[Cite as *McCutcheon v. Ohio Dept. of Rehab. & Corr.*, 2002-Ohio-5116.]

IN THE COURT OF CLAIMS OF OHIO

DENISE MCCUTCHEON	:	
Plaintiff	:	CASE NO. 99-12707
v.	:	MAGISTRATE DECISION
DEPARTMENT OF REHABILITATION AND CORRECTION	:	Steven A. Larson, Magistrate
Defendant	:	

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{¶1} This case was tried to a magistrate of the court on the issue of liability. Plaintiff alleges a single cause of action sounding in negligence. The case arises as a result of injuries that plaintiff sustained when she slipped and fell while visiting defendant's premises.

{¶2} On July 31, 1996, plaintiff arrived at defendant's Grafton Correctional Institution (GCI) for her monthly visit with inmate Ronald Starks. She was dating Starks' brother, Larry. Plaintiff testified that she arrived between noon and 1:00 p.m. for afternoon visitation. According to plaintiff, the visiting room contained 50 to 60 chairs aligned in rows separated by a center aisle. An officer's desk was located at the front entrance to the room. Plaintiff estimated that "quite a few" people were visiting at the time. She entered, passing the officer's desk to her right, and took a seat in a chair located in approximately the third row in front of the desk. (Diagram, Joint Exhibit 1.)

{¶3} Plaintiff testified that about one-half hour into the visit she got up and walked to the vending machines located across the room along a wall opposite a patio. Starks simultaneously left to use the bathroom. Plaintiff asserts that she walked down the row of chairs toward the center aisle, then to the vending area. Upon her return she retraced her route, down the center aisle and down the row of chairs. She was holding her vending machine purchase (a chicken dinner) with both hands when she slipped and fell to the floor.

{¶4} Plaintiff explained that she fell on her left knee and the palm of her right hand. The chicken dinner fell on the floor. While sitting in a chair after her fall, plaintiff noticed a foreign substance stuck to the left knee of her pants and the palm of her right hand. According to plaintiff, the substance looked like "Elmer's Glue." Plaintiff denied seeing any substance on the floor prior to her fall. She also believed that the floor was not wet because her pants were not wet after the fall.

{¶5} On cross-examination plaintiff admitted seeing red warning cones and a mop bucket barricading the aisle in front of the desk, but denied that she traveled through the restricted area when she walked to or from the vending area. Plaintiff also testified that she noticed an inmate porter mopping the floor near the bathrooms which were located by the wall opposite the patio from her seat.

{¶6} A few minutes after plaintiff's fall, Lieutenant Van Hoose, Safety Officer for GCI, arrived at the scene and observed plaintiff sitting in a chair. Starks was sitting in another chair rubbing plaintiff's leg. The chicken dinner was scattered on the floor and table tops. Van Hoose evaluated plaintiff's condition

and determined that she did not require emergency medical treatment. Since plaintiff had stated that she was having trouble walking, she was escorted from the visiting room in a wheelchair; she then called a friend to come and take her home.

{¶7} Lieutenant Van Hoose testified that at 9:50 a.m. during the morning visitation an elderly visitor, Ruth Steckle, slipped and fell in the aisle directly in front of the desk. Van Hoose examined the floor and determined that someone improperly applied a disinfectant over the floor wax. She noticed that there were no wet areas where Steckle fell but that there was a residue on the floor which could have caused it to be slippery, especially if wet. (Defendant's Exhibit B.) At 11:30 a.m., when morning visitation ended, Van Hoose directed porters to remove the tables and chairs and mop the entire visiting room floor, first with soap and water then again with very hot water.

{¶8} Even after mopping with soap and rinsing with hot water, the floor was still extremely slippery. Van Hoose acknowledged slipping and sliding as she walked in the aisles. Finally, in an attempt to totally remove the disinfectant, she directed the porters to use a strong floor stripper from the kitchen to mop the floor a third time. At 1:30 p.m., as afternoon visitation began, the tables and chairs were replaced and visitors were permitted to enter the room. One porter remained and continued to mop in the visiting room because the residue had not been completely removed when afternoon visitors entered the room. (Defendant's Exhibit B.)

{¶9} Lester Evans, an inmate, testified that he was working as a porter during morning visitation when a woman fell in front of the officer's desk. He stated that he helped her up and noticed that her back was wet. As a result of her fall, a crew of six to

seven porters was called to mop the entire visiting room between morning and afternoon visitation. Evans testified that he mopped a twelve by four and one-half foot area in front of the officer's desk where the woman fell. He blocked the aisle in front of the desk with a red "wet floor" cone, a mop bucket and a small table. He propped a mop handle between the cone and the table. The barrier remained during afternoon visitation.

{¶10} 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, 423 N.E.2d 467.

{¶11} As a visitor at the correctional institution, plaintiff is considered an invitee. *Blair v. Ohio Dept. of Rehab. & Corr.* (1989), 61 Ohio Misc.2d 649. Business owners owe a duty of ordinary care to maintain their premises in a reasonably safe condition so as not to expose invitees to unnecessary and unreasonable dangers. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203. However, defendant is not an insurer of visitor safety, and it is under no duty to protect visitors 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.

{¶12} To recover damages in a negligence action an invitee must establish:

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

{¶14} "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

{¶15} "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.

{¶16} With regard to the first element of the *Johnson* test, Van Hoose candidly admitted that disinfectant was mistakenly applied to the visiting room floor and that it caused the floor to be slippery, especially when wet. Thus, the court finds that defendant was responsible for the hazardous condition of the visiting room floor.

{¶17} Defendant became aware of the hazardous condition when Steckle fell during morning visitation, several hours before plaintiff fell. According to Van Hoose, supervisors pressured her and the porters to hurry with the cleaning so that afternoon visitation could commence. Chairs and tables were hurriedly replaced. Plaintiff has proven by a preponderance of the evidence that defendant created the condition, had actual knowledge of the hazard and failed to remove it.

{¶18} Although defendant attempted to remove the residue from the floor soon after it was discovered, the hazard remained when the afternoon visitors were permitted into the room. As visitors

entered the room, one porter was told to remain and continue mopping the main aisles with a stripping substance and an orange all-purpose cleaner to "get some more of the residue up." (Defendant's Exhibit B, Part II, p. 2.)

{¶19} Therefore, the court finds that defendant failed to properly remove the hazard prior to permitting plaintiff to enter the visiting room.

{¶20} Defendant's duty to use reasonable care includes the duty to warn plaintiff of hazardous conditions known to defendant. *Jackson v. Kings Island* (1979), 58 Ohio St.2d 357, 359. The warning of the potentially dangerous condition must be adequate under the circumstances. *Felder v. Victory Fitness Center* (July 16, 1998), Franklin App. No. APE12-1648.

{¶21} The evidence shows that after mopping the area where Steckle fell, Evans blocked the aisle in front of the officer's desk, with at least one red "wet floor" cone, a short table and a mop bucket. Evans also placed a mop across the table to the top of the cone in order to further block the aisle. Evans further testified that he placed a total of four red "wet floor" cones and additional tables to totally block the aisle between the officer's desk and patio door. One porter remained in the room mopping near the restrooms. Plaintiff acknowledged seeing the warning cones and the porter mopping prior to her fall but described them as being away from where she fell.

{¶22} The court finds that defendant did not adequately warn plaintiff of the specific hazard created as a result of disinfectant being improperly applied to the visiting room floor. Cones and other devices calculated to give notice of a dangerous condition were located only in the aisle leading from the officer's

desk to the patio door. No "wet floor" cones were located at the entrance to the room; plaintiff was not verbally warned of the hazard prior to her visit. Neither the warning devices nor the porter mopping near the bathrooms gave adequate notice that there was a slippery residue on the floor. The residue from the disinfectant was undetected by plaintiff prior to her fall. Mopping had not eliminated the hazard as an "Elmer's Glue-like" residue stuck to plaintiff's pant leg and hand after her fall.

{¶23} Finally, defendant asserts that plaintiff was negligent by traveling through the barricaded aisle when she returned from the vending area.

{¶24} Plaintiff provided the only direct evidence as to her route to and from the vending machines. She testified that she exited the row of chairs toward the center aisle, then proceeded down the center aisle to the vending machines. When she returned, she retraced her route. Plaintiff denies exiting the row of chairs towards the patio and traversing the barricaded aisle to or from the vending area. Although Starks first testified that plaintiff walked through the restricted area in front of the desk, he admitted on cross-examination that he did not actually see her walk down the restricted aisle but assumed that it had been her path after seeing that she had fallen. Van Hoose did not see plaintiff walk through the restricted area, but she did see plaintiff just after her fall when she was sitting in a chair at the end of the row of chairs closest to the restricted aisle. Van Hoose testified that plaintiff's food was on top of a table that had been used to barricade the aisle. Defendant contends that the location of plaintiff and her food after the fall indicates that plaintiff ignored the warning and walked through the restricted area.

{¶25} The aisle in front of the desk was well blocked by a cone, table, mop bucket and, finally, a mop propped between the table and the cone. It would have been difficult for plaintiff to walk through such a barricade, especially on her return trip when her hands were full. The route plaintiff described was more direct. Therefore, the court finds that defendant has failed to prove by a preponderance of the evidence that plaintiff was negligent by traveling through the restricted area either going to or returning from the vending area.

{¶26} The court concludes that plaintiff has proved by a preponderance of the evidence that defendant was responsible for the residue on the visiting room floor and failed to properly remove it or adequately notify plaintiff of the particular hazard. Defendant's negligence is the sole proximate cause of plaintiff's fall in the visiting room. Consequently, judgment is recommended for plaintiff.

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STEVEN A. LARSON
Magistrate

Entry cc:

Richard F. Swope — Attorney for Plaintiff
6504 East Main Street
Reynoldsburg, Ohio 43068

Sally Ann Walters — Assistant Attorney General
65 East State St., 16th Fl.
Columbus, Ohio 43215

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