[Cite as *Mayle v. Ohio Dept. of Rehab. & Corr.*, 2010-Ohio-2774.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Phillip Mayle,	:	
Plaintiff-Appellant,	:	
v.	:	No. 09AP-541 (C.C. No. 2007-01550)
Ohio Department of Rehabilitation and Correction,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 17, 2010

Swope and Swope, and *Richard F. Swope*, for appellant.

Richard Cordray, Attorney General, and *Jennifer Anne Adair*, for appellee.

APPEAL from the Court of Claims of Ohio

CONNOR, J.

{¶1} Plaintiff-appellant, Phillip Mayle ("appellant"), appeals from the judgment of the Court of Claims of Ohio, entered in favor of defendant-appellee, Ohio Department of Rehabilitation and Correction ("ODRC"), on appellant's complaint alleging negligence. Based upon the following reasons, we affirm that judgment.

{¶2} On November 12, 2006, at approximately 7:30 p.m., appellant, an inmate at a prison facility operated by ODRC and known as Grafton Correctional Institution ("GCI"), was walking from his housing unit to the infirmary for "pill call." Several other inmates

were also making the trip at the same time. During the walk to the infirmary, appellant traversed an area where the facility was in the midst of a construction project to replace the concrete walkway near the infirmary. Due to the repair work, ODRC had placed plywood boards lying end-to-end next to the concrete path in order to provide a detour. The boards were unsecured and were lying over an uneven drainage area in the grass.

{¶3} As appellant and the other inmates were crossing on the detoured path, an inmate in front of appellant stepped on the far end of one of the boards, which caused the end of the board nearest to appellant to raise up, thereby causing appellant to trip and fall and sustain various injuries. Appellant was taken inside the infirmary and treated with pain medication. On January 22, 2007, appellant filed a complaint against ODRC, alleging ODRC was negligent in forcing inmates to walk on the plywood walkway, thereby creating an unsafe condition, which was the direct and proximate cause of appellant's fall and subsequent injuries.

{¶4} On April 1, 2008, this matter was tried to a magistrate on the issue of liability. Appellant presented the testimony of four witnesses, all of whom were inmates at GCI at the time of the incident. Appellant also testified on his own behalf. ODRC then presented the testimony of five witnesses, all of whom were employees of ODRC.

{¶5} Appellant argued that ODRC had negligently routed the path onto the boards and that this negligence was the proximate cause of his injuries. ODRC argued that the boards presented an open and obvious condition, and as a result, no duty of care was owed to appellant. Alternatively, appellant argued there were attendant circumstances, which provided an exception to the open and obvious doctrine. ODRC further argued that an alternative route was available to appellant.

{¶6} On January 12, 2009, the magistrate issued a decision, finding the boards presented an open and obvious condition and that the doctrine of attendant circumstances did not apply. The magistrate determined ODRC had no duty to protect appellant from the hazard or warn him about the boards and thus, appellant failed to prove his negligence claim. As a result, the magistrate recommended judgment in favor of ODRC.

{¶7} Appellant filed objections to the magistrate's report on March 11, 2009. On April 20, 2009, the trial court overruled appellant's objections and adopted the magistrate's decision and recommendation as its own, including the findings of fact and conclusions of law. On April 23, 2009, appellant filed a request for findings of fact and conclusions of law, pursuant to Civ.R. 52. On April 30, 2009, appellant filed a motion for new trial. On May 15, 2009, the court denied both requests. Appellant then filed the instant appeal, which presents the following assignments of error for our review:

> ASSIGNMENT OF ERROR NO. 1:
>
> THE TRIAL COURT AND MAGISTRATE ERRED AND ABUSED THEIR DISCRETION IN SIMPLY ACCEPTING THE BOARDS WERE ON UNEVEN GROUND AND WERE WARNING ENOUGH, AND IGNORING THE FACT PLAINTIFF HAD NEVER OBSERVED THE BOARDS BUCKLE AND CAUSE ONE BOARD TO SPRING UP SUDDENLY AND CAUSE A PERSON TO CATCH THEIR FEET.
>
> ASSIGNMENT OF ERROR NO. 2:
>
> THE TRIAL COURT AND MAGISTRATE ERRED AND ABUSED THEIR DISCRETION IN RULING AN ALTERNATE ROUTE THAT WAS AVAILABLE WAS A DEFENSE WHEN THE EVIDENCE ESTABLISHES THE WALKWAY ACROSS THE GRASS WAS TO ACCOMMODATE WHEELCHAIRS AND PRISONERS FROM THE SOUTH, WHO CONSISTENTLY USED THE ROUTE WITHOUT

OBJECTION OR WARNING BY THE DEFENDANTS-APPELLEES OF THE DANGER OR NOT TO USE THE ROUTE.

ASSIGNMENT OF ERROR NO. 3:

THE ALTERNATE ROUTE THEORY DOES NOT ALTER THE FACT DEFENDANT-APPELLEE CREATED A HAZARDOUS HIDDEN DEFECT ON A PATH WHICH WAS DESIGNED FOR USE AND WHETHER OTHER ROUTES WERE AVAILABLE, UNLESS INMATES WERE WARNED OF THE DANGER OR TOLD NOT TO USE IT, DEFENDANTS ARE LIABLE FOR NEGLIGENTLY CONSTRUCTING A HIDDEN HAZARD ON AN ACCEPTED ACCESS TO THE INFIRMARY.

ASSIGNMENT OF ERROR NO. 4:

THE TRIAL COURT AND MAGISTRATE ERRED AND ABUSED THEIR DISCRETION IN FINDING THAT THE DEFECT WAS OPEN AND OBVIOUS BECAUSE THIS FACT IS NOT SUPPORTED BY THE EVIDENCE.

ASSIGNMENT OF ERROR NO. 5:

THE TRIAL COURT'S AND MAGISTRATE'S FINDING THAT ATTENDANT CIRCUMSTANCES DID NOT APPLY BECAUSE OF AN AVAILABLE ALTERNATE ROUTE IS ERRONEOUS AND CONTRARY TO THE EVIDENCE SINCE PLAINTIFF-APPELLANT WAS UNAWARE OF THE TRAP AND THE ALTERNATE ROUTE WAS QUESTIONABLE IN HIS MIND, AS WELL AS OUT OF THE WAY.

ASSIGNMENT OF ERROR NO. 6:

THE TRIAL COURT AND MAGISTRATE ERRED IN APPLYING THE ALTERNATE ROUTE THEORY WHEN IT WAS EVIDENT THE DEFENDANT CONSTRUCTED THE BRIDGE TO THE INFIRMARY FOR USE OF INMATES WHICH WAS NOT CONTRADICTED BY DEFENDANTS-APPELLEES.

ASSIGNMENT OF ERROR NO. 7:

THE TRIAL COURT'S AND MAGISTRATE'S RULINGS ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

ASSIGNMENT OF ERROR NO. 8:

THE DEFENDANTS-APPELLEES VIOLATED BUILDING CODE REQUIREMENTS WHICH NEGATED ANY APPLICATION OF THE OPEN AND OBVIOUS DOCTRINE.

ASSIGNMENT OF ERROR NO. 9:

THE TRIAL COURT ERRED WHEN THE COURT FAILED TO PREPARE A FINDING OF FACT AND CONCLUSION OF LAW WHICH WAS TIMELY REQUESTED PURSUANT TO RULE 52, OHIO RULES OF CIVIL PROCEDURE.

ASSIGNMENT OF ERROR NO. 10:

THE TRIAL COURT'S DECISION IS NOT SUPPORTED BY THE EVIDENCE AND IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶8} For ease of discussion, we shall address appellant's assignments of error out of order. Additionally, we shall combine those assignments of error which are inter-related.

{¶9} In his ninth assignment of error, appellant contends the Court of Claims erred in failing to undertake an independent review of the magistrate's decision, as required pursuant to Civ.R. 52(D)(4)(d), to determine if the magistrate properly determined the facts and properly applied the law. Appellant argues it is impossible to determine if the court reviewed the record to ascertain whether the facts actually supported the application of the open and obvious doctrine or the doctrine of attendant circumstances. Appellant further submits that the record and the decisions do not provide

a basis upon which to review either the magistrate's decision or the trial court's decision. We disagree.

{¶10} Civ.R. 52 states in relevant part:

> An opinion or memorandum of decision filed in the action prior to judgment entry and containing findings of fact and conclusions of law stated separately shall be sufficient to satisfy the requirements of this rule and Rule 41(B)(2).

{¶11} The purpose of Civ.R. 52 is " 'to aid the appellate court in reviewing the record and determining the validity of the basis of the trial court's judgment.' " *In re Adoption of Gibson* (1986), 23 Ohio St.3d 170, 172, quoting *Werden v. Crawford* (1982), 70 Ohio St.2d 122, 124. Additionally, if the " 'court's ruling or opinion, considered in conjunction with the record at trial, provides adequate basis upon which we may review the legal and factual issues upon appeal, there is substantial compliance with Civ.R. 52, and, thus, no reversible error.' " *Kelly v. Northeastern Ohio Univ. College*, 10th Dist. No. 07AP-945, 2008-Ohio-4893, ¶29, quoting *Hanson v. Rieser* (Nov. 9, 1999), 10th Dist. No. 98AP-1390. See also *Ferrari v. Ohio Dept. of Mental Health and Mental Retardation* (1990), 69 Ohio App.3d 541, 545, citing *Stone v. Davis* (1981), 66 Ohio St.2d 74.

{¶12} Furthermore, where a magistrate's decision addresses every issue presented by the parties and contains a detailed analysis to support each conclusion, the trial court does not err in wholly adopting that decision where those findings of fact and conclusions of law are sufficient to set forth the basis of the court's decision and to allow appellate review. *Olesky v. Olesky*, 8th Dist. No. 82646, 2003-Ohio-5657.

{¶13} Here, the court conducted an independent review and briefly addressed all of the objections set forth by appellant. The trial court pointed out where the magistrate had noted the parts of the witness testimony which supported the magistrate's factual

findings and, in turn, his conclusions of law. The court then wholly adopted the magistrate's decision, including the findings of fact and conclusions of law. Said decision clearly provides us with an adequate basis upon which to decide the assignments of error presented for review. Therefore, we overrule appellant's ninth assignment of error.

{¶14} Next, we shall address appellant's first, fourth, and fifth assignments of error, which are interrelated. In his first assignment of error, appellant asserts the trial court erred and abused its discretion by simply accepting that the boards themselves constituted sufficient warning of a hazard, thereby ignoring the fact that appellant had never previously observed the boards suddenly rise up and trip someone. Appellant submits that his knowledge that the boards were slippery and rested loosely on uneven ground was not enough to constitute an open and obvious warning of this hazard. Similarly, in his fourth assignment of error, appellant argues the evidence fails to support the trial court's finding that the defect was open and obvious. Appellant asserts the defect here could not be reasonably discovered. Finally, in his fifth assignment of error, appellant asserts the trial court and the magistrate erred in determining the doctrine of attendant circumstances was not applicable. Appellant contends the weather, the lighting, the condition of the boards, and the presence of other inmates constitute attendant circumstances which override the open and obvious doctrine.

{¶15} In accordance with Civ.R. 53, the trial court's standard of review of a magistrate's decision is de novo. *State Farm Mut. Auto. Ins. Co. v. Fox*, 182 Ohio App.3d 17, 2009-Ohio-1965, ¶10. However, the appellate standard of review when reviewing a trial court's adoption of a magistrate's decision is an abuse of discretion. Id. at ¶11. Claims of trial court error must be based on the actions taken by the trial court, itself,

rather than the magistrate's findings. Where an appellate court reviews a trial court's adoption of a magistrate's report for an abuse of discretion, it will only be reversed if it appears that the trial court's actions were arbitrary or unreasonable. Id.

{¶16} In order to prevail on his negligence claim, appellant must establish that ODRC owed him a duty of care, that ODRC breached that duty, and that said breach was the proximate cause of appellant's injuries. *Dean v. Dept. of Rehab. & Corr*. (Sept. 24, 1998), 10th Dist. No. 97API12-1614. Due to the custodial relationship between the state and its prison inmates, the state has a duty to exercise reasonable care to prevent prisoners who are in its custody from being injured by dangerous conditions about which the state knows or should know. Id., citing *Moore v. Ohio Dept. of Rehab. & Corr*. (1993), 89 Ohio App.3d 107, 112. See also *Williams v. Ohio Dept. of Rehab. & Corr*., 10th Dist. No. 04AP-1193, 2005-Ohio-2669, ¶8 (while prison officials are not insurers of an inmate's safety, they owe inmates a duty of reasonable care and protection from danger).

{¶17} Nevertheless, under the open and obvious doctrine, a property owner " 'owes no duty to warn * * * of open and obvious dangers on the property. * * * The rationale behind the doctrine is that the open and obvious nature of the hazard itself serves as a warning, and that the owner or occupier may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves.' " (Citations omitted.) *Duncan v. Capitol South Comm. Urban Redevelopment Corp*., 10th Dist. No. 02AP-653, 2003-Ohio-1273, ¶27, quoting *Anderson v. Ruoff* (1995), 100 Ohio App.3d 601, 604. "The 'open and obvious doctrine,' where warranted, may be applied in actions against the ODRC with the result that ODRC would owe no duty to an injured inmate." *Williams* at ¶8.

{¶18} Open and obvious dangers are those which are not hidden, concealed from view, or undiscoverable upon ordinary inspection. *Cooper v. Meijer Stores Ltd. Partnership*, 10th Dist. No. 07AP-201, 2007-Ohio-6086; *Cordell v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 08AP-749, 2009-Ohio-1555. An individual need not observe a dangerous condition for it to be "open and obvious." Instead, the determinative issue is whether or not the condition is observable. *Cooper* at ¶10.

{¶19} We have uniformly recognized that the existence and obviousness of an alleged hazard requires a review of the underlying facts. *Schmitt v. Duke Realty*, 10th Dist. No. 04AP-251, 2005-Ohio-4245, ¶10; *Terakedis v. Lin Family Ltd. Partnership*, 10th Dist. No. 04AP-1172, 2005-Ohio-3985, ¶10; *Freiburger v. Four Seaons Golf Center*, LLC., 10th Dist. No. 06AP-765, 2007-Ohio-2871, ¶11. If the record reveals no genuine issue of material fact as to whether the hazard was free from obstruction and readily appreciated by an ordinary person, the open and obvious nature of the danger may appropriately be determined as a matter of law. *Cooper* at ¶12; *Freiburger* at ¶11. But, if reasonable minds could differ about whether the hazard was free from obstruction and readily appreciated by an ordinary person, then this factual issue must be resolved before the court determines whether there is a duty owed. *Freiburger* at ¶11.

{¶20} However, attendant circumstances can serve as an exception to the open and obvious doctrine. *Cordell* at ¶19; *Cooper* at ¶15. This doctrine applies where the attendant circumstances are such as to divert the attention of the individual and significantly enhance the danger of the hazard and thus contribute to the fall. *Conrad v. Sears, Roebuck & Co*., 10th Dist. No. 04AP-479, 2005-Ohio-1626, ¶11. To serve as an exception to the open and obvious doctrine, an attendant circumstance must be "so

abnormal that it unreasonably increased the normal risk of a harmful result or reduced the degree of care an ordinary person would exercise." *Cummin v. Image Mart, Inc*., 10th Dist. No. 03AP-1284, 2004-Ohio-2840, ¶10, citing *McGuire v. Sears, Roebuck & Co*. (1996), 118 Ohio App.3d 494. " 'The attendant 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.' " *Barrett v. Ent. Rent-A-Car Co*., 10th Dist. No. 03AP-1118, 2004-Ohio-4646, ¶14, quoting *McGuire* at 499.

{¶21} Our analysis here depends upon our determination as to whether an ordinary person would readily see and appreciate the danger imposed by the placement of the plywood boards upon the uneven ground. In order for the plywood boards to be "obviously hazardous" an ordinary person must readily appreciate the risks. See generally *Freiburger*.

{¶22} As previously stated, attendant circumstances can create an exception to the application of the open and obvious doctrine. Although not an exhaustive list, attendant circumstances can include the following: poor lighting, a large volume of pedestrian traffic, the visibility of the defect, the overall condition of the walkway, and whether the nature of the site is such that one's attention would be easily distracted. *Humphries v. C.B. Richard Ellis, Inc*., 10th Dist. No. 05AP-483, 2005-Ohio-6105, ¶20.

{¶23} Here, appellant argues there are a variety of attendant circumstances, including slick and loose boards that had to be traversed wearing plastic state boots; cold, drizzly, or slightly snowy weather; the use of the boards as a detour for more than one week; poor lighting which was elevated on high standards several feet away; the line of

prisoners traveling over the boarded path to the infirmary; and the presence of a large man who stepped on the board in front of appellant, which in turn caused the board to separate and rise up, thereby tripping appellant. Appellant further argues that, as a prisoner, his freedom of movement and choice of movement is severely restricted. In considering the totality of the circumstances surrounding his inability to perceive the hazards, appellant submits the court must consider these attendant circumstances.

{¶24} In examining the record and the facts in this case, the trial court determined that appellant had crossed the boards on a daily basis to go to the infirmary and had been doing so for approximately three weeks. Appellant was aware that the boards were made of plywood and that they were loosely resting on uneven ground over a drainage ditch. Appellant also testified that he had previously slipped on the boards, and thus he knew he needed to exercise caution, but he admitted he had not complained to ODRC about the boards prior to the accident. As a result, appellant should have been quite familiar with the condition of the plywood boards, even if he had never seen the boards "raise up" during his previous crossings.

{¶25} Additionally, we note that several other inmates testified about their observations of the plywood boards. Inmate Frank Newman testified that when wet, those types of boards, which were placed on uneven ground, would warp and rock and also teeter and could "flip up." (Tr. 41.) Inmate Alan Shaw testified that when one walked on these particular plywood boards, they "tilted back and forth." (Tr. 33.) He also testified that the boards moved when he walked across them. (Tr. 35.) Inmate Paul Showalter testified that the boards were bowed over the ditch. (Tr. 14.)

{¶26} The trial court acknowledged it received conflicting testimony regarding the lighting in the area where the incident occurred. However, its ultimate determination on this issue was not improper. Appellant and several of the inmate witnesses testified that the area was poorly lit on the day of the accident or that it was typically poorly lit. However, Correctional Captain Ivan Gordon testified that GCI maintained high mast lighting as well as canopy lighting and that the area in question was well lit and maintained in that manner for security purposes. Captain Gordon also marked the location of that lighting on a map used during the trial. (See exhibit B.) The trial court indicated that it gave more weight to the testimony of Captain Gordon than it did to the testimony of the inmates, as is its prerogative to do in judging the credibility of the witnesses. In addition, appellant admitted that despite his belief that the area was poorly lit, he could see the boards, but he was not looking down at the ground at the time of the accident. Furthermore, as the magistrate noted, "[d]arkness is always a warning of danger, and for one's own protection it may not be disregarded." *Jeswald v. Hutt* (1968), 15 Ohio St.2d 224. See also *McCoy v. Kroger Co*., 10th Dist. No. 05AP-7, 2005-Ohio-6965.

{¶27} Although appellant now argues that the weather should be an attendant circumstance in this case, the record indicates appellant testified that, in spite of the fact that it was cold and rainy, the weather was not a factor in his fall. Thus, we do not consider it to be an attendant circumstance which could create an exception to the application of the open and obvious doctrine.

{¶28} As to the presence of other inmates on the path, the trial court noted that one of appellant's own witnesses, inmate Paul Showalter, testified that he and appellant

were in a group of approximately five inmates walking single file. Furthermore, given that the large man in front of appellant was allegedly stepping on the opposite end of the board that appellant was approaching, it is difficult to believe that the proximity of the inmates would have had any effect on appellant's ability to see what was lying at his feet.

{¶29} Finally, even if appellant believed he had only one route available "appellant's inability to select his route of travel does not mean the [hazard] was not an open and obvious condition. In other words, solely because this route was selected by the corrections officers * * * such does not render an open and obvious condition no longer open and obvious." *Cordell* at ¶9. Here, the mere fact that this route was established by GCI and that appellant's movements may have been somewhat restricted does not create an attendant circumstance in the instant case.

{¶30} Thus, we find the dangers associated with the placement of the plywood boards on uneven ground over a drainage ditch in these circumstances are "obviously hazardous" in nature. Appellant should have appreciated the attendant risks. The dangers at issue were both observable and appreciable and an ordinary person would be expected to discover them and take measures to protect himself. Furthermore, we find the doctrine of attendant circumstances is not applicable here and does not operate to create an exception to the application of the open and obvious doctrine. Based upon all of this, we find the trial court neither erred nor abused its discretion in finding the plywood boards were an open and obvious condition. Therefore, we overrule appellant's first, fourth, and fifth[1] assignments of error.

[1] The portion of appellant's fifth assignment of error which seems to address the alternate route issue shall be addressed within our discussion of the second, third, and sixth assignments of error.

{¶31} In his second, third, and sixth assignments of error, appellant assigns error to the trial court's application of the alternate route theory. Appellant argues the trial court abused its discretion in finding there was an alternate route that could be used to access the infirmary, claiming the route was not available to inmates. Additionally, appellant argues this alternate route is not a defense and does not absolve ODRC from liability because the plywood boards constituted a hidden hazard and because the inmates were unaware of this longer, out-of-the-way route. Appellant also disputes the testimony of the GCI employees, which indicates that the detoured walkway at issue was actually constructed for inmates needing wheelchair access.

{¶32} Although the trial court heard conflicting testimony as to the availability of an alternate route of travel, it ultimately found that an alternate route did exist, based upon the testimony of Corrections Officer Brian Gribble and GCI building maintenance supervisor Bobby Sparks. While there were several inmates who disputed the existence of an alternate route and/or claimed that route was a much longer and more out-of-the-way route, and therefore impractical for the inmates to use under the circumstances, the magistrate concluded that because he found the testimony of the GCI employees to be more credible, appellant could have avoided walking on the plywood boards if he had taken the alternate route. Such a conclusion is not improper, as the magistrate, as the trier of fact, was in the best position to assess the credibility of the witnesses and to determine which testimony it found believable. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77.

{¶33} Appellant attempts to emphasize that the testimony of the GCI employees establishes that the plywood boards at issue were specifically put down to create a path

for inmates that were confined to wheelchairs. He further argues that GCI never informed the non-wheelchair inmates that the path was constructed for wheelchair inmates only or that non-wheelchair inmates were not permitted to use the boarded path. Aside from the fact that there is no evidence in the record which supports appellant's assertion that non-wheelchair inmates were not permitted to use this path or that said path was known to be unsafe specifically for that category of inmates, appellant has failed to adequately explain how this point is significant and we see no merit in this argument. The trial court properly found that appellant has a duty to exercise some degree of care for his own safety to protect himself from an open and obvious hazard. See generally *Williams v. Ohio Dept. of Rehab. & Corr*., 10th Dist. No. 04AP-1193, 2005-Ohio-2669.

{¶34} Appellant further contends that the plywood board path was the shortest route available and that he would have no reason not to use that route *unless* he was aware that it was dangerous, so the existence of an alternate route would be meaningless without such knowledge. He submits that he was unaware of the hazards at issue here. Again, however, we find no merit in this argument, as we have determined that the placement of the plywood boards over the uneven drainage ditch was an open and obvious hazard.

{¶35} We find no error in the trial court's determination that an alternate route was available to the inmates. Accordingly, we overrule appellant's second, third, and sixth assignments of error.

{¶36} In his eighth assignment of error, appellant contends ODRC violated Ohio building code requirements set forth under the Ohio Adm.Code 4101.1-33, sections 3306.1 and 3306.2, which impose an obligation on ODRC to protect pedestrians during

construction. As a result, appellant argues that the failure to do so in this circumstance constitutes negligence per se, which overrides the application of the open and obvious doctrine. We disagree.

{¶37} There is no direct evidence that a building code violation existed. While appellant's counsel submitted during closing argument that such a violation existed, there was no evidence introduced to substantiate this argument. Additionally, even assuming for the sake of argument that there was a building code violation, an administrative rule violation, such as a building code violation, does not constitute negligence per se. *Lang v. Holly Hill Motel, Inc*., 122 Ohio St.3d 120, 2009-Ohio-2495 (administrative rule violations do not create a per se finding of duty and breach of duty; a violation of the building code is mere evidence of negligence and can still be challenged with the open and obvious doctrine). Accordingly, we overrule appellant's eighth assignment of error.

{¶38} In his seventh and tenth assignments of error, appellant contends the court's rulings are not supported by the evidence and are against the manifest weight of the evidence. We disagree.

{¶39} Under the civil manifest weight of the evidence standard, "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co*. (1978), 54 Ohio St.2d 279, syllabus. When reviewing a judgment under the civil manifest weight of the evidence standard, the court must presume that the findings of the trier of fact are correct, as the trial judge had the opportunity to view and observe the witnesses and to use those observations in weighing the credibility of the testimony. *Seasons Coal Co.* at 80-81. "A reviewing court

should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not." Id. at 81. See also *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶24.

{¶40} Based upon our discussion as set forth in our analysis regarding the first, second, third, fourth, fifth, sixth, eighth, and ninth assignments of error, we find the rulings of the trial court are supported by the evidence and are not against the manifest weight of the evidence. The evidence supports the finding that the plywood boards at issue were an open and obvious hazard which was free from obstruction and readily appreciated by an ordinary person. The evidence does not support the application of the attendant circumstances doctrine to create an exception to this determination.

{¶41} The evidence demonstrates appellant had crossed the path countless times over a three-week period and was aware the boards were slippery and that they rested over an uneven dip in the grass. The determination that the area in question contained substantial lighting and that inclement weather did not contribute to the incident are also supported by the record, as was the court's determination that an alternate route was available. The evidence does not support appellant's assertion that a building code violation occurred. Finally, the evidence supports the determination that appellant should have appreciated the risk. The judgment is based upon some competent, credible evidence and covers all of the essential elements of the case. Accordingly, we overrule appellant's seventh and tenth assignments of error.

{¶42} In conclusion, we overrule appellant's ten assignments of error and affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.

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