

[Cite as *Peake v. The Ohio State Univ. Wexner Med. Ctr.*, 2019-Ohio-508.]

SCHALAINE PEAKE	Case No. 2017-00547JD
Plaintiff	Judge Patrick McGrath Magistrate Holly True Shaver
v.	<u>ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</u>
THE OHIO STATE UNIVERSITY WEXNER MEDICAL CENTER	
Defendant	

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{¶1} On November 26, 2018, defendant Ohio State University Wexner Medical Center (OSU Wexner) filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff Schalaine Peake has not filed a response. The motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D). For the reasons stated herein, defendant's motion is granted.

{¶2} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C), which states, in part, as follows:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

When a moving party makes a properly supported motion for summary judgment, the adverse party may not rest upon the mere allegations or denials in the pleadings but "by affidavit, or as otherwise provided \* \* \* must set forth specific facts showing that there is

a genuine issue for trial.” Civ.R. 56(E). “If the party does not respond, summary judgment, if appropriate, shall be entered against the party.” *Id.*

{¶3} Plaintiff alleges that she fell and sustained injuries due to the negligence of defendant. On June 20, 2015, plaintiff fell in an elevated walkway connecting Ross Heart Hospital and the SAFEAUTO parking garage in Columbus, Ohio. (Complaint at ¶¶ 4, 7). Plaintiff suffered neck, back, and knee injuries. (Complaint at ¶ 13). Plaintiff alleges she fell due to a dangerous condition in the walkway, and that defendant breached a duty of reasonable care for her safety by failing to maintain the walkway in a reasonably safe condition or to give warning of latent or concealed dangers. (Complaint at ¶ 9). Plaintiff alleges that defendant’s failure led to a foreseeable risk of bodily injury. (Complaint at ¶ 9).

{¶4} On the same day plaintiff filed her complaint in this court, she filed a connected action in the Franklin County Court of Common Pleas. The nearly-identical complaints concern the same events of June 20, 2015. The two complaints also name the same defendants: OSU Wexner, CampusParc, LP, and John Does # 1-3. However, the Franklin County court subsequently dismissed OSU Wexner as a party in the Franklin County action, and the Court of Claims dismissed CampusParc and John Does #1-3 as parties in this action. The Court of Claims stayed this action pending resolution of the Franklin County case. After the Franklin County case concluded, the Court of Claims vacated the stay of proceedings and set this case for trial.

{¶5} OSU Wexner asserts that it is entitled to summary judgment on the grounds of issue preclusion. In support of its motion, counsel for OSU Wexner filed an affidavit incorporating certified copies of several documents from the Franklin County case, including the final decision and entry. (Jacobus Aff., Exhibit C). The Franklin County Court of Common Pleas granted summary judgment to the defendants on the basis that the condition that caused plaintiff’s injury—an accumulation of water that covered almost the entire walkway—was an open and obvious danger. (Jacobus Aff., Exhibit C at 5). The court determined that defendants had no duty to warn plaintiff of this open and

obvious condition. OSU Wexner asserts that, under the doctrine of res judicata, the Franklin County court's decision precludes plaintiff from litigating the issue of duty in this court. Consequently, OSU Wexner argues, plaintiff cannot prevail on her negligence claim.

### **Negligence**

{¶6} The existence of a legal duty owed to the defendant is a necessary element of a negligence claim. *Cromer v. Children's Hosp. Med. Ctr. of Akron*, 142 Ohio St.3d 257, 2015-Ohio-229, ¶ 23. "In general, a cause of action for negligence requires proof of (1) a duty requiring defendant to conform to a certain standard of conduct, (2) a breach of that duty, (3) a causal connection between the breach and injury, and (4) damages." *Id.* citing *Menifee v. Ohio Welding Prods., Inc.*, 15 Ohio St.3d 75, 77 (1984). Under the open-and-obvious doctrine, the owner of a premises has no duty to warn of dangers that are open and obvious. *Armstrong v. Best Buy Co.*, 99 Ohio St.3d 79, 2003-Ohio-2573, ¶ 5. Where applicable, the open-and-obvious doctrine "acts as a complete bar to any negligence claims." *Id.*

### **Res Judicata**

{¶7} Under the doctrine of res judicata, "[a] valid, final judgment upon the merits bars all subsequent actions based upon any claim arising out of the same transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Township*, 73 Ohio St.3d 379, 379 (1995). The doctrine of res judicata encompasses two distinct yet related preclusive effects—claim preclusion (estoppel by judgment) and issue preclusion (collateral estoppel). *Id.* at 381. OSU Wexner specifically raises issue preclusion in its motion for summary judgment.

{¶8} "Issue preclusion \* \* \* serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties and their privies." *O'Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59,

2007-Ohio-1102, ¶ 7. Issue preclusion is also applicable in cases involving a party that was *not* a party to the previous action if the fact or point at issue was: (1) actually and directly litigated in the previous action; (2) passed upon or determined by a court of competent jurisdiction; and (3) when the party against whom issue preclusion is asserted was a party in privity with a party to the prior action. *New Winchester Gardens v. Franklin County Bd. of Revision*, 80 Ohio St.3d 36, 41 (1997), *overruled in part on other grounds, Cummins Prop. Servs., L.L.C. v. Franklin County Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473.

{¶9} Issue preclusion is applicable against plaintiff in this case. In the Franklin County case, a court of competent jurisdiction considered the same occurrence at issue here. That court determined that no legal duty of reasonable care or duty to warn was owed to plaintiff due to the open and obvious nature of the walkway conditions. Although OSU Wexner was not a party to the Franklin County case when that case was finally determined, plaintiff was a party. Because OSU Wexner is asserting issue preclusion against plaintiff, plaintiff is barred from relitigating the issue of the existence of a legal duty. Construing the evidence most strongly in plaintiff's favor, the only reasonable conclusion is that plaintiff cannot prove the existence of a legal duty and cannot sustain a negligence claim. Consequently, there is no genuine issue as to any material fact and OSU Wexner is entitled to summary judgment as a matter of law.

{¶10} Defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. 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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PATRICK M. MCGRATH  
Judge