[Cite as *Fawley v. Kings Island*, 2004-Ohio-4312.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

TAMARA D. FAWLEY,	:	
Plaintiff-Appellant,	:	CASE NO. CA2004-01-012
	:	O P I N I O N
- vs -		8/16/2004
	:	
KINGS ISLAND, et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 02CV60134

Wilcox, Schlosser & Bendig Co., L.P.A., Jacob A. Schlosser, 4937 West Broad Street, Columbus, Ohio 43228, for plaintiff-appellant

Graydon, Head & Ritchey, LLP, Brian C. Thomas and Kent Wellington, 1900 Fifth Third Center, 511 Walnut Street, Cincinnati, Ohio 45202, for defendant-appellee, Kings Island

Frederick G. Cloppert, Jr., 225 East Broad Street, Columbus, Ohio 43215, for defendant, Primax Recoveries, Inc.

WALSH, J.

{¶1} Plaintiff-appellant, Tamara Fawley, appeals a decision of the Warren County Court of Common Pleas, granting summary judgment in favor of defendant-appellee, Kings Island Co., in a trip and fall action. We affirm the decision of the trial court.

{¶2} The relevant facts in this matter are undisputed. On April 20, 2001, appellant and members of her family were staying

in a cabin at Paramount's Kings Island Campground. Because the cabins do not have restroom facilities, campground patrons used the restrooms in the Country Store located on the grounds. The grassy path between the campground and the store was apparently well-traveled. On that day, appellant and her nephew were throwing a Frisbee back and forth in this vicinity. Appellant's right foot slipped into a depression, or hole, three to four inches deep and approximately 12 inches in diameter, causing her to injure her leg.

{¶3} Appellant brought suit, alleging that appellee violated its duty to maintain its premises in a safe condition, negligently permitted the dangerous condition to exist, failed to correct the defect, and failed to warn her of the danger posed by the hole. Appellee moved for summary judgment, contending in part that it was not liable for the danger posed by the natural defect. The trial court agreed and granted the motion. Appellant appeals, raising a single assignment of error:

{¶4} "The trial court committed prejudicial error in granting appellee's motion for summary judgment in that genuine issues of material fact exhibited [sic] and appellee was not entitled to judgment as a matter of law."

{¶5} Because the propriety of granting summary judgment is a question of law, an appellate court conducts a de novo review of a trial court's summary judgment determination. Dresher v. Burt, 75 Ohio St.3d 280, 293, 1996-Ohio-107. Summary judgment is appropriate when the movant demonstrates: "(1) that there is no

genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) 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, who is entitled to have the evidence construed most strongly in his favor." Harless v. Willis Day Warehousing Co. (1978), 54 Ohio St.2d 64, 66; Civ.R. 56(C).

{¶6} To avoid summary judgment in a negligence action, the plaintiff must show: (1) the defendant owed the plaintiff a duty of care; (2) the defendant breached that duty of care; and (3) as a direct and proximate result of the defendant's breach, the plaintiff suffered injury. Menifee v. Ohio Welding Products, Inc. (1984), 15 Ohio St.3d 75, 77. An owner or occupier of a business owes its invitees a duty of ordinary care in maintaining the premises in a "reasonably safe condition" so that its customers are not exposed to danger. Paschal v. Rite Aid Pharmacy, Inc. (1985), 18 Ohio St.3d 203, 203.

{¶7} However, the owner of a premises is not an insurer for the safety of visitors who come upon his land. See Perry v. Eastgreen Realty Co. (1978), 53 Ohio St.2d 51, 52. "It is only where it is shown that the owner had superior knowledge of the particular danger which caused the injury that liability attaches, because in such a case the invitee may not reasonably be expected to protect himself from a risk he cannot fully appreciate." LaCourse v. Fleitz (1986), 28 Ohio St.3d 209, 210. Thus, when a person has knowledge of ground conditions that might cause her injury, that person is charged with her own

safety for any injuries resulting from such conditions. See Stein v. City of Oakwood (May 8, 1998), Montgomery App. No. 16776. A premises owner or occupier will not be held liable for such injuries even if the injured person lacked actual knowledge of the particular defect that caused her injury. Id. citing Krone v. McCann (1982), 196 Mont. 260, 638 P.2d 397, 400, ("[s]ince [plaintiff] knew of the general condition of the ground, no duty rests on the defendant to warn her of it").

{¶8} In the present matter, appellant had knowledge of conditions that should have caused her to recognize that the ground was potentially hazardous. She was in fact, at a campground, an area that remains rustic in nature, and will invariably contain various dips, holes and contours. The fact that the hole she stepped into was obscured by grass does not obviate her general knowledge of the ground conditions. See Stein, Montgomery App. No. 16776. Because appellant had such knowledge, appellee cannot be found negligent absent evidence that it had superior knowledge of the danger. Appellant has failed to present such evidence, and her negligence claim fails as a matter of law. Accord id.; Young v. Local 775 Housing Association (May 30, 1997), Montgomery App. No. 16226 (holes and depressions are ordinary hazards which anyone walking in grass can expect). The assignment of error is overruled.

Judgment affirmed.

YOUNG, P.J., and VALEN, J., concur.