

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JOHNNIE GLENN,	:	APPEAL NO. C-030300
	:	TRIAL NO. A-0204423
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
	:	
WAL-MART STORES, INC.,	:	
	:	
Defendant-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: October 31, 2003

Stephen R. Roell, for Appellant,

Dan M. Newman and Reminger & Reminger Co., L.P.A., for Appellee.

MARK P. PAINTER, Judge.

{¶1} Plaintiff-Appellant Johnnie Glenn slipped and fell on a patch of what appeared to be grease or oil in defendant-appellee Wal-Mart’s parking lot. The trial court granted summary judgment against Glenn. We affirm.

{¶2} The trial court held that there was no genuine issue of material fact. Glenn could not demonstrate either that the substance was placed there by Wal-Mart, or that Wal-Mart had actual or constructive knowledge of the hazard. The oil could have come from a passing vehicle that had stopped to pick up a passenger a few minutes before. Or not. But it was Glenn’s burden to prove, and she could not.

{¶3} In a well-written brief, Glenn relies on *McCloy v. Hamilton Cty. Bd. of Elections*,¹ which held that the occupier of premises “had a duty to inspect and warn invitees...of dangers in the entranceway to the building.” Strangely, Wal-Mart makes no attempt to distinguish that case—it is not even mentioned in its brief. While *McCloy* provides for a heightened duty of care for business inviters to police an entranceway, Glenn fell in the parking area, albeit about 18 inches from the curb. We do not extend *McCloy* to parking areas.

{¶4} Additionally, Wal-Mart has moved, under App.R. 23, for sanctions against Glenn for filing a frivolous appeal. We decline to consider the appeal frivolous. Though we are somewhat inclined to hold the *motion for sanctions* to be frivolous, we decline that also.

{¶5} We affirm the trial court’s grant of summary judgment and overrule Wal-Mart’s motion for sanctions.

Judgment affirmed.

GORMAN, P.J., and WINKLER, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this decision.

¹ (1994), 130 Ohio App.3d 621, 720 N.E.2d 954.