal Team, P.A., 900 N. Federal Hwy., Suite 160, Boca Raton, FL 33432, this 5th day of February, 2024.

DERREVERE STEVENS BLACK &
COZAD

2005 Vista Parkway, Suite 210

West Palm Beach, FL 33411

Telephone: (561) 684-3222

Facsimile: (561) 640-3050

Email: jdd@derreverelaw.com

sjm@derreverelaw.com

eservice@derreverelaw.com

cprasad@derreverelaw.com

BY: /s/ Jon D. Derrevere

JON D. DERREVERE, ESQUIRE

Florida Bar No: 0330132

**CERTIFICATE OF COMPLIANCE WITH FLORIDA RULES OF
APPELLATE PROCEDURE 9.210(g) and 9.045**

I HEREBY CERTIFY that this Answer Brief complies with the applicable font and word count limits (8470 words) of Florida Rules of Appellate Procedure 9.210(a)(2)(B) and 9.045 with the proviso that Bookman Old Style 14-point has been used throughout.

DERREVERE STEVENS BLACK &
COZAD

2005 Vista Parkway, Suite 210

West Palm Beach, FL 33411

Telephone: (561) 684-3222

Facsimile: (561) 640-3050

Email: jdd@derreverelaw.com

sjm@derreverelaw.com

eservice@derreverelaw.com

cprasad@derreverelaw.com

BY: /s/ Jon D. Derrevere

JON D. DERREVERE, ESQUIRE

Florida Bar No: 0330132