[Cite as *Dixon v. Ohio Dept. of Transp.*, 2002-Ohio-4597.]

IN THE COURT OF CLAIMS OF OHIO

LILLIAN AGNES DIXON :
1105 Baesler Lane
Winchester, Kentucky 40391 : Case No. 2002-02396-AD

Plaintiff : MEMORANDUM DECISION

v. :

OHIO DEPT. OF TRANSPORTATION :

Defendant :

: : : : : : : : : : : : : : : : :

For Defendant: Gordon Proctor, Director
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

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FINDINGS OF FACT

{¶1} On May 15, 2001, at approximately 1:00 p.m., plaintiff, Lillian Agnes Dixon, suffered personal injury when she slipped and fell while walking on the grounds of a roadside rest area located adjacent to milepost 34 on Interstate 71 in Warren County. Specifically, plaintiff loosened her teeth when she fell upon the ground after tripping over a straw covered area abutting a concrete sidewalk. Both plaintiff and a witness, Nancy G. Baesler, indicated "green netting" was protruding through the straw covered area where plaintiff's trip and fall occurred. Both plaintiff and Baesler explained this "green netting" caused plaintiff's trip and resulting injuries. Baesler stated the netting was not readily discernible. Evidence has shown netting covered by straw was placed adjacent to most of the concrete sidewalks on the rest area grounds. No signs were erected to warn rest area guests of any

danger presented by the hidden netting condition.

{¶2} Plaintiff has contended defendant, Department of Transportation, as the party responsible for rest area maintenance, is liable for any damages resulting from her trip and fall. Plaintiff asserted defendant constructed a hidden defect at the rest area location. Plaintiff further asserted defendant failed to warn rest area guests about the latent defective condition which proximately caused plaintiff's injury. Consequently, plaintiff filed this complaint seeking to recover $1,639.50, her total cost of dental treatment expenses resulting from injuries exacerbated by her trip and fall. Plaintiff submitted the filing fee with the complaint.

{¶3} Defendant, in its investigation report, has denied liability for plaintiff's injury. Defendant argues that plaintiff is a licensee and, thus, defendant only owes her a duty to refrain from wanton and willful conduct which may result in injury.

{¶4} On June 10, 2002, plaintiff submitted a response to defendant's investigation report. Conversely, plaintiff has argued defendant's acts constituted wanton conduct and therefore liability should attach. Plaintiff reasoned her injuries were caused by defendant's maintenance of an obvious hazard to all rest area guests. Plaintiff has questioned the premise she should be classified a licensee under the circumstances of this claim. Plaintiff insisted she should be awarded all damages claimed based on the facts presented.

CONCLUSIONS OF LAW

{¶5} Ohio law classifies an individual using a public roadside rest area as a licensee. *Provencher v. Ohio Department of Transportation* (1990), 49 Ohio St. 3d 265, at the syllabus. Accordingly, plaintiff was a licensee while at defendant's rest area. Therefore, defendant generally owed plaintiff a duty to refrain from wanton and willful conduct which might result in injury to her. Id. at 266.

{¶6} Under existing case law, a licensor does not owe a licensee any duty except to refrain from willfully injuring her and not to expose her to any hidden danger, pitfall, or obstruction. If the licensor knows such a danger is present, the licensor must warn the licensee of this danger which the licensee cannot reasonably be expected to discover. *Salemi v. Duffy Construction Corporation* (1965), 3 Ohio St. 2d 169, at paragraph two of the syllabus; *Hannan v. Ehrlich* (1921), 102 Ohio St. 176, at paragraph four of the syllabus.

{¶7} A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, *** (a) the possessor knows or has reason to know of the condition and should realize that it involved an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and *** (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and ***(c) the licensees do not know or have reason to know of the condition and the risk involved. 2 Restatement of the Law 2d, Torts (1965), Section 342.

{¶8} In the instant claim evidence has established defendant created and therefore knew about the dangerous condition presented by the netting along the concrete sidewalk, which proximately caused plaintiff's injury. The dangerous condition was hidden from the rest area guests such as plaintiff. Defendant was charged with a duty to warn visitors of this dangerous condition. Defendant's failure to provide adequate warning constituted actionable negligence. Consequently, defendant is liable to plaintiff or the damage claimed, $1,639.50, plus the $25.00 filing fee. *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶9} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶10} IT IS ORDERED THAT:

{¶11} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶12} 2) Defendant (Department of Transportation) pay plaintiff (Lillian Agnes Dixon) $1,664.50 and such interest as is allowed by law;

{¶13} 3) Court costs are assessed against defendant.

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DANIEL R. BORCHERT
Deputy Clerk

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