[Cite as *McGovern v. Univ. of Toledo*, 2002-Ohio-6952.]

IN THE COURT OF CLAIMS OF OHIO

JOANN MCGOVERN :
363 Skyline
Blissfield, Michigan 49228 : Case No. 2002-07487-AD

Plaintiff : MEMORANDUM DECISION

v. :

UNIVERSITY OF TOLEDO :

Defendant :

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

For Defendant: Mary E. Konicki
Risk Management
2801 West Bancroft Street
Toledo, Ohio 43606

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

{¶1} At approximately 8:00 p.m., on February 15, 2002, plaintiff, Joann McGovern, attended a basketball game held on the campus of defendant, University of Toledo. When the game was over, plaintiff walked through a parking lot located on defendant's premises to retrieve her automobile. As she walked across defendant's parking lot, plaintiff tripped over a cement parking block which had a metal bar protruding from it. Plaintiff noted she tripped over the anchoring spike protruding from the parking block she, "fell face first and my face hit the corner of the block." Plaintiff indicated she was injured and required medical attention as a result of falling against the cement block. Specifically, plaintiff asserted her face was lacerated and the little finger on her right hand was broken when she fell. Plaintiff explained she received nine stitches to close the laceration on her face and she had pins surgically placed in her

finger to mend the fracture.

{¶2} Consequently, plaintiff filed this complaint seeking to recover $2,232.00 in damages. Plaintiff has implied her damages include claims for medical expenses, work loss, transportation expenses, home care living expenses and paid and suffering associated with her injuries received on February 15, 2002. Plaintiff suggested defendant is liable for her unreimbursed damages as a proximate cause of maintaining a hidden dangerous condition on its premises. Plaintiff submitted the filing fee with the complaint.

{¶3} Defendant filed an investigation report acknowledging that plaintiff, "may state a claim against the University." Defendant asserted the parking lot area where plaintiff fell was adequately lighted. Additionally, defendant contended any metal anchoring spike protruding from a concrete parking block should have been readily noticeable by plaintiff. Defendant submitted photographic evidence of its parking lot where plaintiff's personal injury occurred. The photographs, taken during daylight hours, depict parking blocks, parked vehicles, pavement and light poles among other things. The photographs do not reflect an accurate representation of the parking lot's appearance at the time of plaintiff's injury event.

{¶4} Plaintiff was present on defendant's premises for such purposes which would classify her under the law as an invitee. *Scheibel v. Lipton* (1985), 156 Ohio St. 308, 102 N.E. 2d 453. Consequently, defendant was under a duty to exercise ordinary care for the safety of invitees such as plaintiff and to keep the premises in a reasonably safe condition for normal use. *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29. The duty to exercise ordinary care for the safety and protection of invitees such as plaintiff includes having the premises in a reasonably safe condition and warning of latent or concealed defects or perils which the possessor has or should have knowledge. *Durst v.*

VanGundy (1982), 8 Ohio App. 37 72; *Wells v. University Hospital* (1985), 86-01392-AD.

{¶5} An owner of a premises has no duty to warn or protect an invitee of a hazardous condition, where the condition is so obvious and apparent that the invitee should reasonably be expected to discover the danger and protect herself from it. *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49. *Blair v. Ohio Department of Rehabilitation and Correction* (1989), 61 Ohio Misc. 2d 649. This rationale is based on principles that an open and obvious danger is itself a warning and the premises owner may expect persons entering the premises to notice the danger and take precautions to protect themselves from such dangers. *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642.

{¶6} However, no evidence has been presented in the instant claim to show the protruding anchoring spike which caused plaintiff's fall was open and obvious. Without additional evidence, the court presumes the hazardous condition was hidden from plaintiff's view, but had existed for such a length of time that defendant should have known about it. Consequently, the court concludes plaintiff was injured by a latent defect defendant knew about and should have corrected. Therefore, defendant is liable to plaintiff in the amount of $2,232.00, plus the $25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

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

{¶8} IT IS ORDERED THAT:

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

{¶10} 2) Defendant (University of Toledo) pay plaintiff (Joann McGovern) $2,257.00 and such interest as is allowed by law;

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

DANIEL R. BORCHERT
Deputy Clerk

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