[Cite as *Greenberg v. Markowitz*, 2010-Ohio-2228.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93838

SARAH GREENBERG, ET AL.

PLAINTIFFS-APPELLANTS

vs.

ROSE C. MARKOWITZ

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-687345

BEFORE: Sweeney, J., Stewart, P.J., and Boyle, J.
RELEASED: May 20, 2010

JOURNALIZED:

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JAMES J. SWEENEY, J.:

{¶ 1} Plaintiff-appellant, Sarah Greenberg ("plaintiff"), appeals the court's granting summary judgment to defendant-appellee, Rose C. Markowitz ("defendant"), in this personal injury case. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} On October 17, 2005, plaintiff tripped and fell on the sidewalk "about a block and a half down" from 2549 Claver Road in University Heights, which is her daughter's house. Defendant owns the property at 2429 Claver Road, which is the approximate area where plaintiff fell. On March 12, 2009, plaintiff sued defendant for personal injuries suffered as a result of the fall. On July 29, 2009, the court granted defendant's motion for summary judgment.

{¶ 3} Plaintiff now appeals, raising four assignments of error for our review, some of which shall be addressed together and out of order where appropriate.

{¶ 4} "II. The trial court erred in failing to schedule a hearing on defendant's motion for summary judgment."

{¶ 5} A trial court is not required to hold an oral hearing on summary judgment motions. *Doe v. Beach House Dev. Co.* (2000), 136 Ohio App.3d 573, 737 N.E.2d 141. See, also, Civ.R. 56; Loc. R. 11(I)(2) (stating that "motions for summary judgment shall be heard on briefs and accompanying evidentiary materials * * * without oral argument"). Additionally, if a party requests an oral hearing, the decision whether to grant this request lies within the trial court's

discretion. *Hooten v. Safe Auto Ins. Co.,* 100 Ohio St.3d 8, 2003-Ohio-4829, 795 N.E.2d 648.

{¶ 6} In the instant case, neither party requested a hearing on defendant's summary judgment motion. Accordingly, we cannot say the court erred when it ruled on the motion without holding a hearing.

{¶ 7} Assignment of Error II is overruled.

{¶ 8} "I. The trial court erred in concluding that there is no genuine issue of material fact.

{¶ 9} "III. The trial court erred in concluding that defendant was entitled to judgment as a matter of law and that viewing the evidence most strongly in favor of the plaintiffs, reasonable minds can reach only one conclusion and that conclusion is adverse to the plaintiffs.

{¶ 10} "IV. If the trial court erred in granting summary judgment against plaintiff Sarah Greenberg, it also erred in granting summary judgment against plaintiff Joe Greenberg."

{¶ 11} Appellate review of granting summary judgment is de novo. Pursuant to Civ.R. 56(C), the party seeking summary judgment must prove that 1) there is no genuine issue of material fact; 2) they are entitled to judgment as a matter of law; and 3) reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 662 N.E.2d 264.

{¶ 12} The duty of care owed by a property owner to a person who is injured on the property depends on the status of the injured person. The status of a passerby on a public sidewalk is "licensee." *Gall v. Systems Parking, Inc.* (Oct. 27, 1994), Cuyahoga App. No. 66159. The duty of care owed to a licensee is to refrain from willful or wanton conduct, which is when a defendant "fails to exercise any care whatsoever toward those to whom he owes a duty of care, and his failure occurs under circumstances in which there is great probability that harm will result * * *." *Hawkins v. Ivy* (1977), 50 Ohio St.2d 114, 117-18, 363 N.E.2d 367.

{¶ 13} In *Crowe v. Hoffman* (1983), 13 Ohio App.3d 254, 255, 468 N.E.2d 1120, the court stated that "[a]n owner of property abutting a public sidewalk is not, generally, liable for injuries sustained by a pedestrian thereon." (Citing *Eichorn v. Lustig's Inc.* (1954), 161 Ohio St.11, 117 N.E.2d 436.) There are exceptions to this rule, one of which is raised in the instant case: "[W]hen a pedestrian sustains injuries under such circumstances, the abutting property owner will be liable if a statute or ordinance imposes upon him a specific duty to keep the sidewalk adjoining his property in good repair." *Kingston v. Austin Dev. Co.* (Feb. 5, 1998), Cuyahoga App. No. 72034.

{¶ 14} In the instant case, plaintiff first argues that as a matter of public policy, her status should be that of an "invitee" rather than a "licensee," which would raise defendant's duty to that of ordinary care. Plaintiff cites no legal

authority to support this argument. Following Ohio law, as stated above, we reject this argument and base our review of this appeal on plaintiff's legal status while walking on the sidewalk as being a "licensee."

{¶ 15} Plaintiff next argues that the City of University Heights C.O. 1060.04(a)(2)(B) imposes upon defendant a duty to keep the sidewalk free from defective conditions, including "[a]djoining sections of block * * * whose edges differ vertically by three-fourths of an inch or more * * *."

{¶ 16} However, this Court has held that if a "municipality fails to provide the owner with notice of [a] violation, the ordinance may not be relied upon to impose liability on the owner." *Hughes v. Kozak* (Feb. 22, 1996), Cuyahoga App. No. 69007. See, also, *Terry v. SMJ Growth Corp*. (Dec. 13, 2001), Cuyahoga App. No. 79730.

{¶ 17} In the instant case, it is undisputed that defendant received notice of a sidewalk violation in May 1994 and repaired the noted defect in July 1994. Between 1994 and October 17, 2005 — the date of plaintiff's fall — defendant did not received any further notices from University Heights regarding sidewalk defects. Plaintiff does not contest this; rather, she argues that there was no evidence that the 1994 defect was "corrected in a satisfactory manner or that the City even inspected the work that was done." In other words, plaintiff argues that the 1994 notice is enough to impose ongoing liability in 2005. Our review of Ohio case law does not support plaintiff's position.

{¶ 18} There is no evidence in the record that the 1994 defect was improperly repaired, continued to violate the City's code, or caused plaintiff's fall. Although there is evidence in the record that defendant had two blocks of the sidewalk leveled on November 19, 2005, there is no evidence that defendant knew of this defect before plaintiff's fall.

{¶ 19} Accordingly, there is no genuine issue of material fact and no evidence that defendant acted willfully or wantonly regarding her sidewalk. After viewing the evidence in a light most favorable to plaintiff, we find that defendant is entitled to summary judgment as a matter of law.

{¶ 20} Assignments of Error I, III, and IV are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant her costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MELODY J. STEWART, P.J., and
MARY J. BOYLE, J., CONCUR