[Cite as *White v. University of Toledo*, 2004-Ohio-5042.]

IN THE COURT OF CLAIMS OF OHIO

L'TANYA WHITE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-03772-AD
UNIVERSITY OF TOLEDO	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} Plaintiff, L'Tanya White, a student attending defendant, University of Toledo, asserted she suffered personal injury when she tripped and fell while walking through a parking lot on defendant's campus. Plaintiff stated she left a class at approximately 9:15 p.m. on January 12, 2004, and was walking through a parking lot to her car when she tripped over a depression in the parking lot pavement. Plaintiff described this depression in the pavement as a pothole. Plaintiff related she fell to the ground after tripping on the pothole and injured her right knee. The knee injury was characterized as "badly bruised." Plaintiff immediately sought medical attention for her knee injury.

{¶ 2} Plaintiff implied her slip and fall injury was proximately caused by negligence on the part of defendant in maintaining a hazardous condition in the parking lot area. Consequently, plaintiff filed this complaint seeking to recover unspecified damages related to the January 12, 2004 incident. Plaintiff submitted a bill for her medical treatment indicating she was responsible for $75.00 of a total treatment charge of $394.00. Apparently, plaintiff's health care insurer paid $319.00 of the medical expenses incurred. Plaintiff acknowledged her insurer paid medical expenses totaling $319.00. Plaintiff explained, since January 12, 2004, she experiences fear and anxiety while walking across the parking lot to her car. However, plaintiff did not elaborate about this condition. It is unclear if plaintiff is pursuing a damage claim regarding her post injury mental state. Plaintiff did not plead any other damage elements. Plaintiff did submit the requisite material filing fee.

{¶ 3} Defendant seemingly acknowledged a pavement defect existed in its parking lot on

January 12, 2004, this defect proximately caused injury to plaintiff. However, defendant denied any liability in this matter. Defendant asserted it did not know about the pavement defect until after plaintiff's personal injury event. Furthermore, defendant suggested the defect in the parking lot should have been open and obvious to plaintiff considering the parking lot was well lit and plaintiff had traversed the same area where the defect was present approximately three hours prior to her personal injury occurrence.

{¶ 4} Defendant submitted a transcript of an interview with plaintiff in which she recalled the particular relevant events of January 12, 2004. In the interview, plaintiff recollected her injury occurred in the evening when it was dark outside, but the parking lot where she tripped was illuminated by electric lighting. Plaintiff noted areas of the parking lot were spattered with slushy snow. However, plaintiff related she could see the parking lot pavement despite the slushy snow covering and her view of the parking lot surface was not obstructed. Plaintiff stated she was not looking down at the lot surface when she stepped into the pothole and fell. Plaintiff did recall she had walked through generally the same parking lot area earlier on January 12, 2004.

{¶ 5} Plaintiff's cause of action is grounded in negligence. In order to prevail on a negligence action, plaintiff must establish: (1) a duty on the part of defendant to protect her from injury; (2) a breach of that duty; and (3) injury proximately resulting from the breach. *Huston v. Konieczny* (1990), 62 Ohio St. 3d 214, 217; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 142; *Thomas v. Parma* (1993), 88 Ohio App. 3d 523, 527; *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49, 50.

{¶ 6} Based on plaintiff status as an invitee on defendant's premises, defendant owed her a duty to exercise reasonable care in keeping the premises in a safe condition and warning plaintiff of any latent or concealed dangers which defendant had knowledge. *Perry v. Eastgreen Realty Company* (1978), 53 Ohio St. 2d 51, 52-53; *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29, *31; Sweet v. Clare-Mar Camp, Inc.* (1987). 38 Ohio App. 3d 6, 9. However, a property owner is under no duty to protect a business invitee from hazards which are so obvious and apparent that the invitee is reasonably expected to discover and protect against them herself. *Sidle v. Humphrey*

(1968), 13 Ohio St. 2d 45, paragraph one of the syllabus; *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St. 3d 203, 203-204; *Brinkman v. Ross,* 68 Ohio St. 3d 82, 84, 1993-Ohio-72.

{¶ 7} A property owner has no duty to inform an invitee about open and obvious dangers on the property. "[T]he open and obvious nature of the hazard itself serves as a warning." *Simmers v. Bentley Constr. Co.*, 64 Ohio St. 3d, 642, 644, 1992-Ohio-42. "'Darkness' is always a warning of danger, and for one's own protection it may not be disregarded." *Jeswald v. Hutt* (1968), 15 Ohio St. 2d 244 at paragraph three of the syllabus. In the present claim, plaintiff has failed to produce sufficient evidence to establish the hole she stepped into was not open, obvious, and readily discernible. Consequently, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

L'TANYA WHITE	:	
Plaintiff	:	
v.	:	CASE NO. 2004-03772-AD
UNIVERSITY OF TOLEDO	:	ENTRY OF ADMINISTRATIVE DETERMINATION
Defendant	:	

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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.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

L'Tanya White
1531 S. Cove
Toledo, Ohio 43606

Plaintiff, Pro se

Mary E. Konicki
Department of Safety and
Risk Management
2300 C NE, MS 405
2801 West Bancroft Street
Toledo, Ohio 43606-3390

For Defendant

DRB/RDK/laa
8/12
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