[Cite as *Merriner v. Ohio Dept. of Rehab. & Corr.*, 2001-Ohio-1866.]

IN THE COURT OF CLAIMS OF OHIO

ALEXIS MERRINER	**:**	
Plaintiff	**:**	**CASE NO. 2000-02216**
v.	**:**	**DECISION**
DEPARTMENT OF REHABILITATION AND CORRECTION	**:**	**Judge J. Warren Bettis**
Defendant	**:**	

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Plaintiff brings this action against defendant alleging negligence. The case was tried to the court on the sole issue of liability.

On December 20, 1995, plaintiff arrived at defendant's Orient Correctional Institution to visit an inmate whom she had visited on several previous occasions. Plaintiff was escorted to the public visitation room as was the case on her prior visits. At the time, plaintiff was wearing cowboy boots with a narrow, two-inch heel. During the visit, plaintiff walked over to the vending machines at the far end of the visitation area and purchased two cups of coffee. Plaintiff claims that as she was returning to her chair, the heel of her boot entered a small indentation in the floor causing her to fall to the ground.

Plaintiff asserts that the defect in the floor of defendant's visiting room created a foreseeable and unreasonable risk of harm to visitors, and that defendant was negligent in failing to either repair the defect or provide her with an adequate warning of its existence. The court disagrees.

The owner of premises owes a duty to an invitee to exercise ordinary care to maintain the premises in a reasonably safe

condition and to warn an invitee of latent or concealed defects of which the owner has knowledge. *Baldauf v. Kent State Univ.* (1988), 49 Ohio App.3d 46. However, the owner is not the insurer for the safety of visitors who come upon his land. *Perry v. Eastgreen Realty Co.* (1978), 53 Ohio St.2d 51. Indeed, in a case where a defect in the premises is trivial or minor, or is the type of defect routinely encountered by visitors, liability will not attach. *Baldauf, supra.* Furthermore, when the defect is minor or trivial, the question whether defendant had knowledge of the defect is irrelevant to the determination of liability. *Id.*

In this case, plaintiff testified that at the time she fell she was wearing high-heeled boots and carrying two full cups of coffee. Although plaintiff claims that she had no trouble walking on that day, she admitted that she had been diagnosed with lupus and that she was taking the prescription drug Prednisone as treatment for that disease. Plaintiff acknowledged that Prednisone can cause muscle weakness.

Plaintiff testified that the indentation in the visiting room floor was approximately two inches in diameter and one-quarter inch deep. Measurements and photographs taken of the indentation establish that it was one and one-half inches in diameter at the surface and one quarter of an inch deep at its deepest point. The indentation was cone-shaped, tapering down from the surface. Testimony establishes that this small depression was caused by a metal post that had been attached to a partition which had formerly been used to separate the room into two parts. No attempt to repair or fill the indentation had ever been made.

Correction Officer Terry Rue was present when plaintiff fell and when the photographs were taken. According to Rue, the indentation was so small that he could not even see it until he was very close. Rue did not mention the hole in his report about this incident because he did not consider it to be important. The photographs and measurements support Rue's testimony as to size of the hole.

Upon review of the photographs and the measurements of the alleged defect in the floor, the court is convinced that this indentation was so small and insignificant that a person of average intelligence and awareness would not consider it to be a hazard. Thus, the court concludes that the alleged defect was not unreasonably dangerous. Similarly, the court finds that the likelihood that an injury would occur as a result of this minor indentation in the floor was so small that it could not be considered reasonably foreseeable. In short, plaintiff has failed to prove negligence on the part of defendant. See *Helms v. American Legion, Inc.* (1966), 5 Ohio St.2d 60, (Demurrer in favor of premises owner affirmed where the hole plaintiff caught her heel on measured only 1-1/4 inches in diameter and ½ inch deep).

Given the court's determination that the alleged hazard was not unreasonably dangerous and that an injury was not reasonably foreseeable, the court finds that defendant had no duty to warn plaintiff. Judgment will be rendered in favor of defendant.

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J. WARREN BETTIS
Judge

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IN THE COURT OF CLAIMS OF OHIO

ALEXIS MERRINER	**:**	
Plaintiff	**:**	**CASE NO. 2000-02216**
v.	**:**	**JUDGMENT ENTRY**
DEPARTMENT OF REHABILITATION AND CORRECTION	**:**	**Judge J. Warren Bettis**
Defendant	**:**	

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This case was tried to the court on the sole issue of liability. The court has considered the evidence, and for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____

J. WARREN BETTIS
Judge

Entry cc:

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