

[Cite as *Whiteside v. Ohio Dept. of Rehab. & Corr.*, 2003-Ohio-2985.]

IN THE COURT OF CLAIMS OF OHIO

MARY C. WHITESIDE :
Plaintiff :
v. : CASE NO. 2001-03011-AD
DEPARTMENT OF REHABILITATION : MEMORANDUM DECISION
AND CORRECTION :
Defendant :
: : : : : : : : : : : : : : : :

{¶1} On March 6, 1999, plaintiff Mary C. Whiteside, went to defendant's Orient Correction Institution to visit her son, Norman Whiteside. Plaintiff has alleged that, while she was walking in the visiting area of defendant's institution, she slipped and fell upon the floor injuring her back and hip. Plaintiff related her slip and fall was caused by an indiscernible slippery wet substance on the visiting room floor. According to plaintiff, there were no warning signs posted to warn visitors of the wet floor. Plaintiff asserted the injuries she received when she slipped and fell caused her to miss several weeks of work. Consequently, plaintiff originally filed this complaint seeking to recover \$6,150.00 for lost wages and lost contributions to her ministry. Plaintiff contended her injuries and resulting damages were proximately caused by negligence on the part of defendant in depositing a slippery wet substance on the visiting room floor and not providing adequate warning of the dangerous condition.

{¶2} On May 6, 2002, this case came for trial. Before proceedings commenced, the court and parties discussed options available to the plaintiff for continuing the trial and

transferring her claim to the administrative determination docket.

Trial proceedings were continued and plaintiff subsequently filed a "motion for leave to amend prayer for damages and to have matter transferred to administrative docket per agreement of all parties."

The court granted plaintiff's motion, her damage claim was amended to \$2,500.00, and her claim was transferred to the administrative determination section of this court.

{¶3} On November 19, 2002, plaintiff filed a document captioned, "motion to use transcript for determination of agreement between parties." In this motion plaintiff requested the court review the transcript of the May 6, 2002 court appearance where plaintiff asked for a continuance of her trial and discussed amending her damage claim in conjunction with transferring the claim to the administrative determination docket. Plaintiff asserted the discussions at the May 6, 2002 court appearance, included an offer by defendant to settle or compromise her claim for \$2,500.00. Before any ruling was made on plaintiff's November 19, 2002 motion, defendant filed an investigation report denying any liability for any injury plaintiff may have suffered from the March 6, 1999 slip and fall incident.

{¶4} On April 11, 2003, the court issued a ruling on plaintiff's November 19, 2002 motion. The court granted plaintiff's "motion to use transcript for determination of agreement between parties." Based on the contents of plaintiff's November 19, 2002 motion, the court granted plaintiff's request to review a transcript of a May 6, 2002 open court discussion. Plaintiff has not submitted a transcript of the May 6, 2002 discussions.

{¶5} Assuming a transcript of the May 6, 2002 court appearance becomes available the court determines any discussion involving an offer of settlement is inadmissible and will consequently not be reviewed for the purposes plaintiff intended. Evidence of a

settlement offer is violative of Rule 408 of the Rules of Evidence.¹ Despite the fact R.C. 2743.10(C) specifically states the "rules of evidence shall not be applicable in the determination," at the administrative determination level, the court chooses to follow the intent of Rule 408 based on defendant's subsequent denial of liability and defenses offered. Therefore, any prior discussions of settlement or compromise will not be considered.

{¶6} Defendant denied any negligent act or omission on its part caused plaintiff's fall and resulting injury. Defendant acknowledged plaintiff slipped and fell on a wet floor located at the visiting area of the Orient Correctional Institution. However, defendant asserted the condition of the floor was clearly marked by a "wet floor" cone placed on or near the wet floor area. Defendant maintained plaintiff was adequately warned by markings of the dangers the floor presented. Defendant contended plaintiff received adequate warning of the condition of the visiting room floor and therefore no duty owed to plaintiff was breached.

{¶7} Furthermore, defendant has disputed plaintiff's injury and damage claim. Within minutes after she fell, plaintiff was examined and offered treatment by defendant's medical personnel. According to a medical report compiled at the time of examination, plaintiff stated she struck her right hip and hand upon the floor when she fell. It was reported plaintiff complained of pain and

¹ RULE 408. Compromise and Offers to Compromise

"Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution."

tenderness in her right hand across the knuckles when opening and closing her hand. No deformitory or swelling was noted in plaintiff's hand. Plaintiff related she was not experiencing any pain in her hip at the time she was examined. Plaintiff did not supply any evidence of subsequent treatment. Also, plaintiff did not produce any evidence to establish the nature and extent of her professed hip and back injury. Although, plaintiff claimed work loss due to her injury no evidence was submitted to corroborate this claim.

{¶8} Plaintiff insisted defendant did not post any "wet floor" signs or other warning devices to notify her about the condition of the visiting area floor. Plaintiff did not produce any witness statements regarding this warning sign issue. Plaintiff reasserted she was injured as a proximate cause of a negligent omission on the part of defendant.

{¶9} 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.

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

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

{¶12} "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

{¶13} "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.

{¶14} In the instant claim plaintiff has failed to show defendant did not provide adequate warning of the wet floor. Evidence regarding the placement of warning signs is in dispute. However, plaintiff bears the burden of proof on this issue. Plaintiff has failed to meet her burden. Consequently, plaintiff's claim is denied since plaintiff has failed to prove defendant breached a duty of care owed to her which resulted in the damage claimed.

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

{¶16} IT IS ORDERED THAT:

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

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

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Mary C. Whiteside
5370 Heckin Court

Plaintiff, Pro se

Columbus, Ohio 43229

Gregory C. Trout, For Defendant
Chief Counsel
Ohio Department of Rehabilitation
and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

RDK/tad
5/1
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