[Cite as *Antoine v. Univ. of Akron,* 2003-Ohio-4650.]

IN THE COURT OF CLAIMS OF OHIO

SHUNNAH ANTOINE	:	
Plaintiff	:	
v.	:	CASE NO. 2003-02748-AD
UNIVERSITY OF AKRON	:	MEMORANDUM DECISION
Defendant	:	

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

{¶1} Plaintiff, Shunnah Antoine, asserted she suffered personal injury on January 28, 2003, while walking in a parking deck located on the campus of defendant, University of Akron. Specifically, plaintiff related she sprained her right ankle when she stepped into "an uncovered hole" in the floor of defendant's parking deck. Plaintiff indicated she filed a report with defendant's police department regarding her personal injury incident. The report was not submitted. On the day of the incident plaintiff sought medical treatment for the physical injury she suffered when she stepped into the hole in the floor of the parking deck. Plaintiff filed this complaint seeking to recover $2,500.00 in damages based on her January 28, 2003 injury occurrence. On March 19, 2003, plaintiff submitted the filing fee.

{¶2} Defendant denied any liability in this matter. Defendant contended it was unaware of any hole in the floor of its parking deck. Defendant argued plaintiff has failed to produce sufficient evidence to establish her injury was caused by a defective condition located on defendant's premises.

{¶3} Plaintiff was present on defendant's premises for such purposes which would classify her under the law as an invitee. *Scheibel v. Lipton* (1985), 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.

{¶4} However, defendant is not an insurer of visitor safety, and it is under no duty to protect visitors from conditions "which are known to such invitee or are so obvious and apparent to such invitee that [she] may reasonable be expected to discover them and protect [herself] against them." *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, paragraph one of the syllabus. This rationale is based on the 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. Where an invitee voluntarily exposes herself to a hazard, the owner or occupier of the premises will not be the insurer of her safety, since an invitee is required to exercise some degree of care for her own safety. *Thompson v. Kent State Univ.* (1987), 36 Ohio Misc. 2d 16. In the instant claim, plaintiff has not offered any evidence to indicate the hole in the parking deck floor was not readily discernible.

{¶5} To recover damages in a negligence action an invitee must establish:

{¶6} "1) That the defendant through its officers or employees was responsible for the hazard complained of; or

{¶7} "2) That at least one of such persons had actual knowledge of the hazard and neglected to give adequate notice of its presence or remove it promptly; or

{¶8} "3) That such danger had existed for a sufficient length of time reasonably to justify the inference that the failure to warn against it or remove it was attributable to a want of ordinary care." *Evans v. Armstrong* (Sept. 23, 1999), Franklin App No. 99AP-17, quoting, *Johnson v. Wagner Provision Co.* (1943), 141 Ohio St. 584, 589. Plaintiff has failed to produce evidence establishing any of these elements. Therefore, plaintiff's claim

is denied.

{¶9} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
8/11
Filed 8/22/03
Sent to S.C. reporter 9/4/03