[Cite as *Mostyn v. CKE Restaurants Inc.*, 2009-Ohio-2934.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

Martha F. Mostyn, et al.	Court of Appeals No. WM-08-018
Appellants	Trial Court No. 07 CI 259
v.	
CKE Restaurants, Inc.	**DECISION AND JUDGMENT**
Appellee	Decided: June 19, 2009

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Eric A. Mertz, for appellants.

Joseph P. Dawson, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Williams County Court of Common Pleas which granted summary judgment to appellee regarding a trip and fall incident at the entry area to an Ohio Turnpike rest stop restaurant. For all of the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellants, William and Martha Mostyn, set forth the following sole assignment of error:

{¶ 3} "No. 1: The Trial Court erred in its finding that the defect in this case was open and obvious; and in granting summary judgment to the defendant, and dismissing plaintiff's complaint, when the plaintiff was a business invitee who had entered the first of two sets of doors and caught her foot on the corner of a mat that was molded in an upright position; and the molded part blended in with the non-molded part of the mat, making the defect not open and obvious but blended and concealed and not discoverable by ordinary inspection."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. During the mid-morning of November 5, 2004, appellants were en route to New York traveling via the Ohio Turnpike. Appellants stopped at a turnpike travel plaza in Williams County. The sole and undisputed purpose of this stop was for appellants to utilize the restrooms.

{¶ 5} William Mostyn safely traveled through a double set of glass entry doors leading into the travel plaza's restaurant, Hardees, and proceeded towards the restroom. While subsequently proceeding in through this same double set of glass entry doors, Martha Mostyn tripped and fell over an entryway floor mat sustaining injury.

{¶ 6} Appellants' first complaint against appellee was voluntarily dismissed and subsequently refiled. On October 30, 2007, appellants filed their second complaint, alleging negligence and loss of consortium. On December 3, 2007, appellee filed its

answer. In its answer, appellee raised various affirmative defenses including, significantly, the open and obvious doctrine, primary assumption of the risk, and appellants' status as licensees to whom no duty of care was owed beyond restraint from wanton or reckless conduct.

{¶ 7} On June 16, 2008, appellee moved for summary judgment primarily premised upon similar assertions of primary assumption of the risk, open and obvious condition, and the contention that appellants were licensees, not invitees, of appellee. On August 6, 2008, the trial court rendered its summary judgment decision.

{¶ 8} The trial court granted summary judgment to appellee. The trial court determined that appellants were invitees, not licensees, but were nevertheless owed no duty of care due to the open and obvious nature of the floor mat over which appellant, Martha Mostyn, tripped. The court found no evidence of reckless or wanton conduct on the part of appellee in the floor mat not lying wholly flat. Timely notice of appeal was filed.

{¶ 9} In the sole assignment of error, appellants maintain that the trial court erred in finding the condition to be open and obvious and granting summary judgment to appellee. In support, appellants assert, without objective evidentiary support, that the floor mat was defective. While appellants repeatedly characterize the format as defectively "molded" vertically upright at its edge, there is no evidence in the record demonstrating that this was anything other than a floor mat which was not fully straightened out and flat at the time of the incident. The record contains no evidence that

the floor mat was defective so as to possess a permanent vertical portion perpendicular to the floor rather than simply being temporarily bunched or curled upward at its edge.

{¶ 10} Appellants contend that the trial court erred in granting summary judgment to appellee. Appellate court review of a trial court's summary judgment determination is conducted pursuant to a de novo standard of review. The appellate court utilizes the same standard as applied by the trial court. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105.

{¶ 11} Summary judgment must be awarded when there remains no genuine issue of material fact and, when considering the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 12} In conjunction with fundamental summary judgment legal principles, we must also consider the controlling legal principles applicable to premises liability cases. To establish a legitimate premises liability negligence claim, one must establish the existence of duty, a breach of that duty, and injury proximately resulting therefrom. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶ 13} In such a premises liability negligence case, the type of relationship in existence between the owner or occupier of the premises and the injured party is determinative as to the scope of the duty owed. *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 315. Ohio has long recognized that the nature of the relationship will fall into one of three categories; invitee, licensee, or trespasser.

The classification determines the scope of the legal duty owed by the property owner to the injured party. *Gladon*, supra.

{¶ 14} If one is found to be an invitee, the property owner owes a duty to exercise ordinary care. The owner must maintain the premises so that business invitees are not unreasonably exposed to dangerous conditions. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203.

{¶ 15} However, the open and obvious doctrine has long been recognized by courts in Ohio. It establishes that a property owner has no duty to warn invitees of potentially hazardous conditions determined to be open and obvious to a reasonable person such that the owner may reasonably anticipate that they will discover those dangers and engage in actions to protect themselves from the dangers. *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St.3d 642, 644.

{¶ 16} Conversely, for licensees and trespassers, no duty is owed other than to refrain from wanton or reckless conduct. *Gladon*, at 317. Wanton or reckless conduct occurs when one fails to exercise any care towards another to whom a duty of care is owed and such failure entails a probability of resulting harm. *McKinney v. Hartz & Restle Realtors, Inc*. (1987), 31 Ohio St.3d 244, 246.

{¶ 17} We have carefully reviewed the record of evidence. The record demonstrates that the floor mat over which appellant tripped was adjacent to transparent, full-length glass doors. The mat was of a different color than the tile so as to be clearly distinguished from the floor. The record establishes that nothing was obstructing Martha

Mostyn's view of the floor mat. The record contains no evidence of defective or inadequate lighting in the vicinity of the floor mat. Appellant herself conceded that she was not looking down watching where she was walking when the incident occurred.

{¶ 18} While appellants maintain that the floor mat was defectively "molded" in an upright position at its edge, there is no objective evidence demonstrating that this was anything other than a floor mat that had curled or bunched at the edge so as not to be perfectly flat. The record demonstrates that appellants had entered the premises purely for their own restroom purposes and had not entered the area of the incident for any business purpose beneficial to appellee.

{¶ 19} We find that given the facts and circumstances of this case, appellants were licensees of appellee at the time of this incident. As such, they were owed no duty of care other than restraint from wanton or reckless conduct and a duty to warn of hidden or latent defects. The record contains no evidence or indicia of wanton or reckless conduct on the part of appellee.

{¶ 20} In a strikingly similar case, *Martin v. Christ Hospital*, 9th Dist. No. C-060639, 2007-Ohio-2795, the injured party had likewise tripped and fallen over an entry rug that was not totally straightened and flat. Just as in the case at hand, the rug was visible through the door and was a color divergent from the floor. As such, it was found to be an open and obvious condition for which no duty was owed.

{¶ 21} Although we find that appellants were licensees at the time of the incident, we further find that the distinction is moot. Appellants, without any visual or lighting

obstruction of any kind, traveled through a transparent glass entry area containing a floor mat of a color divergent from the tile beneath it. Even assuming arguendo that appellants were invitees, the record clearly demonstrates that the condition was open and obvious so as to negate any duty on the part of appellee. As such, there is no genuine issue of material fact remaining in dispute through which liability could be imposed upon appellee. We find appellants' sole assignment of error not well-taken.

{¶ 22} On consideration whereof, the judgment of the Williams County Court of Common Pleas is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE