[Cite as *Hamrock v. Ams*, 2020-Ohio-1335.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

CATHERINE E. HAMROCK,	:	**O P I N I O N**
Plaintiff-Appellant,	:	
- vs -	:	**CASE NO. 2019-T-0032**
JOHN A. AMS, ADMINISTRATOR OF THE ESTATE OF JOHN G. MIKACINICH a.k.a. JOHN MIKACINICH,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2018 CV 01291.

Judgment: Affirmed.

Angela J. Mikulka, The Mikulka Law Firm, LLC, 134 Westchester Drive, Youngstown, OH 44515 (For Plaintiff-Appellant).

W. Scott Fowler and *Thomas J. Wilson*, Comstock, Springer & Wilson Co., L.P.A., 100 Federal Plaza East, Suite 926, Youngstown, OH 44503 (For Defendant-Appellee).

MATT LYNCH, J.

{¶1} Plaintiff-appellant, Catherine E. Hamrock, appeals from the Judgment Entry of the Trumbull County Court of Common Pleas, granting summary judgment in favor of defendant-appellee, John A. Ams, administrator of the Estate of John G. Mikacinich, on Hamrock's claim for negligence. The issue to be determined in this case is whether summary judgment is properly granted on a claim of negligence where the plaintiff turned off the lights in a client's home pursuant to his request, was met with darkness, walked

through the home in the dark, and fell down an open stairwell. For the following reasons, we affirm the decision of the lower court.

{¶2} On July 19, 2018, Hamrock filed a Complaint against Ams, the administrator of the Estate of Mikacinich. The Complaint alleged that Hamrock had been hired by Mikacinich to provide him care within his residence and, when preparing to leave the house on August 27, 2016, she fell down a flight of stairs and suffered serious injuries. The Complaint alleged that Mikacinich had been negligent in forbidding her from turning on any light while leaving the residence, leading to her accident. Hamrock suffered physical injuries including a concussion, rib fractures, and a head wound.

{¶3} Ams filed an Answer on August 30, 2018.

{¶4} On March 12, 2019, Ams filed a Motion for Leave to file Motion for Summary Judgment, which was granted. Ams argued that the Complaint should be dismissed under the "step in the dark rule" since Hamrock intentionally proceeded in the dark to retrieve her purse before attempting to exit the residence and falling down the stairs. He also contended that the stairwell constituted an "open and obvious danger."

{¶5} Pursuant to the deposition testimony of Hamrock, on August 26, 2016, she went to Mikacinich's home for the first time to interview for a position as his home health aide. The interview was conducted by Mikacinich and his niece in the kitchen and was followed by an additional conversation in the living room. On that day, they "were pretty much through the house," including Mikacinich's bedroom, but did not go into the basement. The interview was less than half an hour.

{¶6} Hamrock was hired and on August 27, 2016, she began working at Mikacinich's home at around 8 or 9 a.m. That evening, she asked Mikacinich "what light

can I leave on to leave?" since she typically kept a light on when leaving a client's house. He responded "no, I don't want any lights on. We leave the house dark," which she characterized as a "demand" that all lights be turned off. Although she told him it would be dark when she tried to leave, he responded "we don't leave lights on."

{¶7} Hamrock testified that at around 8 p.m., her husband and daughter arrived to pick her up. Her daughter knocked at the kitchen door, which faced the driveway and was used to enter and exit the home, and Hamrock said she would be out in a few minutes. At that time the lights were on and Hamrock left the door open since she was preparing to leave. She further explained the circumstances surrounding her exit: "I had already opened the door to go out. Well, when I went to reach for my purse, I stepped down and I thought I was stepping down off—onto the step to go outside and somehow it was the cellar step and it was so black and so dark in there that I just tumbled down 13 steps." The basement or cellar steps were to the right (when inside the kitchen) of and perpendicular to the kitchen door and had no door. She clarified: "I opened the door, I outed the light, okay? I turned around to get my purse. I got my purse and I felt and the door was open. When I went to step down, I had the intention * * * of pulling the door closed behind me, but it wasn't the door to go out. * * * And the table was right – the table was right there where I had my purse." She testified several times that she "outed the light" and then picked up her purse, which was located on the kitchen table, before proceeding toward the door.

{¶8} Photographs and testimony indicated that there were two sets of light switches: one set immediately beside the kitchen door at the top of the basement stairs, and another set further into the kitchen, located closer to the kitchen table where Hamrock

had placed her purse. Hamrock's testimony initially demonstrated confusion regarding which light switch she used. She stated she did not "remember where the light switch was" but that after she turned off the lights, "All I had to do was turn. There was a table there. That's where my purse was." She did not recall seeing the light switches located directly near the door to exit the home.

{¶9} Hamrock testified that once she turned off the lights, she "couldn't see [her] hand in front of [her]" because it was completely dark. She wanted to turn the light back on because she "got scared" and "didn't think it was going to be that dark." However, "it was so dark [she] tried to reach for it again and [she] couldn't." She was questioned by counsel: "And because you couldn't see because it was completely dark, you didn't know where you were going?" to which she replied affirmatively. She believed there was no way to turn off the light and safely step out of the home.

{¶10} Hamrock filed a Memorandum in Opposition on April 26, 2019, arguing that she followed instructions to darken the home before leaving and that there were disputed factual issues as to whether she exercised ordinary care.

{¶11} On May 28, 2019, the trial court issued a Judgment Entry granting summary judgment in favor of Ams, finding no genuine issues of material fact. The court concluded that although Hamrock had been instructed to leave the house dark, "she chose to reenter the kitchen in the darkness" and "should have been reasonably expected to protect herself against" the darkness and the staircase. It found that the danger of the stairs was open and obvious and that the danger arose only when she voluntarily entered the darkness to retrieve her purse and exited toward the stairs instead of the door.

{¶12} Hamrock timely appeals and raises the following assignments of error:

{¶13} "[1.] The Trial Court erred when it determined issues of fact.

{¶14} "[2.] The Trial Court improperly limited the principles of *Miller v. Wyman* * * * and *Hissong v. Miller* * * * to situations wherein a plaintiff was opening a door to a staircase.

{¶15} "[3.] The Trial Court improperly concluded that HAMROCK voluntarily took a step in the dark as a matter of law."

{¶16} For ease of discussion, we will consider Hamrock's assignments out of order.

{¶17} In her third assignment of error, Hamrock argues that the trial court erred by finding that she voluntarily took a step in the dark as a matter of law. She contends that there was conflicting evidence disputing an inference of contributory negligence and, at the least, evidence of her efforts to exercise ordinary care precluded the grant of summary judgment.

{¶18} Pursuant to Civil Rule 56(C), summary judgment is proper when (1) the evidence shows "that there is no genuine issue as to any material fact" to be litigated, (2) "the moving party is entitled to judgment as a matter of law," and (3) "it appears from the evidence * * * 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 * * * construed most strongly in the party's favor."

{¶19} A trial court's decision to grant summary judgment is reviewed by an appellate court under a de novo standard of review. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). "A de novo review requires the appellate court to conduct an independent review of the evidence before the trial court without deference

to the trial court's decision." *Peer v. Sayers*, 11th Dist. Trumbull No. 2011-T-0014, 2011-Ohio-5439, ¶ 27.

{¶20} "[I]n order to establish a cause of action for negligence, the plaintiff must show (1) the existence of a duty, (2) a breach of duty, and (3) an injury proximately resulting therefrom." *Armstrong v. Best Buy Co., Inc.,* 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 8. The scope of the duty owed depends upon the relationship between the premises' owner and the plaintiff. In this case, Hamrock was an invitee, i.e., a person who "rightfully come[s] upon the premises of another by invitation, express or implied, for some purpose which is beneficial to the owner." *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 315, 662 N.E.2d 287 (1996). "It is the duty of the owner of the premises to exercise ordinary care and to protect the invitee by maintaining the premises in a safe condition." *Light v. Ohio Univ.*, 28 Ohio St.3d 66, 68, 502 N.E.2d 611 (1986).

{¶21} No duty is owed to protect an invitee "against dangers which are known to such invitee or are so obvious and apparent to such invitee that he may reasonably be expected to discover them and protect himself against them." *Cash v. Thomas & King, Ltd.*, 11th Dist. Trumbull No. 2015-T-0030, 2016-Ohio-175, ¶ 20, citing *Sidle v. Humphrey*, 13 Ohio St.2d 45, 233 N.E.2d 589 (1968), paragraph one of the syllabus; *Armstrong* at syllabus. The open-and-obvious test "properly considers the nature of the dangerous condition itself, as opposed to the nature of the plaintiff's conduct in encountering it. The fact that a plaintiff was unreasonable in choosing to encounter the danger is not what relieves the property owner of liability. Rather, it is the fact that the condition itself is so obvious that it absolves the property owner from taking any further

action to protect the plaintiff." *Armstrong* at ¶ 13; *Sabo v. Zimmerman*, 11th Dist. Ashtabula No. 2012-A-0005, 2012-Ohio-4763, ¶ 15.

{¶22} "This court has held that darkness itself is an open and obvious danger, obviating any duty from a property owner to its invitees." (Citation omitted.) *Wochele v. Veard Willoughby Ltd. Partnership*, 11th Dist. Lake No. 2017-L-062, 2017-Ohio-8807, ¶ 17; *Swonger v. Middlefield Village Apts.*, 11th Dist. Geauga No. 2003-G-2547, 2005-Ohio-941, ¶ 13, citing *Jeswald v. Hutt*, 15 Ohio St.2d 224, 239 N.E.2d 37 (1968), paragraph three of the syllabus ("'Darkness' is always a warning of danger, and for one's own protection it may not be disregarded.").

{¶23} While the open and obvious doctrine relates to the duty element and requires a determination of "whether the danger would be objectively open and obvious to a reasonable person," the "step in the dark" doctrine evaluates whether a plaintiff "intentionally steps from a lighted area to total darkness, without investigating the possible dangers concealed by the darkness," relating to the element of proximate cause. *Miller v. Wayman*, 11th Dist. Geauga No. 2012-G-3057, 2012-Ohio-5598, ¶ 35; *Watson v. Bradley*, 2017-Ohio-431, 84 N.E.3d 97, ¶ 27 (11th Dist.); *Posin v. A.B.C. Motor Court Hotel, Inc.*, 45 Ohio St.2d 271, 276, 344 N.E.2d 334 (1976). "The step-in-the-dark rule generally infers that the injured party lacked ordinary care in proceeding in the dark," although a step may be reasonable when a person is "lulled into a false sense of safety under certain circumstances, such as the existence of some lighting or adherence to the instructions of another." (Citation omitted.) *Watson* at ¶ 29. Summary judgment is appropriate under this rule when there is no genuine issue of material fact as to "whether the plaintiff's own negligence is greater than the negligence of the defendant." *Miller* at ¶

43.

{¶24} In the present matter, the trial court found that the stairs were an open and obvious condition of which Mikacinich had no duty to protect Hamrock, and that the danger arose only when Hamrock voluntarily entered into the darkness to retrieve her purse.

{¶25} As an initial matter, while Hamrock's arguments relate to the step in the dark doctrine, we note that the trial court held there was no duty to protect Hamrock, which relates to the open and obvious doctrine. *Armstrong* at ¶ 13. A finding that the open and obvious doctrine applies would, by itself, warrant a grant of summary judgment since it negates any duty owed by the defendant.

{¶26} Nonetheless, we find no error in the determination that no genuine issue of material fact exists as to whether Hamrock's negligence outweighed that of Mikacinich, warranting summary judgment. There are no facts to refute the inference that Hamrock failed to take ordinary care in proceeding in the darkness.

{¶27} Hamrock's testimony regarding which of the two light switches she used varied, as she testified that she had not seen the light switch by the door, had utilized a switch and then immediately turned to retrieve her purse from the table, but that she didn't "remember where the light switch was" and she knew that she "outed one of them." Regardless, her use of either set of switches to turn off the lights demonstrated a lack of ordinary care. There is no dispute that Hamrock retrieved her purse and walked toward the door after turning off the lights and when the house was completely dark. Either she chose to turn off the lights in the kitchen and did not attempt to use the light switches located by the exit door or she turned off the lights by the door before retrieving her purse

which was at least few feet away. Under either circumstance, she reached for her purse in the dark rather than before turning off the lights and walked toward the back door in the darkness she created, despite stating that she was scared by how dark it was. She had been in the home on two occasions and had spent approximately 12 hours there on the day of the incident. She had previously passed by the stairs on which she ultimately fell, which were not concealed behind a door, when entering and exiting the home. Had Hamrock not decided to voluntarily proceed in the dark, the fall down the steps would not have happened.

{¶28} While Hamrock argues that she fell as a result of following Mikacinich's instructions to turn off the lights when she left, he did not instruct her to proceed through the home in the darkness, reach for her purse while the lights were off, or to use a particular light switch to turn off the lights. Her failure to take steps to ensure she could exit the home safely was not the fault of Mikacinich. She elected to proceed in the darkness although she was aware or believed it was not safe. *See Pass v. Cinemark USA, Inc.,* 5th Dist. Stark No. 2003CA00276, 2004-Ohio-5191, ¶ 16 (appellant elected to exit a dark movie theater before the lights were scheduled to come on and "[e]ven if the lights failed to rise to the proper level during the credits, appellant was aware of the darkness and chose to exit her seat").

{¶29} While we recognize that a step in the dark can be reasonable in some instances, and that conflicting evidence regarding facts such as whether the step was intentional, the nature of premises, and the lighting conditions may require that the matter be submitted to a jury for factual determinations, *Hissong v. Miller*, 186 Ohio App.3d 345, 2010-Ohio-961, 927 N.E.2d 1161 (2d Dist.); *Watson*, 2017-Ohio-431, at ¶ 31, such is not

the case here. There is no particular factual dispute as to what occurred. It was evident that Hamrock took the steps intentionally and that, pursuant to her testimony, it was so dark she could not see, but she proceeded nonetheless. We find no factual issues exist that need to be determined by a jury.

{¶30} Hamrock argues that the evidence demonstrated she exercised reasonable care for her safety by acting in accordance with Mikacinich's instructions, trying to turn the light back on when it was too dark to see, and waiting for her eyes to adjust to the darkness before moving. As noted above, we do not find the evidence showed Hamrock was instructed to proceed in the manner she did. If it was too dark to proceed after she turned the lights off and waited for her eyes to adjust, it was not reasonable to proceed in the darkness anyway, rather than taking a variety of actions such as continuing to feel on the wall for light switches, waiting for her daughter to return to the door, or even calling out to Mikacinich for help.

{¶31} The third assignment of error is without merit.

{¶32} In her second assignment of error, Hamrock argues that the lower court should not have limited its application of *Miller*, 2012-Ohio-5598, and *Hissong*, 2010-Ohio-961, or found these cases to be distinguishable. She argues that, pursuant to these cases, the issue of whether her conduct was reasonable and the apportionment of degrees of negligence were for the jury to determine.

{¶33} In *Miller*, the plaintiff was at a coffee shop and asked for directions to the restroom. Following these directions, the plaintiff opened multiple doors before locating what he believed to be the restroom. The room was dark, the plaintiff unsuccessfully tried to locate a light switch, and then took a step in, falling down a flight of stairs. *Miller* at ¶

2-3. The court found that reasonable minds could differ as to whether a danger is open and obvious when the darkness is not revealed until the doorway is open and a foot may already be in the room. It held that "one could conclude the darkness is not necessarily dangerous, but common or expected because many public establishments do not keep a light on in a restroom at all times." *Id.* at ¶ 39. As to the step in the dark rule, this court held it could not be concluded, as a matter of law, that the plaintiff's conduct departed from what a reasonably prudent person would have done, given his lack of familiarity with the shop and that he was following directions to locate the restroom. *Id.* at ¶ 47.

{¶34} In *Hissong*, the plaintiff was given directions to a store restroom located in the backroom. She opened a door to a darkened room she believed to be the restroom. Using light from the backroom, she reached for a light switch while stepping through the doorway and fell down the steps located inside. *Hissong* at ¶ 2. The Second District held that reasonable minds could differ as to whether the stairs were an open and obvious danger, whether a person exercising reasonable care would have observed them, noting that the inward opening door could hide the danger, and that reasonable minds could reach different conclusions about whether she was negligent in stepping in the dark since she had followed directions on how to reach the bathroom. *Id.* at ¶ 35 and 45.

{¶35} We hold that these cases are distinguishable. In both *Hissong* and *Miller*, the plaintiffs followed instructions that led them to believe they were entering a bathroom rather than a staircase. The staircases were unknown to them, located in the dark, and were behind closed doors. Since the danger was unknown and concealed, the reasonableness of their actions was found to require fact-finding to evaluate whether the open and obvious and/or step in the dark doctrines applied. Hamrock chose to turn off

the lights, reach for her purse in the dark, and walk toward the back door in the darkness she created. She had been at the home for a period of time and had passed by the unconcealed staircase where she fell. Unlike the plaintiffs in the foregoing cases, Hamrock was not following specific directions on how to proceed but made her own choices which led to the accident.

{¶36} The second assignment of error is without merit.

{¶37} Finally, in her first assignment of error, Hamrock contests the lower court's determination of issues of fact, noting that its decision was based on errant interpretations or statements of the facts.

{¶38} We initially emphasize that since our review of summary judgment is de novo, we do not reverse a judgment that is based on "erroneous reasons." *Salloum v. Falkowski*, 151 Ohio St.3d 531, 2017-Ohio-8722, 90 N.E.3d 918, ¶ 12. Our evaluation of the propriety of the grant of summary judgment is based on our review of the record independent of the trial court's decision. We find that the court's decision to grant summary judgment was proper for the reasons discussed above.

{¶39} Nonetheless, addressing Hamrock's specific arguments, she first contends it was error to find she voluntarily entered into the darkness to retrieve her purse, since she "got her purse and shut the light off at about the same time" and did not mention voluntarily entering into darkness. However, in describing the incident, Hamrock said multiple times that she "outed the light" and thereafter "turned around to get [her] purse." These were two separate actions and were not improperly described by the lower court. Further, her entry into the dark was voluntary in that she chose to turn off the light and then move around the kitchen, retrieving her purse and exiting toward the door.

{¶40} Hamrock also takes issue with the trial court's statement that the staircase was "objectively observable" since it was pitch black, under her description, when she fell down the stairs. The lower court appeared to find that Hamrock could have observed the stairs *before* it was dark, as it explained "she had knowledge of [the stairs] before she turned off the lights." In other words, this, combined with the darkness, should have led her to proceed with caution. *See Cash*, 2016-Ohio-175, at ¶ 27 ("darkness increases rather than reduces the degree of care an ordinary person would exercise") (citation omitted). Even presuming that it was inaccurate to refer to the stairs as "objectively observable" given the darkness, for the reasons described above it was unreasonable for Hamrock to proceed. Hamrock also argues that the court improperly stated that the staircase was "lighted" since it was dark at the time of the incident and similarly takes issue with the contention that the staircase was "known and observable" after she was in the darkness. Regardless, even if this finding was improper, it does not impact our de novo decision.

{¶41} Finally, even presuming that Mikacinich's statement that the lights are left off in the home at night was construed as an "order," as Hamrock argues is the case, her actions surrounding proceeding in the dark warranted summary judgment in favor of Ams. Hamrock does not cite to authority for the proposition that an instruction that lights be turned off justifies a claim of negligence, particularly when there were no directions about the manner in which the plaintiff should proceed when turning off the lights and exiting the home.

{¶42} The first assignment of error is without merit.

{¶43} For the foregoing reasons, the judgment of the Trumbull County Court of

Common Pleas, granting summary judgment in favor of Ams on Hamrock's claim of negligence, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J., concurs,

THOMAS R. WRIGHT, J., concurs in judgment only.