

[Cite as *Hornung v. Miami Univ.*, 2006-Ohio-7138.]

IN THE COURT OF CLAIMS OF OHIO

GAYE HORNUNG	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2005-10390-AD
	:	
MIAMI UNIVERSITY	:	<u>MEMORANDUM DECISION</u>
	:	
Defendant	:	

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{¶ 1} On March 22, 2005, at approximately 5:30 p.m., Tami Hornung suffered personal injury when she tripped and fell while entering Shriver Center, a building located on the campus of defendant, Miami University. Tami Hornung explained she was going to the Shriver Center to purchase books and noted, "[a]s I opened the door, the toe of my shoe got caught on a half step into the building and I tripped, falling directly onto my right elbow." According to Tami Hornung, the step at the entrance to the Shriver Center is dangerous and warning signs of this potential danger should have been posted, but were not. After the trip and fall incident, Tami Hornung received medical treatment and remedial therapy for a fractured elbow.

{¶ 2} Gaye Hornung, the mother of Tami Hornung, assumed responsibility for her daughter's outstanding medical bills related to the March 22, 2005, incident. Gaye Hornung filed this complaint seeking to recover \$1,251.88, the amount owed to medical providers for her daughter's treatment and care. As plaintiff in this claim, Gaye Hornung has asserted Tami Hornung's injuries were proximately caused by negligence on the

part of defendant, University, in maintaining a defective condition on its premises. The filing fee was paid.

{¶ 3} Defendant pointed out entrance to the Shriver Center is through one of five separate sets of doors. Defendant related "[t]he thresholds of the doors range from flush with the ground to 5". Photographs depicting doors to the Shriver Center where steps were present were submitted. One photograph shows a main entrance with two sets of double doors and a concrete or stone step up five inches at the door's base from the sidewalk entrance. Another photograph shows a double door entrance area with a step up of about two inches from the sidewalk approach to the door entrance. None of the stepped areas at the entrances appear to be in disrepair. All stepped areas appear to be clearly and distinctly visible to pedestrian traffic entering Shriver Center. Defendant asserted these photographs establish the entrances to the Shriver Center were not defective and were properly maintained.

{¶ 4} To establish a cause of action for negligence, a plaintiff must prove the existence of a duty, breach of that duty, and an injury proximately caused by that breach. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.* (1998), 81 Ohio St. 3d 677, 680. Under the common law of premises liability, the status of a person who enters upon the land of another determines the scope of the duty the responsible party owes the entrant. *Shump v. First Continental-Robinwood Assoc.* (1994), 71 Ohio St. 3d 414, 417. In the instant claim, it is undisputed Tami Hornung would be considered an invitee under the circumstances presented.

{¶ 5} An owner or occupier of a premises owes business invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition so that invitees are not unnecessarily and unreasonably exposed to danger. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St. 3d 203. However, the owner or occupier is not an insurer of an invitee's safety and owes no duty to protect invitees from open and obvious dangers on the property. *Id.* at 203-204, citing *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, paragraph one of the syllabus. Courts reason that, because of the open and obvious nature of the hazard, business owners may reasonably expect their invitees to discover the hazard and take appropriate measures to protect themselves. *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642, 644. The open and obvious doctrine is determinative of the threshold issue, the landowner's duty. *Armstrong v. Best Buy, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, at ¶13. If an alleged hazard is open and obvious, whether the plaintiff can prove the elements of negligence other than duty is superfluous. *Horner v. Jiffy Lube Internatl., Inc.*, Franklin App. No. 01AP-1054, 2002-Ohio-2880, at ¶17. Because the open and obvious doctrine is determinative of the threshold issue of duty, we begin our analysis with that issue.

{¶ 6} Open and obvious hazards are those hazards that are neither hidden nor concealed from view and are discoverable by ordinary inspection. *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49, 50-51. "[T]he dangerous condition at issue does not actually have to be observed by the plaintiff in order for it to be an 'open and obvious' condition under the law. Rather, the

determinative issue is whether the condition is observable." *Lydic v. Lowe's Companies, Inc.*, Franklin App. No. 01AP-1432, 2002-Ohio-5001, at ¶10. Put another way, the crucial inquiry is whether an invitee exercising ordinary care under the circumstances would have seen and been able to guard herself against the condition. *Kidder v. The Kroger Co.*, Montgomery App. No. 20405, 2004-Ohio-4261, at ¶11, citing *Youngerman v. Meijer, Inc.* (Sept. 20, 1996), Montgomery App. No. 15732. The Supreme Court of Ohio has cautioned that "[c]ases of this type sometimes involve narrow distinctions and a decision in each case depends largely on the facts of the particular case.'" *Lawson v. Columbia Gas of Ohio, Inc.* (1984), 20 Ohio App. 3d 208, 209-210, quoting *Boles v. Montgomery Ward & Co.* (1950), 153 Ohio St. 381, 384.

{¶7} Some argument has been introduced that the injured party, Tami Hornung, could not see the step at the door entrance to Shriver Center because she was hurried and her arms were full. The open and obvious nature of the condition and available defense doctrine is not negated by the fact the injured party may have voluntarily impaired her sightline. The court, in the instant claim finds, Tami Hornung should have been able to guard herself against possible injury from an open and obvious condition. Consequently, plaintiff's claim is denied since defendant owed no duty to the injured party under the facts and circumstances shown.

IN THE COURT OF CLAIMS OF OHIO

GAYE HORNUNG	:	
Plaintiff	:	
v.	:	CASE NO. 2005-10390-AD
MIAMI UNIVERSITY	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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.

DANIEL R. BORCHERT
Deputy Clerk

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