[Cite as *Peery v. Cleveland State Univ.*, 2007-Ohio-5275.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

JACQUELINE M. PEERY

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2007-02009-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Jacqueline M. Peery, related she suffered personal injury when she tripped and fell while walking on a sidewalk located on the campus of defendant, Cleveland State University ("CSU"). Plaintiff recalled her injury occurred as she was walking to defendant's physical education building from Euclid Avenue. Plaintiff stated she approached the stairs to the physical education building and tripped over a "poorly marked curb," which was, "very poorly lit as well." Plaintiff noted she fell to the ground after tripping over the curb spraining her right wrist as well as suffering abrasions and contusions to her right leg. Plaintiff observed the described personal injury incident occurred at approximately 8:00 p.m. on November 10, 2006, as she was on her way to attend a volleyball game at defendant's physical education building.

{¶2} Plaintiff implied the injuries she suffered on November 10, 2006, were proximately caused by negligence on the part of defendant in maintaining a hazardous condition on CSU premises. Consequently, plaintiff filed this complaint seeking to recover $2,000.00 in unspecified damages related to her slip and fall injuries. The filing fee was paid. On November 13, 2006, plaintiff received medical treatment for her injuries suffered on November 10, 2006. Plaintiff paid $10.00 for this treatment. Also, on November 13, 2006, plaintiff paid $20.00 for prescribed medication to treat her injuries. Plaintiff pointed out she missed time from work as a result of her injuries.

{¶3} Defendant denied plaintiff's trip and fall and resulting injuries were proximately caused by any negligent act or omission on the part of CSU. Defendant disputed plaintiff's description that the curb she tripped over was poorly marked or that the area was poorly lit. Defendant submitted a photograph depicting the general area around the CSU physical education building. The photograph shows clearly marked warning poles on a raised curb and a row of security lighting adjacent to the curb. The approaches to the CSU physical education building appear to be well marked and well lit.

{¶4} Defendant acknowledged plaintiff was present on the CSU campus for the purpose of attending a volleyball game. Defendant related, "[p]laintiff entered the Cleveland State University campus for her own pleasure and convenience; had no express invitation; and was not there for business purposes." Therefore, defendant contended plaintiff was classified under the law as a licensee, defined as, "a person who enters the premises of another by permission or acquiescence, for his own pleasure or benefit, and not by invitation." *Light v. Ohio University* (1986), 28 Ohio St. 3d 66, 68, 502 N.E. 2d 611,

613. Defendant observed a premises owner such as CSU owes no duty to a licensee except to refrain from wantonly or willfully causing her injury. 76 Ohio Jur. 3d, Premises Liability §14. Defendant cited *Doelker v. Ohio State Univ.* (1990), 61 Ohio Misc. 2d 69, 70, 573 N.E. 2d 809, 810, for the proposition that CSU cannot be liable to plaintiff for ordinary negligence and, "owes [her] no duty except to refrain from wantonly, willfully, or intentionally injuring [her], to avoid exposing [her] to known hazards or hidden dangers, to refrain from any affirmative act of negligence, and to warn [her] of any danger." Defendant maintained that none of the excepting circumstances for liability listed in *Doelker*, id., apply to the instant claim.

{¶5} Based on the information presented plaintiff's status under a premises liability analysis was that of a licensee. See *Light*, supra. 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), 52 Ohio St. 3d 214, 217, 556 N.E. 2d 505, 508; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 142, 539 N.E. 2d 614, 616; *Thomas v. Parma* (1993), 88 Ohio App. 3d 523, 527, 624 N.E. 2d 337, 339; *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49, 50, 566 N.E. 2d 698, 700. The mere fact plaintiff tripped does not prove negligence on the part of defendant. *Green v. Castronova* (1966), 9 Ohio App. 2d 156, 161, 223 N.E. 2d 641, 646; *Kimbro v. Konni's Supermarket, Inc.* (June 27, 1996), 1996 Ohio App. LEXIS 2737, Cuyahoga App. No. 69666, unreported; *Costidakis v. Park Corporation* (Sept. 1, 1994), 1994 Ohio App. LEXIS 3894, Cuyahoga App. No. 66167, unreported. It is incumbent upon a plaintiff as a licensee to show that there was not only a dangerous or latent condition on the premises that was the cause of the fall, but that defendant knew of the hidden danger and either exposed her to such danger or failed to warn her of the danger. Under the evidence presented, the court finds plaintiff's injury was not caused by a hidden dangerous condition, but by an open and obvious condition that was not particularly hazardous. Consequently, plaintiff

has failed to prove elements necessary to invoke liability. Plaintiff's claim is denied.

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ENTRY OF ADMINISTRATIVE DETERMINATION

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.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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