[Cite as *Conrad v. Miami Univ.*, 2003-Ohio-2170.]

IN THE COURT OF CLAIMS OF OHIO

KELLY J. CONRAD	:	Case No. 2002-10364-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
MIAMI UNIVERSITY	:	
Defendant	:	

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FINDINGS OF FACT

{¶1} Plaintiff, Kelly J. Conrad, asserted she suffered personal injury on September 27, 2002, when she slipped and fell in he basement hallway of Scott Hall, a student residence dormitory and dining facility located on the campus of defendant, Miami University. Specifically, plaintiff contended she injured her left elbow when she slipped on two inches of standing water on the basement hallway floor of Scott Hall. Plaintiff did not offer any explanation regarding how the standing water condition originated or why she was present in a basement hallway of a residence hall. Plaintiff related she was a resident of Scott Hall on September 27, 2002. Plaintiff did file this complaint seeking to recover $425.10 for medical expenses related to her elbow injury, plus $30.90 for work loss. Plaintiff submitted the filing fee with the complaint. Plaintiff acknowledged she carries health insurance with a $200.00 deductible provision. Plaintiff did not submit any bills for medical treatment related to the September 27, 2002 incident. Plaintiff did not present any investigative reports or witness statements regarding her personal injury event.

{¶2} Defendant denied any liability in this matter. Defendant

has asserted plaintiff has failed to establish any evidence supporting her claim. Additionally, defendant has contended plaintiff's damage claim is subject to the collateral source limitations imposed by R.C. 3345.40(B)(2).[1]

{¶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. As the landlord of its dormitory, defendant has "a duty to take those steps which are within [its] power to minimize the predictable risk to [its] tenants." *Doe v. Flair Corp.* (1998), 129 Ohio App. 3d 739, 751, quoting, *Kline v. 1500 Massachusetts Avenue Apartment Corp*. (C.A., D.C. 1970), 439 F. 2d 477. The court will presume plaintiff was present on defendant's premises for such purposes which would classify her under the law as an invitee. *Scheibel v. Lipton* (1951), 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. 3d 72; *Wells v. University Hospital* (1985), 86-01392-AD. As a result of plaintiff's status, defendant was also under a duty to exercise ordinary care in providing for plaintiff's safety and warning her

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[1] R.C. 3345.40(B)(2) states, in pertinent part:

"If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of benefits shall be deducted from any award against the state university or college recovered by the plaintiff.

of any condition on the premises known by defendant to be potentially dangerous. *Crabtree v. Shultz* (1977), 57 Ohio App. 2d 33.

{¶4} However, 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. In the instant claim, plaintiff has failed to present any evidence to prove the condition in the basement hallway of defendant's residence facility was anything but open and obvious. Furthermore, plaintiff has failed to establish the condition was particularly hazardous. Finally, plaintiff has failed to present sufficient evidence to prove her damage claim. Consequently, plaintiff's claim is denied.

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

{¶6} IT IS ORDERED THAT:

{¶7} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶8} 2) The court shall absorb the court costs of this case in excess of the filing fee.

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DANIEL R. BORCHERT
Deputy Clerk

Order cc:

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RDK/laa
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