[Cite as *Billingsley v. Ohio Dept. of Pub. Safety*, 2002-Ohio-4259.]

IN THE COURT OF CLAIMS OF OHIO

THELMA L. BILLINGSLEY :

Plaintiff : CASE NO. 2000-07293

v. : MAGISTRATE DECISION

DEPARTMENT OF PUBLIC SAFETY : Magistrate Anderson M. Renick

Defendant :

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{¶1} The case was tried to a magistrate of the court on the issue of liability. Plaintiff alleges a single claim of negligence arising from injuries that she sustained as a result of a slip and fall accident.

{¶2} On December 31, 1998, plaintiff drove her granddaughter from Springfield, Ohio to defendant's Bureau of Motor Vehicles Drivers' Reinstatement Office in Columbus, Ohio. Upon arrival, plaintiff's granddaughter entered the building to get her license reinstated. A rubber mat was located at the entrance to the building between the interior and exterior doors. Two additional mats were positioned on the lobby floor inside the interior doors. Plaintiff, a below-the-knee, left leg amputee, followed her granddaughter into the facility to use the restroom. Plaintiff's granddaughter asked the receptionist where the restroom was located and then pointed in its direction. As plaintiff stepped off the mat and onto the tile floor, she slipped and fell, landing with her right leg extended in front of her and her prosthetic leg underneath her. Ohio State Highway Patrol Police Officer Wesley Wells was working nearby and came to assist plaintiff when he heard her fall. Wells also called for a medical squad, but plaintiff refused treatment when the squad arrived. Plaintiff was helped to her car. She received medical treatment after her return to Springfield.

{¶3} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. With regard to the duty of care owed to plaintiff, it is undisputed that plaintiff was an invitee at defendant's office. Business invitees are owed a duty of ordinary care by merchants in maintaining their places of business in a reasonably safe condition so that customers are not exposed unnecessarily and unreasonably to danger. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203. However, defendant is not an insurer of its customers' safety, and it is under no duty to protect customers from conditions "which are known to such invitee or are so obvious and apparent to such invitee that [she] may reasonably be expected to discover them and protect [herself] against them." Id. at 203, quoting *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, paragraph one of the syllabus.

{¶4} As a business invitee, in order for a plaintiff to recover damages in a negligence action based on a slip and fall accident she must establish:

{¶5} "1. That the defendant through its officers or employees was responsible for the hazard complained of; or

{¶6} "2. That at least one of such persons had actual knowledge of the hazard and neglected to give adequate notice of its presence or remove it promptly; or

{¶7} "3. That such danger had existed for a sufficient length of time reasonably to justify the inference that the failure to warn against it or remove it was attributable to a want of ordinary care." *Evans v. Armstrong,* (Sept. 23, 1999), Franklin App No. 99AP-17, quoting, *Johnson v. Wagner Provision Co.* (1943), 141 Ohio St. 584, 589.

{¶8} With regard to the first element of the *Johnson* test, plaintiff testified that she did not know what caused her fall, that she did not see any moisture on the floor or feel any substance underfoot prior to her fall. However, after she fell, plaintiff said that she noticed that one of her pant legs had a "damp feel." Plaintiff's granddaughter also testified that she

did not notice any water or other substance on either the mat or the floor when she entered the building. When Officer Wells went to assist plaintiff, he discovered an area of water that was approximately two inches in length near the location where she fell.

{¶9} "Ordinarily, no liability attaches to a store owner or operator for injury to a patron who slips and falls on the store floor which has become wet and slippery by reason of water and slush tracked in from the outside by other patrons." *Boles v. Montgomery Ward & Co.* (1950), 153 Ohio St. 381, at paragraph two of the syllabus. The Supreme Court of Ohio also recognized that "[cases] of this type sometimes involve narrow distinctions and a decision in each case depends largely on the facts of the particular case." Id. at 384. "The mere fact that a customer slips and falls on the floor of a business establishment does not, standing alone, create an inference that the floor was unsafe." *Eller v. Wendy's International, Inc.* (2000), 142 Ohio App.3d 321; *J.C. Penny Co., Inc. v. Robison* (1934), 128 Ohio St. 626, paragraph four of the syllabus. Rather, plaintiff must produce some evidence to show that a negligent act or omission of defendant caused the fall. Id.

{¶10} Although plaintiff apparently slipped on water, it is not known exactly how the water got on the floor or how long it had been there. Contrary to plaintiff's testimony, both Officer Wells and defendant's facility manager testified that on the day of the incident snow was underneath and around cars in the parking lot. The photographs that were taken within two hours after the incident show that snow or slush had accumulated in the parking lot near the entrance doors. (Defendant's Exhibit C.) The court finds that plaintiff has failed to establish that defendant's employees were responsible for creating a hazard. It is just as likely that the water was tracked in by a visitor, such as plaintiff or her granddaughter.

{¶11} Plaintiff also failed to establish the second and third elements of the *Johnson* test because the testimony and evidence submitted at trial shows that defendant provided adequate warning of a potential hazard by posting a "caution, wet floor" sign at the

entrance to the facility. Reasonable care includes a duty to warn customers of a hazardous condition that is known to defendant. *Jackson v. Kings Island* (1979), 58 Ohio St.2d 357, 359. However, "the liability of an owner or occupant to an invitee for negligence in failing to render the premises reasonably safe for the invitee, or in failing to warn him of dangers thereon, must be predicated upon a superior knowledge concerning the dangers of the premises to persons going thereon." *Debie v. Cochran Pharmacy-Berwick, Inc.* (1967), 11 Ohio St.2d 38, quoting 38 American Jurisprudence, 757, Negligence, Section 97.

{¶12} Although both plaintiff and her granddaughter testified that they did not see any warning sign when they entered the facility, photographs of the entrance area that were taken approximately one hour after the incident show that a "caution, wet floor" sign had been placed inside the interior doors. Officer Wells and Robert Maddox, defendant's maintenance custodian, both testified that the warning sign was in place at the time of the incident. Plaintiff's view of the warning sign was not obstructed and it was prominently posted below another sign that directed customers to "please enter here." Furthermore, in addition to the warning sign, defendant placed rubber mats on both sides of the interior doors.

{¶13} The court concludes that defendant met its duty to warn customers of a potentially hazardous condition by posting an adequate caution sign. Plaintiff has failed to establish that defendant was negligent. Accordingly, judgment is recommended in favor of defendant.

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ANDERSON M. RENICK
Magistrate

Entry cc:

Philip H. Sheridan, Jr. Attorneys for Plaintiff

580 S. High Street, Suite 200
Columbus, Ohio 43215

J. Randolph Burchfield
1313 East Broad Street
Columbus, Ohio 43205

William C. Becker Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

AMR/cmd
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