[Cite as *Camden v. Wright State Univ.*, 2005-Ohio-6310.]

IN THE COURT OF CLAIMS OF OHIO
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MARTHA CAMDEN, et al.	:	
Plaintiffs	:	CASE NO. 2003-11721 Judge Joseph T. Clark
v.	:	DECISION
WRIGHT STATE UNIVERSITY	:	
Defendant	:	

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{¶ 1} Plaintiffs, Martha and Fred Camden, brought this action against defendant, Wright State University, alleging a claim of negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability. At the close of plaintiffs' case and again at the end of trial, defendant made an oral motion to dismiss plaintiffs' case pursuant to Civ.R. 41(B), which the court took under advisement.

{¶ 2} On December 1, 2001, plaintiffs were present on defendant's campus to attend the graduation of their niece. The ceremony was held at the Nutter Center, a multipurpose building where sports and entertainment events are scheduled throughout the year.

{¶ 3} According to Mrs. Camden, temporary seating consisting of rows of individual chairs had been placed in front of the stage on the floor of the arena. In order to reach that area on the center floor, she had to walk over some temporary flooring that defendant had put down to cover and protect the ice underneath that was maintained for hockey games. Plaintiff[1] testified that as she

[1]For the purposes of this decision, plaintiff shall refer to Mrs. Camden.

stepped onto the flooring she felt it move beneath her. Plaintiff recalled that she related her observations at the time to her husband. Fred Camden testified that he also felt some movement or "teeter totter" motion in the floor when he stepped onto it. He stated that he then instructed his wife to walk slowly and carefully. As she proceeded up the center aisle to take a seat in the forward rows, plaintiff stumbled and fell forward to the floor, landing on her right shoulder.

{¶ 4} In order to prevail on a negligence action, plaintiff must establish: (1) a duty on the part of defendant to protect her from injury; (2) a breach of that duty; and (3) injury proximately resulting from the breach. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79,81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶ 5} There is no dispute that plaintiff was on university property as an invitee. *Baldauf v. Kent State University* (1988), 49 Ohio App.3d 46. Based on plaintiff's status as an invitee, defendant university owed her a duty to exercise reasonable care in keeping the premises in a safe condition and warning plaintiff of any latent or concealed dangers which defendant had knowledge. *Perry v. Eastgreen Realty Company* (1978), 53 Ohio St.2d 51, 52-53; *Presley v. Norwood* (1973), 36 Ohio St.2d 29, 31; *Sweet v. Clare-Mar Corp., Inc.* (1987), 38 Ohio App.3d 6. However, a property owner is under no duty to protect an invitee from dangers known by the invitee or hazards that are so obvious and apparent to the invitee that she should reasonably be expected to discover and protect against them herself. *Paschal v. Rite Aid Pharmacy* (1985), 18 Ohio St.3d 203, 203-204; *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, paragraph one of the syllabus; *Brinkman v. Ross* (1993), 68 Ohio St.3d 82, 84.

{¶ 6} Defendant's Director of the Nutter Center, John Siehl, testified that the ice used by the hockey team is formed over top of a concrete floor. When other events are held in the arena, the surface of the ice is smoothed by a Zamboni machine before more than 300 plastic panels are wedged side by side to cover the floor. He described the panels as 4- by 4-foot squares of foam-insulated plastic that, when properly placed, form a dry, even, smooth, surface wall-to-wall. Mr. Siehl also verified that when the panels are in place, they should not move or raise up. He stated that each panel has more than a dozen pillars in the middle to keep the panels from sagging. According to Siehl, 15 to 25 part-time laborers and a supervisor from the operations department worked approximately one and one-half hours laying the panels in place over the ice. Siehl also testified quite credibly that he and other employees walked over sections of the floor that day and that they did not notice any movement in the floor panels, nor did anyone make a complaint of any such problems with the flooring. Mr. Siehl denied having any knowledge of plaintiff's fall prior to the filing of this lawsuit.

{¶ 7} Plaintiff stated that she thought she had caught or stubbed her toe, and that her shoe had come off when she fell. The mere fact that plaintiff tripped does not establish any negligence on the part of defendant. *Green v. Castronova* (1966), 9 Ohio App.2d 156, 161; *Benton v. Cracker Barrel Old Country Store, Inc.*, Franklin App. No. 02AP-1211, 2003-Ohio-2890. It is also incumbent upon plaintiff to show that there was a dangerous or latent condition on the premises that was the cause of the fall. *Paschal*, supra.

{¶ 8} Mr. Camden related that after his wife had fallen, he looked around and saw the edge of a panel near them that was raised up, and that people were standing on the opposite end of the panel,

which he believed caused the edge to be raised. He stated that plaintiff probably tripped over the edge of a raised panel. Likewise, plaintiff speculated that she must have stumbled over the raised edge of a temporary floor panel. Although plaintiffs claim they were helped by security persons or persons wearing badges, no incident report was ever completed.

{¶ 9} On cross-examination, plaintiff testified that although there were people walking both in front of and behind her, her view of the floor was not obstructed. She also acknowledged that she did not see any panels raise up before she fell nor did she notice any debris on the floor.

{¶ 10} The court finds that plaintiff failed to present sufficient evidence to prove either that defendant negligently installed the floor panels or that the condition of the floor panels caused her to fall. Indeed, plaintiff was unable to ascertain with any certainty what precipitated her accident. The Tenth District Court of Appeals has held that "*** a plaintiff will be prevented from establishing negligence when he, ***, is unable to identify what caused the fall. In other words, a plaintiff must know what caused him to slip and fall. A plaintiff cannot speculate as to what caused the fall." (Citations omitted.) *Beck v. Camden Place at Tuttle Crossing,* Franklin App. No. 02AP-1370, 2004-Ohio-2989. See, also, *Benton*, supra, at paragraphs 22-24.

{¶ 11} Based upon the testimony presented, the court finds that defendant satisfied its duty to keep the premises in a reasonably safe condition, and that plaintiff failed to prove by a preponderance of the evidence that her fall was caused by a defective condition on defendant's premises. Accordingly, judgment shall be rendered for defendant. As a result of the court's determination, defendant's oral motion is DENIED as moot.

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		JUDGMENT ENTRY
WRIGHT STATE UNIVERSITY	:	
Defendant	:	

: : : : : : : : : : : : : : : : :

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

_____
JOSEPH T. CLARK
Judge

Entry cc:

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SJM/cmd
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