

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

JENNIFER L. HOLZ

Plaintiff

v.

UNIV. OF AKRON WAYNE COLLEGE

Defendant

Case No. 2008-05915-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Jennifer L. Holz, related she sustained property damage to her 2005 Toyota Matrix while parking the vehicle on April 17, 2008 at an outdoor parking area located on the campus of defendant, University of Akron Wayne College (“Wayne College”). The parking area, maintained by defendant, is reserved for Wayne College employees. Plaintiff, an employee of defendant, stated “[t]he tire bumper guards (concrete) in the parking area were not secured in the ground properly (and) [w]hen I pulled into park my 2005 Toyota Matrix, the right corner of the concrete tire bumper caught the plastic under cover” of the vehicle. Plaintiff explained she immediately stopped her car when she heard the car contact with the bumper guard and then tried to back the vehicle away, but as she backed the “plastic undercover (of her car) was ripped away, torn and loosely hanging rubbing against the front tires.” Plaintiff submitted three photographs depicting the concrete parking block or bumper guard. The photographs (taken April 18, 2008) show a parking block multiple feet in length that is almost totally raised from the paved asphalt portion of the parking area and protruding diagonally onto a grassy area abutting and adjacent to the paved parking area. Two of

the three metal rebars that anchored the parking block at the end of the parking area are not in contact with the paved surface and the remaining rebar contacting with the paved surface has been partially dislodged.

{¶ 2} Plaintiff implied the damage to her car was proximately caused by negligence on the part of defendant in maintaining a hazardous condition at the Wayne College parking lot. Consequently, plaintiff filed this complaint seeking to recover damages in the amount of \$240.39, for automotive repair expenses she incurred resulting from the April 17, 2008 incident. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim. Plaintiff submitted a copy of an accident report she filed with defendant's police after her property damage event. Information contained in the accident report notes plaintiff is listed as a faculty member at Wayne College and designates that her vehicle was not legally parked at the time of the property damage event.

{¶ 3} Defendant contended at the time of the incident forming the basis of this claim, plaintiff's vehicle was not legally parked and therefore, no liability should attach for any damage claimed. Defendant pointed out plaintiff parked her vehicle in an area that was not marked by two white lines which delineate a proper parking space. Defendant submitted photographs depicting the parking area and designated on the photographs the specific area where plaintiff parked. The marked area on the photograph where plaintiff chose to park her car does not appear to be a clearly defined parking space for any vehicle. Furthermore, defendant pointed out plaintiff parked her car in a parking area designated for "Cafeteria Staff and Service Vendors Only." Submitted photographs show a sign posted in this parking area that clearly reads "Cafeteria Staff and Service Vendors Only." Defendant explained that plaintiff, as a faculty member at Wayne College, was not permitted to park at any spaces in this area "reserved for cafeteria workers and service vendors only." Apparently, plaintiff disregarded the posted sign when she chose to park in the area where her property damage occurred.

{¶ 4} Alternatively, defendant asserted it had "no knowledge of any defects in the area of the parking lot or the parking block in question." Defendant related Wayne College employees conduct regular visual inspections of all its parking lots and had any employee discovered a defective parking block it would have been promptly repaired.

Defendant denied receiving any reports, calls, or complaints regarding a loose parking block prior to plaintiff's April 17, 2008 incident.

{¶ 5} Defendant suggested, based on the photographic evidence of the parking block that plaintiff took on April 18, 2008, "[t]hat plaintiff struck the concrete parking block with sufficient force that her Toyota Matrix pushed the right side of the block two feet off the pavement and into the grass," caught the block on the underside of her vehicle and damaged the vehicle as she backed away. Essentially, defendant speculated plaintiff's parking maneuver was the cause of her property damage and the parking block was intact as she pulled into the parking area with the block being dislodged by the force of her vehicle.

{¶ 6} Additionally, defendant suggested "[t]hat the parking block in question was in the position on the grass as depicted in the photographs prior to [p]laintiff striking it, and that when [p]laintiff parked her vehicle in an illegal area not intended for parking, her vehicle traveled past the paved surface and onto the grass up to (or possibly over the parking block)." Based on this proposed scenario, defendant offered that plaintiff's vehicle was damaged as she backed from the grass area onto the pavement with the underside of her vehicle being caught upon the already raised parking block located in the grass. Defendant argued under either scenario presented if proven then the cause of plaintiff's damage was her own negligent driving "in her attempt to squeeze her vehicle in a small paved area never intended or designated to be a parking space." Also defendant asserted the parking block was an open and obvious condition and therefore Wayne College was under no duty to protect plaintiff from apparent hazards arising from such a condition.

{¶ 7} Defendant filed an affidavit from Wayne College employee, David M. Forshee, who reported plaintiff contacted him on April 18, 2008 to notify him of the property damage event of the day before and accompanied him to the parking area where the incident occurred. Forshee recorded he was directed to the damage-causing parking block which "was located completely off the pavement and onto the grass, one side of which was located approximately two (2) feet into the grass." Forshee noted he advised plaintiff "she was not permitted to park her car in that area as that parking area is reserved for cafeteria staff and vendors only." According to Forshee, one of his employment duties is to maintain parking lots on defendant's campus and he related "if

our maintenance department receives a report or complaint about a defect in the parking lot surface or parking bumper, it is examined and if valid, the defect is repaired as soon as possible.” Forshee denied receiving any prior complaints about a defective parking block at the lot in question.

{¶ 8} Defendant also submitted an affidavit from Wayne College police officer John T. Carroll, Jr., who compiled the accident report plaintiff filed after her property damage occurrence. Carroll stated “[p]laintiff’s vehicle was not parked in a space designated by two white lines (but instead) was parked in a small pie-shaped area adjacent to the grass which was not intended to be a valid parking space as there is no white line on the edge of the parking surface which (abuts) the grass.” Carroll observed plaintiff’s vehicle was not only illegally parked but was parked in an “area that is reserved for cafeteria staff and service vendors only.”

{¶ 9} In order to establish a negligence claim, a plaintiff must show the existence of a duty, a breach of that duty, and an injury proximately resulting from the breach. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.*, 81 Ohio St. 3d 677, 680, 1998-Ohio-602. With respect to the duty of a property owner or occupier in a premises liability negligence case such as this one, Ohio adheres to the common law classifications of invitee, licensee, and trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St. 3d 312, 315, 1996-Ohio-137. An invitee is one who enters the premises of another by invitation for some purpose that is beneficial to the owner or occupier. *Gladon*, at 315, 1996-Ohio-137. A licensee is one who enters property with the owner or occupier’s permission or acquiescence for purposes beneficial to the licensee and not the owner or occupier. *Provencher v. Ohio Dept. of Transp.* (1990), 49 Ohio St. 3d 265, 551 N.E. 2d 1257. A trespasser is one who enters property without invitation or permission, purely for his or her own purposes or convenience. *McKinney v. Hartz & Restle Realtors, Inc.* (1987), 31 Ohio St. 3d 244, 246, 31 OBR 449, 510 N.E. 2d 386.

{¶ 10} With respect to an invitee, a property owner or occupier owes a duty to exercise ordinary care and to protect the invitee by maintaining the premises in a safe condition. *Light v. Ohio Univ.* (1986), 28 Ohio St. 3d 66, 68, 28 OBR 165, 502 N.E. 2d 611. With respect to a licensee or a trespasser, a property owner or occupier owes no duty except to refrain from willful or wanton misconduct that is likely to injure the

licensee or trespasser. *Gladon*, 75 Ohio St. 3d at 317, 1996-Ohio-137. To constitute willful and wanton misconduct, an act must demonstrate heedless indifference to or disregard for others in circumstances where the probability of harm is great and is known to the actor. *Combs v. Baker*, Butler App. No. CA2001-01-020, 2001-Ohio-8650; *Rinehart v. Fed. Natl. Mtge. Assn.* (1993), 91 Ohio App. 3d 222, 229, 632 N.E. 2d 539.

{¶ 11} The rights of an invitee are not absolute, but are limited by the scope of the invitation. *Gladon* at 315. If an invitee goes beyond the area that is reasonably considered to be part of the invitation, the invitee loses invitee status and becomes either a licensee or a trespasser, depending on whether he or she is there with the permission of the owner or occupier of the property. *Id.*; *Conniff v. Waterland, Inc.* (1997), 118 Ohio App. 3d 647, 651, 693 N.E. 2d 1127. The invitation includes the use of parts of the premises as the visitor reasonably believes is held open to her. *Wanko v. Downie Productions, Inc.* (Aug. 24, 2000), Franklin App. No. 99AP-1047. Determining the scope of the invitation is an objective inquiry based on how a reasonable person would interpret “the purpose for which the land is held open or the particular business purpose for which the invitation is extended.” *Wanko*, citing *Conniff*.

{¶ 12} In the instant claim, the facts establish plaintiff, as a faculty member at Wayne College, initially entered defendant’s premises as an invitee. However, when plaintiff voluntarily chose to park her vehicle in an area reserved for cafeteria staff and service vendors and parked in a specific area where parking was prohibited, her status changed from an invitee to a trespasser once she parked in the area. Defendant viewed the parking area for cafeteria staff and service vendors and did not give permission for plaintiff to park there. Moreover, plaintiff not only parked in an area where she was not invited, but specifically chose to park in an area not designed for parking where parking was prohibited. As a trespasser, defendant owed plaintiff a duty to refrain from willful and wanton misconduct. The instant claim is devoid of evidence defendant acted with heedless disregard for the safety of plaintiff’s property in maintaining the parking block. In fact, the evidence is unclear to whether or not the parking block presented a hazardous condition at the time of plaintiff’s damage incident or if plaintiff herself moved the block from its anchored position with her car. Plaintiff has failed to prove defendant breached any duty owed to her in connection with her status on Wayne College premises and consequently, her 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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RDK/laa
6/4
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