[Cite as *Williamson v. Geeting*, 2012-Ohio-2849.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

PREBLE COUNTY

DALE D. WILLIAMSON,	:	
Plaintiff-Appellant,	:	CASE NO. CA2011-09-011
	:	O P I N I O N
- vs -		6/25/2012
	:	
ROBERT GEETING, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
Case No. 10-CV-28413

Thompson, Meier & Dersom, Adam H. Leonatti and William A. Meier, 929 Harrison Avenue, Suite 205, Columbus, Ohio 43215, for plaintiff-appellant

Mazza & Associates, John P. Mazza, 941 Chatham Lane, Suite 201, Columbus, Ohio 43221, for defendants-appellees, Robert Geeting and John Geeting

Cooke, Demers & Gleason LLC, Adam J. Bennett, 3 North High Street, P.O. Box 714, New Albany, Ohio 43054, for defendant Steve Buehrer, Administrator, Ohio Bureau of Workers' Compensation

POWELL, P.J.

{¶ 1} An electrician filed suit claiming he was injured in a fall when he stepped into an open well pit located below an electric panel in a farmer's garage. The trial court granted summary judgment to the landowner and the electrician appealed. We find the

well pit was an open and obvious hazard and affirm the trial court's decision.

{¶ 2} Dale Williamson alleges he sustained injuries to both shoulders in a September 2008 fall on the farm on which Robert Geeting resides. Geeting's brother, John, is also a defendant-appellee in this case. All references to the Geetings pertain to the siblings, but any reference to Geeting in this decision refers to Robert Geeting.

{¶ 3} The Geetings moved for summary judgment, which was granted by the Preble County Common Pleas Court. Williamson appeals, raising four assignments of error for review. Due to their length, we will summarize the assignments of error.

{¶ 4} Williamson's four assignments of error allege the trial court erred in granting summary judgment when it improperly resolved disputed issues of material fact as to whether (1) access to the well pit was required to perform the electrical job, (2) whether Getting's removal of the boards over the pit to provide access to the pit constituted "active participation" in or the "exercise of control" over the job operation, (3) whether the pit was an open and obvious hazard, and (4) whether attendant circumstances precluded the open and obvious doctrine.

{¶ 5} Summary judgment is a procedural device used with caution to terminate litigation and avoid a formal trial where there are no issues in a case to try. *See Norris v. Ohio Std. Oil Co*., 70 Ohio St.2d 1, 2 (1982). This court reviews summary judgment decisions de novo, which means that we review the trial court's judgment independently and without deference to its determinations. *Burgess v. Tackas*, 125 Ohio App.3d 294, 296 (8th Dist.1998); *First Horizon Home Loans v. Sims*, 12th Dist. No. CA2009-08-117, 2010-Ohio-847, ¶ 18.

{¶ 6} Utilizing the same standard in our review that the trial court should have employed, summary judgment is appropriate under Civ.R. 56 when (1) there is no genuine issue of material fact, (2) the moving party is 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 nonmoving party, said party being entitled to have the evidence construed most strongly in his favor. *Zivich v. Mentor Soccer Club, Inc*., 82 Ohio St.3d 367, 369-370, 1998-Ohio-389.

{¶ 7} The evidence presented for purposes of summary judgment indicates Williamson was employed by Tobias Electric. He and Joe Tobias, Jr. were called to the Geeting farm to perform electrical work. The farm's electricity was out and Geeting needed a generator hooked up to provide power to one of the water wells for livestock.

{¶ 8} Geeting described the well pit as approximately five feet deep and an estimated two and one-half feet square. Inside the pit was a tank and plumbing. The description of the pit provided by Geeting does not appear to be disputed. Photographs of the garage in the pit area were provided in deposition testimony.

{¶ 9} Geeting said he removed the boards that were placed over the pit before the electricians arrived because he thought they needed to gain access to the pump in the pit. Both Geeting and Tobias testified by deposition they entered the garage without Williamson to look at the job. They believed it was mentioned in Williamson's presence that the electric panel was located above the well pit. Williamson disputes that he was told or overheard that the well pit was open.

{¶ 10} Williamson testified that he entered the garage alone and was "glancing around everywhere as I was going." He said, "I walked through looking for a panel that I was told was on the wall, and I see the panel, and as I walk toward it, I fall into a hole." Williamson said he walked approximately ten feet into the garage before he fell. He said the light coming through the windows of the garage illuminated the garage enough to see, that he had access to but did not need a flashlight to see. He said he did not see the well pit before he fell.

{¶ 11} Williamson said he was not looking down and was focused on "things in the aisleway" and where the electric panel was located. He said he would not have seen the pit had he been looking down. Even if he had been looking down at the pit, Williamson said he would have thought it was an oil or grease spot or perhaps a dark mat. Williamson said he believes both of his feet fell into the pit. He explained that he reached out to catch himself and "it caught both arms and caused me the injury."

{¶ 12} We will first address Williamson's third and fourth assignments of error as we find the resolution of those assignments determinative of this appeal. Williamson's third and fourth assignments of error challenge the trial court's determination that summary judgment was appropriate because the open well pit was open and obvious, which was not negated by any attendant circumstances.

{¶ 13} Negligence claims require a showing of a duty owed, a breach of that duty, and an injury proximately caused by the breach. *Wallace v. Ohio Dept. of Commerce*, 96 Ohio St.3d 266, 2002-Ohio-4210, ¶ 22. The existence of a duty is fundamental to establishing actionable negligence, without which there is no legal liability. *Uhl v. Thomas*, 12th Dist. No. CA2008-06-131, 2009-Ohio-196, ¶ 10. A determination of whether a duty exists is a question of law for the court to decide. *Mussivand v. David*, 45 Ohio St.3d 314, 318 (1989).

{¶ 14} For purposes of these two assignments of error, we will consider Williamson a business invitee of the Geetings and hold the Geetings to the duty owed a business invitee.

{¶ 15} One who is invited onto the premises of another for the benefit of the owner is considered an invitee. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 315, 1996-Ohio-137; *see also Eicher v. United States Steel Corp.*, 32 Ohio St.3d 248, 249 (1987) (duty owed to frequenters of a business pursuant to R.C. 4101.11

is no more than a codification of the common-law duty owed by an owner or occupier of the premises to invitees).

{¶ 16} An owner or occupier of land owes business invitees a duty of ordinary care to maintain the premises in a reasonably safe condition so that invitees are not unreasonably or unnecessarily exposed to danger. *Paschal v. Rite Aid Pharmacy, Inc*., 18 Ohio St.3d 203 (1985).

{¶ 17} The owner or occupier of a premises has no duty to protect invitees from conditions that are either known to the invitee or are so obvious and apparent that the invitee may reasonably be expected to discover and protect himself against them. *Id*.; *see Ahmad v. AK Steel Corp.*, 119 Ohio St.3d 1210, 2008-Ohio-4082, ¶ 23. The rationale behind the open and obvious doctrine is that the open and obvious nature of the hazard itself serves as a warning. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, ¶ 5.

{¶ 18} Further, a dangerous condition need not be actually observed by the claimant to be open and obvious. *Barnett v. Beazer Homes, L.L.C*., 180 Ohio App.3d 272, 2008-Ohio-6756, ¶ 31-32 (12th Dist.). The question is whether the condition is discoverable or discernible by one acting with ordinary care under the circumstances. *Packman v. Barton*, 12th Dist. No. CA2009-03-009, 2009-Ohio-5282, ¶ 33; *Lykins v. Fun Spot Trampolines, et al.*, 172 Ohio App. 3d 226, 2007-Ohio-1800, ¶ 24 (12th Dist.), (a dangerous condition does not necessarily need to be observed by the injured party; the determinative issue is whether the condition is observable and that determination depends upon the particular circumstances surrounding the hazard).

{¶ 19} When applicable, the open-and-obvious doctrine obviates an owner's duty of care, and acts as a complete bar to any negligence claim. *Armstrong* at ¶ 5, 13-14. Whether a hazard is an open and obvious condition is a matter of law to be determined by

the court, and therefore, a suitable basis for summary judgment. *Galinari v. Koop*, 12th Dist. No. CA2006-10-086, 2007-Ohio-4540, ¶ 13, citing *Armstrong*.

{¶ 20} Construing the evidence most favorably for Williamson, the nonmoving party, the record indicates Williamson testified that he believed the lighting conditions in the garage were sufficient for him to observe and work on an electric panel and that he was looking for the panel and not looking down where he was walking. The record indicates the open well pit was in plain view, observable to the naked eye and was observable to Williamson had he looked where he was walking. Therefore, reasonable minds could only conclude that the open well pit was an open and obvious hazard. *See Isaacs v. Meijer, Inc.*, 12th Dist. No. CA2005-10-098, 2006-Ohio-1439.

{¶ 21} Williamson argues under his fourth assignment of error that attendant circumstances were present in this case and these attendant circumstances provide an exception to the open and obvious doctrine. Specifically, Williamson argues that he was focused on locating the electric panel and his failure to see the pit was reasonable, given the attendant circumstances of the pit, or what his counsel described as a "black plane set against a darkened column bisecting bright garage doors."

{¶ 22} Attendant circumstances are an exception to the open and obvious doctrine and refer to distractions that contribute to an injury by diverting the attention of the injured party and that reduce the degree of care an ordinary person would exercise at the time. *See Isaacs* at ¶ 16. The phrase refers to all facts relating to the event, and includes such circumstances as time of day, lack of familiarity with the route taken, and lighting conditions. *Galinari*, 12th Dist. No. CA2006-10-086, 2007-Ohio-4540 at ¶ 21.

{¶ 23} An attendant circumstance must divert the attention of the injured party, significantly enhance the danger of the defect, and contribute to the fall. *Isaacs* at ¶ 16. Additionally, an attendant circumstance is one that is beyond the control of the injured

party. *Id.*; *Galinari*.

{¶ 24} As we previously noted, Williamson testified that the lighting conditions were sufficient to navigate the area in question. He had access to a flashlight, but said he did not need it. In addition, the level of lighting in the garage was a readily observable condition. *Swonger v. Middlefield Village Apts*., 11th Dist. No. 2003-G-2547, 2005-Ohio-941. Darkness "is always a warning of danger, and for one's own protection it may not be disregarded." *See Jeswald v. Hutt*, 15 Ohio St.2d 224 (1968), paragraph three of the syllabus.

{¶ 25} Dim or reduced lighting is an open and obvious condition which should increase the degree of care that an ordinary person would exercise under the circumstances; it is not a circumstance which necessarily creates a genuine issue of material fact or precludes summary judgment. *See Wainscott v. Americare Communities Anderson Dev., L.L.C.*, 12th Dist. No. CA2006-12-308, 2007-Ohio-4735, ¶ 27.

{¶ 26} Accordingly, we find that reasonable minds could come to but one conclusion and that conclusion is adverse to Williamson. The open well pit was open and obvious and there were no attendant circumstances diverting Williamson's attention and precluding the application of the open and obvious doctrine. The record is devoid of any evidence that the open well pit was hidden, concealed, and not discernible by examination had Williamson looked where he was walking. *See Haynes v. Mussawir*, 10th Dist. Nos. 04AP-110, 04AP-117, 2005-Ohio-2428. The grant of summary judgment to the Geetings was appropriate on these issues. Williamson's third and fourth assignments of error are overruled.

{¶ 27} Williamson's first and second assignments of error allege that the trial court erred in making factual determinations on whether access to the well pit was required to perform the electrical job, and whether Getting's removal of the boards over the pit to

provide access to the pit constituted "active participation" in or the "exercise of control" over the job operation.

{¶ 28} Based on our resolution of Williamson's third and fourth assignments of error, and the finding that summary judgment was appropriate, Williamson's remaining assignments of error are rendered moot.

{¶ 29} Judgment affirmed.

RINGLAND and HUTZEL, JJ., concur.