[Cite as *Studer v. Univ. of Cincinnati*, 2018-Ohio-1667.]

JULIE STUDER Plaintiff v. UNIVERSITY OF CINCINNATI Defendant	Case No. 2017-00797-AD Interim Clerk Daniel R. Borchert MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff Julie Studer ("plaintiff") filed a complaint against defendant, University of Cincinnati ("UC"). Plaintiff asserted on June 10, 2016, while attending an event at defendant's Kresge auditorium, she tripped and fell due to darkness and a raised place in the handicapped section. As a result of the trip and fall, she sustained a dislocated left ring finger. As a result of this injury, she suffered swelling of her knuckle. Plaintiff seeks damages in the amount of $1,934.00, which includes medical expenses incurred plus an arthritic clip so she is able to wear her ring over her swelled knuckle. Plaintiff submitted the $25.00 filing fee.

{¶2} Defendant submitted an investigation report denying liability. Defendant acknowledges that plaintiff fell on the day in question, but disputes that UC's negligence caused her injury. The row in which plaintiff fell is located furthest from the stage and is configured to accommodate those with mobility issues. Defendant's investigation revealed the following: "the A9 Section Plan shows that the offset extends a maximum of two feet and seven inches. The offset is level and then reaches a maximum height of 4 and 1/8 inches. The area where plaintiff fell is carpeted… "The lights were dimmed, but minimal lights remained on for safety and the stage was lit."

{¶3} Defendant argues that the offset was both minor and open and obvious. While defendant acknowledges that plaintiff was an invitee, defendant asserted variation in height was open and obvious and accordingly, UC had no obligation to

notify plaintiff. This variation was not obstructed and was visible to patrons of the auditorium.

{¶4} Defendant addressed plaintiff's claim that attendant circumstances diverted plaintiff's attention away from the hazard causing her fall. Defendant contended darkness is a common feature on entering an auditorium where a presentation is being made. Accordingly, this condition should have heightened plaintiff's caution when navigating the seating area. Accordingly, defendant argues that plaintiff's claim should be denied.

{¶5} Plaintiff submitted a response to defendant's investigation report.

CONCLUSIONS OF LAW

{¶6} Plaintiff was present on defendant's premises for such purposes which

{¶7} would classify her under the law as an invitee. *Scheibel v. Lipton*, 156 Ohio St. 308, 102 N.E.2d 453 (1951). 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*, 36 Ohio St.2d 39, 303 N.E.2d 81 (1973). 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*, 8 Ohio App.3d 72, 455 N.E.2d 1319 (10th Dist. 1982); *Wells v. University Hospital*, 86-01392-AD (1985). As a result of plaintiff's status, defendant was also under a duty to exercise ordinary care in providing for plaintiff's safety and warning her of any condition on the premises known by defendant to be potentially dangerous. *Crabtree v. Shultz*, 57 Ohio App.2d 33, 384 N.E.2d 1294 (10th Dist. 1977).

{¶8} However, an owner of a premises has no duty to warn or protect an invitee

{¶9} of a hazardous condition, where the condition is so obvious and apparent that the invitee should reasonably be expected to discover the danger and protect

herself from it. *Parsons v. Lawson Co.*, 57 Ohio App.3d 49, 566 N.E.2d 698 (5th Dist. 1989); *Blair v. Ohio Department of Rehabilitation and Correction*, 61 Ohio Misc.2d 649, 582 N.E.2d 673 (Ct. of Cl. 1989). This rationale is based on 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*., 64 Ohio St.3d 642, 597 N.E.2d 504 (1992).

{¶10} Plaintiff, essentially countered that the lack of lighting in the area constituted an attendant circumstance thereby providing an exception to the open and obvious doctrine. See *Cummin v. Image Mark, Inc*., 10th Dist. No. 03AP-1284, 2004-Ohio-2840, at ¶ 8, citing *McGuire v. Sears, Roebuck & Co*., 118 Ohio App.3d 494, 498, 693 N.E.2d 807 (1st Dist. 1996). The attendant circumstance exception applies if something beyond the plaintiff's control contributes to the fall – other than, or in addition to, the open and obvious condition. *Backus v. Giant Eagle, Inc*. 115 Ohio App.3d 155, 158, 684 N.E.2d 1273 (7th Dist. 1996). In *Barrett v. Enterprise Rent-A-Car Co*., 10th Dist. App. No. 03AP-1118, 2004-Ohio-4646, the Tenth District Court of Appeals found that "attendant circumstances" can include any distraction that would come upon a pedestrian in the same circumstances and reduce the degree of care an ordinary person would exercise at the time. "The attendance circumstances must, taken together, divert the attention of the pedestrian, significantly enhance the danger of the defect, and contribute to the fall. * * * Both circumstances contributing to and those reducing the risk of the defect must be considered." Id. at ¶ 14, quoting *McGuire v. Sears, Roebuck & Co*., supra, at 499.

{¶11} "'Darkness' is always a warning of danger, and for one's own protection it may not be disregarded." *Jeswald v. Hutt*, 15 Ohio St.2d 244, 239 N.E.2d 37 at paragraph three of the syllabus (1968).

{¶12} In the present case, plaintiff has failed to produce sufficient evidence to establish the variation in height in the handicapped row was not open, obvious, and readily discernible. Therefore, judgment is rendered in favor of defendant.

JULIE STUDER Plaintiff v. UNIVERSITY OF CINCINNATI Defendant	Case No. 2017-00797-AD Interim Clerk Daniel R. Borchert 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
Interim Clerk

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