[Cite as *Underwood v. Univ. of Akron*, 2003-Ohio-3594.]

IN THE COURT OF CLAIMS OF OHIO

HEATHER UNDERWOOD	:	
Plaintiff	:	
v.	:	CASE NO. 2003-01814-AD
THE UNIVERSITY OF AKRON	:	MEMORANDUM DECISION
Defendant	:	

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{¶1} Plaintiff, Heather Underwood, a student attending defendant, University of Akron, suffered personal injury when she slipped and fell in a building located on the campus of defendant. Plaintiff stated she entered defendant's Auburn Science and Engineering Center on December 3, 2002, at approximately 7:45 A.M. Plaintiff related she entered the building via the south entrance, went through a doorway, and walked up a stairway. After reaching the top of the steps, plaintiff explained, as she started to walk through an entrance she noticed a puddle of water on the floor and tried to step over the accumulated water. When she attempted to step over the water puddle, plaintiff stated her "heel caught on the puddle and I preceded to fall down the staircase." As a result of falling down the staircase in defendant's building, plaintiff has maintained she suffered an, "acute cervical-thoracic spine sprain, an acute right shoulder strain, and a left thigh hematoma." Plaintiff contended her fall and injuries were attributable to negligence on the part of defendant in failing to warn her of a known dangerous condition on University premises. Consequently, plaintiff filed this complaint seeking to recover $2,000.00 for medical expenses incurred and pain and suffering related to her injuries received on December 3, 2002. Plaintiff submitted the filing fee with the complaint.

{¶2} On December 4, 2002, plaintiff filed a report with the University police relating the slip and fall incident from the previous day. Plaintiff submitted a copy of the report. The report included a narrative of plaintiff's personal injury event which included the following: "The victim states she was walking down the steps and slipped and fell. The victim states there was a puddle of slushed snow that she accidently stepped in. The victim also stated there was no wet floor sign in the area. The victim did get medical attention."

{¶3} Defendant denied plaintiff's injuries were proximately caused by any negligent act or omission on the part of the University. Defendant denied any duty of care owed to plaintiff was breached which resulted in injury. Defendant denied any knowledge of the tracked in water accumulation in the Auburn Science Center. Defendant suggested plaintiff's own negligence was the sole cause of her slip and fall.

{¶4} Plaintiff was present on defendant's premises for such purposes which would classify her under the law as an invitee. *Scheibel v. Lipton* (1951), 156 Ohio St. 308, 102 N.E. 2d 453. Consequently, defendant was under a duty to exercise ordinary care for the safety of invitees such as plaintiff and to keep the premises in a reasonably safe condition for normal use. *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29. The duty to exercise ordinary care for the safety and protection of invitees such as plaintiff includes having the premises in a reasonably safe condition and warning of latent or concealed defects or perils which the possessor has or should have knowledge. *Durst v. VanGundy* (1982), 8 Ohio App. 3d 72; *Wells v. University Hospital* (1985), 86-01392-AD. As a result of plaintiff's status, defendant was also under a duty to exercise ordinary care in providing for plaintiff's safety and warning her of any condition on the premises known by defendant to be potentially dangerous. *Crabtree v. Shultz* (1977), 57 Ohio App. 2d 33.

{¶5} However, an owner of a premises has no duty to warn or protect an invitee of a hazardous condition, where the condition is so obvious and apparent that the invitee should reasonably be expected to discover the danger and protect herself from it. *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49; *Blair v. Ohio Department of Rehabilitation and Correction* (1989), 61 Ohio Misc. 2d 649. This rationale is based on principles that an

open and obvious danger is itself a warning and the premises owner may expect persons entering the premises to notice the danger and take precautions to protect themselves from such dangers. *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642. In the instant claim, plaintiff has acknowledged the water puddle which caused her slip and fall was readily noticeable to her. Plaintiff admitted she was trying to avoid the water accumulation when she slipped and fell as a result of a misstep. Furthermore, liability of a premises owner for tracked-in water or snow is governed by the principle there is no duty to keep a battery of moppers on the premises to remove a risk which should be equally appreciated and avoided by everyone. *Paschal v. RiteAid Pharmacy, Inc.* (1985), 18 Ohio St. 3d 203; *Lawson v. Columbia Gas of Ohio, Inc.* (1984), 20 Ohio App. 3d 208; *Boles v. Montgomery Ward & Co.* (1950), 153 Ohio St. 381.

{¶6} Despite the general rule that no duty exists to protect an invitee from the potential hazards of tracked in water, cases of this type sometimes involve narrow distinctions and determinations on these claims depend largely on the facts of each separate claim. The general rule regarding tracked in water is subject to an exception if the water is sufficiently distant from the entrance of a particular premises. A distance of fifty feet creates an issue of negligence since the owner rather than the invitee by its superior knowledge should foresee that the water would be tracked into a certain location. *Yahn v. Mahoning Natl. Bank* (1982), 4 Ohio App. 3d 172. See *Rayburn v. J.C. Penney Outlet Store* (1982), 3 Ohio App. 3d 463, where water was fifteen feet from the entrance, *Lawson v. Columbia Gas of Ohio, Inc., supra*, where water was absorbed by a carpet into a large lobby. Evidence in the instant claim seems to show the water accumulation plaintiff slipped on was located at the top of a stairway some distance from a main entrance of the Auburn Science Center. These circumstances should create a negligence issue analysis, except for the fact plaintiff acknowledged she was totally aware of the water accumulation before she unsuccessfully attempted to maneuver over and around the water puddle. No liability shall attach to defendant based on the admitted open and obvious condition presented which led to plaintiff's injury.

{¶7} Having considered all the evidence in the claim file and, for reasons set forth

in the memorandum decision filed concurrently herewith, judgment is rendered in favor of the defendant. Court costs shall be absorbed by the court. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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