

[Cite as *Kovacs v. Univ. of Akron*, 2003-Ohio-3727.]

IN THE COURT OF CLAIMS OF OHIO

MARILYN KOVACS :
Plaintiff :
v. : CASE NO. 2003-02322-AD
THE UNIVERSITY OF AKRON : MEMORANDUM DECISION
Defendant :

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{¶1} On November 24, 2002, plaintiff, Marilyn Kovacs, attended a musical production held at the E.J. Thomas Performing Arts Hall located on the campus of defendant, University of Akron. When plaintiff arrived for the production she initially took a seat in the upper level of defendant's Performing Arts Hall. At a scheduled intermission plaintiff decided to watch the remainder of the performance in a seat located on the lower level of defendant's building. To proceed from the building's upper level to lower level plaintiff chose to use the staircase access in lieu of an elevator. The staircase plaintiff descended was carpeted with a handrail fastened to an abutting wall. As plaintiff was walking down the staircase steps, an unidentified woman walking behind lost her balance and fell forward onto plaintiff. Plaintiff stated she was pushed by the woman who had lost her balance. This pushing contact caused plaintiff to hit her head on an abutting cement wall and fall down the remaining steps on the staircase interval. Plaintiff related she ended up on a landing at the bottom of the staircase interval with her right leg contorted under her body. Plaintiff further related she realized she had lost consciousness at sometime when she fell and complained of severe head pain after regaining consciousness. After resting for about ten minutes, plaintiff was able to get up and walk down the remaining stairs to the

lower level of defendant's building. Subsequently, plaintiff decided to be examined for injury at a nearby medical facility. Plaintiff was transported to Akron General Medical Center where she received treatment for a head injury.

{¶2} Plaintiff has implied defendant, University is liable for the injuries she received when she was pushed down a flight of steps by an unidentified third person. Although this unidentified third person presumably tripped and fell while descending a staircase on defendant's premises, no evidence has been submitted to show the steps on the staircase were defective. Additionally no evidence has been submitted to establish any defective condition on defendant's premises caused the unidentified woman to fall which in turn resulted in plaintiff being pushed down a staircase thereby suffering personal injury. The trier of fact has not been provided with any evidence to indicate plaintiff's injuries were proximately caused by the maintenance of a defective condition. Nevertheless, plaintiff filed this complaint seeking to recover reimbursement for medical expenses,¹ work loss, and filing fees. Plaintiff has not offered any allegations of negligence on the part of defendant or its personnel.

{¶3} Liability for negligence is predicated upon injury caused by the failure to discharge a duty owed to the injured party. *Moncol v. Bd. of Education* (1978), 55 Ohio St. 2d 72. Therefore, to prevail in an action founded upon negligence, plaintiff must demonstrate:

{¶4} 1) that the defendant had a duty, recognized by law, requiring conformance of conduct to a certain standard for the protection of plaintiff;

{¶5} 2) that the defendant failed to conform its conduct to that standard; and

{¶6} 3) that the defendant's conduct proximately caused the plaintiff to sustain actual loss or damage.

{¶7} Plaintiff, in the instant claim, failed to produce any evidence to show her injuries were caused by any breach of a duty of care owed by defendant for her protection. Plaintiff did not offer any set of facts establishing any act or omission on the part of

¹ Recoveries for medical expenses are subject to the statutory limits promulgated in R.C. 2743.02(D) and R.C. 3345.40(B)(2).

defendant proximately caused her injuries. Plaintiff did not submit any legal theory to support her position defendant should bear liability for the negligent acts of a third party. In fact all evidence points to the fact the sole cause of plaintiff's injury and resulting damage was the negligent act of an unidentified third party.

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

{¶9} However, in order to recover from a premises owner for personal injuries sustained on the premises, an invitee must allege and prove that the fall was proximately caused by some unreasonably dangerous condition present. *Baldauf v. Kent State University* (1988), 49 Ohio App. 3d 46. In the instant claim plaintiff has failed to prove her fall and resulting injuries were caused by any condition of defendant's premises let alone an unreasonably dangerous condition. Consequently, any claim plaintiff has asserted against the named defendant is denied.

{¶10} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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