[Cite as *Meli v. Univ. of Akron Office of Risk Mgt.*, 2017-Ohio-8077.]

NANCY MELI Plaintiff v. UNIVERSITY OF AKRON OFFICE OF RISK MANAGEMENT Defendant	Case No. 2017-00338-AD Clerk Mark H. Reed MEMORANDUM DECISION

{¶1} This matter is before the Court as a result of a claim filed by Nancy Meli (hereinafter "plaintiff") on April 13, 2017. In her claim, the plaintiff alleged that on January 23, 2017 she tripped and fell on a sidewalk on the grounds of the University of Akron (hereinafter "UA"). Plaintiff believes that her fall was caused by a rise in the sidewalk area of about two inches. As a result of the fall, the plaintiff suffered a broken hip which required surgery and hospitalization. Plaintiff now seeks damages of $94.00, which is the balance of her medical bills that was not covered by her insurance.

{¶2} The Defendant UA filed an Investigation Report with this Court on June 1, 2017. In this report, UA does not dispute the facts of plaintiff's complaint nor the amount of claimed damages. The University concedes that the plaintiff was a legal invitee on its campus, and was therefore owed an ordinary duty of care of protection from unreasonable risk of harm. In spite of this admission, however, the University does deny liability for plaintiff's fall and subsequent injury.

{¶3} The University's contention that it is not responsible for Plaintiff's injury is based on the results of an investigation conducted by the University Risk Manager Matt Beaven who found that there was no area in the UA sidewalks where the difference in separation of the slabs was more than 1 and ¾ inches (UA was unable in its investigation to locate the exact location where plaintiff fell). It is UA's position that such a minor deviation in height in the sidewalk is not evidence of negligence on the part of the University. In support of its position, the University cites a long line of Ohio cases

beginning with *Helms v. American Legion*, 5 Ohio St.2d 60, 213 N.E.2d 734, 1966 Ohio LEXIS 387, 34 Ohio Op. 2d 124 (Ohio 1966), which stands for the proposition that entities such as the University here are not liable for injuries that occur on sidewalks where there are only minor height deviations. Minor has been defined by Ohio Courts as variations of two inches or less.

{¶4} Thus, the Court must therefore decide if a deviation in the sidewalk of 1 and ¾ inches is so minor, that even if plaintiff were invited on the premises and was unaware of the raise in the sidewalk, that the University could not be held liable for her injuries. In this case, the Court, guided by the precedent of relevant Ohio law, does find that a 1 and ¾ inch raise is a minor deviation and therefore not sufficiently significant to hold the University liable for plaintiff's fall. This Court's rationale is similar to that of the court in *Helms*, when quoting the case of *Gastel v. City of New York*, 194 N.Y. 15, 86 N.E. 833.

> "We think we may take judicial notice of the fact which ordinary observation discloses that there is scarcely a rod in the streets of any city in which there may not be discovered some little unevenness or irregularity in sidewalks, crosswalks, curbs, or pavements. As the result of various causes, climatic and otherwise, they are constantly occurring and recurring. Ordinarily they cause no difficulties, and it would require a vast expenditure of money to remove them all."

{¶5} As the courts in *Helms* and *Gastel* make clear, it is unreasonable to expect that an entity be held legally liable for every small defect in its sidewalks. This is especially so in cases such as this one, where there is no evidence before the Court that indicates that UA had notice of the deviation.

{¶6} Therefore, the complaint filed April 13, 2017 is hereby dismissed.

Plaintiff v. UNIVERSITY OF AKRON OFFICE OF RISK MANAGEMENT Defendant	Clerk Mark H. Reed ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file, and for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs shall be absorbed by the Court.

MARK H. REED
Clerk

Filed 7/11/17
Sent to S.C. Reporter 10/5/17