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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000768-MR

HAJAR SHAQDEIH — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KENNETH CONLIFFE, JUDGE
ACTION NO. 00-CI-008183

SIGNATURE INN SOUTH — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BAKER, GUIDUGLI, AND KNOPF, JUDGES.

BAKER, JUDGE: Hajar Shaqdeih brings this appeal from a March 27, 2002, summary judgment of the Jefferson County Circuit Court. We affirm.

Appellant and her family moved into the Signature Inn South in January 2000 following a fire in their home. When the family initially moved into the hotel and in the days subsequent to their arrival, snow and ice accumulated in the parking lot and on the sidewalks around the hotel. Appellant's testimony affirmed that she was aware that the conditions in the parking

lot were “very slick.” Similarly, she relied upon a picture taken two days after the accident to provide visual proof that the conditions in the parking lot did, in fact, appear dangerous. During the period of appellant’s stay at the hotel, the Signature Inn South made no attempt to clear the snow and ice from the parking lot.

On January 31, 2000, approximately three days following the family’s relocation to the Signature Inn, appellant slipped and fell on ice in the parking lot while walking to her car. Appellant testified that as she started to walk to her car, she felt her feet slip beneath her. She remained in the parking lot for roughly ten minutes before returning inside to the hotel, at which time her daughter drove her to a clinic for treatment. The injuries complained of included bruising to the knees, as well as a sore arm and back. Appellant was allegedly forced to quit cosmetology school due to her injuries and has been unable to return since.

Appellant brought this suit on December 22, 2000, for damages stemming from the injuries sustained in her fall. The Jefferson Circuit Court entered summary judgment on March 27, 2002. This appeal follows.

On appeal, appellant raises three main issues: (1) Signature Inn South did not operate its premises with ordinary care to ensure reasonably safe conditions for its guests; (2) a

reasonable interpretation of 902 KAR 7:010(11) requires Signature Inn South to keep its parking lots, sidewalks, and driveways clear from ice and snow; and (3) the innkeeper/guest relationship is akin to that of landlord/tenant, requiring a higher standard of care between Signature Inn South and Shaqdeih. These arguments are without merit.

In regards to appellant's first issue, there is a long line of Kentucky cases standing for the proposition that a landowner has neither a duty to stay the elements nor a duty to warn when conditions are clear and obvious. Standard Oil Company v. Manis, Ky., 433 S.W.2d 856 (1968); see also, Rogers v. Professional Golfers Ass'n, Ky. App., 28 S.W.3d 869 (2000); Corbin Motor Lodge v. Combs, Ky., 740 S.W.2d 944 (1987). The standard for slip-and-fall cases as set forth in Standard Oil states that "*natural outdoor hazards* which are as obvious to an invitee as to the owner of the premises do not constitute *unreasonable* risks to the former which the landowner has a duty to remove or warn against." In such a situation, the defendant owes no duty to the plaintiff because there is no negligence on the part of the defendant. See Corbin Motor Lodge, 740 S.W.2d at 946.

The facts of this case are indistinguishable from the previous cases. The testimony of appellant clearly indicates that she was aware of the conditions in the parking lot when she

walked to her car on the morning of the accident, and that the conditions were clear and obvious to the reasonably prudent person. She had knowledge that the parking lot was covered with snow and ice, that nothing had been done by the hotel to clear the area, and that the area around the Signature Inn South was slick. Additionally, the picture offered by appellant of the parking lot provides evidence that the snow and ice were in fact clear and obvious to the reasonable observer. Therefore, no unreasonable risk was created by the existence of the snow and ice that would have required the hotel to warn its guests of the conditions.

Second, appellant's contention that 902 KAR 7:010 (11) imposes a duty upon innkeepers to keep their parking lots and sidewalks "clean and in good repair" is without value. The regulation states:

> Section 11. Maintenance of Room, Furniture and Accessories. All sleeping rooms, hallways, lobbies and other facilities shall be kept clean and in good repair. Furniture, drapes, curtains and shades shall be kept clean and in good repair.

There is no contention that regulations have the force and effect of law. However, appellant has failed to prove that the intent of this section was to include the maintenance of parking lots and sidewalks. The whole of 902 KAR 7:010 (the "State Hotel Code") covers the regulatory codes for Kentucky hotels and

motels. Though there are sections under the code covering aspects of hotel upkeep from linen service to sewage and waste disposal, none of the sections speak directly to the maintenance of hotel parking lots and sidewalks. In the absence of such explicit language, it hardly seems logical or judicious to interpret the term "and other facilities" as found in Section 11 to include outdoor parking lots and sidewalks. As stated in the Brief for Appellee, to do so would be "violative of the court's duty to give effect to the legislature's intent." See also Commonwealth v. Plowman, Ky., 86 S.W.3d 47, 49 (2002).

Under the common law, a defendant does not incur liability unless there has been a voluntary assumption of a duty. Based on this principle, had Signature Inn South attempted to clear the parking lots and sidewalks and either failed to do so effectively or had stopped before the clearing was complete, a duty would have attached. See Johnson v. Brey, Ky., 438 S.W.2d. 535, 536 (1969). The decision of the hotel to refrain wholly from clearing the hazards does not make it liable for failure to exercise reasonable care. Rather, Signature Inn South was under no obligation to clear the ice and snow from its parking lot and therefore acted accordingly.

Finally, appellant argues that the "special" relationship between she and Signature Inn South requires the same standard of care as applies to a landlord/tenant

relationship. The appellant bases this argument on Davis v. Coleman Management Co., Ky. App., 765 S.W.2d. 38 (1989) and Fuhs v. Ryan, Ky. App., 571 S.W.2d 627 (1978), which held that landlords are responsible for the upkeep of tenants' common areas. However, relying on the Court's decision in In Re Dant and Dant of Kentucky, 39 F.Supp. 753 (D.C. Ky. 1941), this argument is misplaced. The Court stated, "it is settled in Kentucky that to constitute a tenancy of any kind, the tenant must get some definite control and possession of the premises with the intention on the part of the owner to dispossess himself of the premises under consideration." Id. at 757, 758. There is no indication that the relationship that existed between Signature Inn South and appellant was anything beyond that of the traditional innkeeper/guest association. Though appellant and her family were planning to stay at the hotel for an extended period of time while looking for a new home, this fact alone does not alter the relationship between the appellee and appellant in this case. There was no "definite control and possession" on the part of appellant, nor any intention of Signature Inn South to "dispossess" itself of the premises, save for a nightly rental. To hold the hotel to a heightened standard of care based upon an extension of the law of tenancy would be unjust.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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