**[Cite as *Lee v. Univ. of Akron,* 2003-Ohio-3897.]**

IN THE COURT OF CLAIMS OF OHIO

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|---|---|---|
| JUDITH L. LEE | : | |
| Plaintiff | : | |
| v. | : | CASE NO. 2003-03132-AD |
| UNIVERSITY OF AKRON | : | MEMORANDUM DECISION |
| Defendant | : | |

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

**{¶1}** On or about February 20, 2003, plaintiff, Judith L. Lee, was walking from an automobile parking deck located on the campus of defendant, University of Akron, when she slipped on an icy sidewalk step and fell. Plaintiff complained of pain in her right wrist and shoulder area as a result of the slip and fall. Plaintiff sought medical treatment for her condition which may have involved an occult injury to her right arm. Plaintiff received treatment for her injury symptoms and was released from care. Subsequently, plaintiff filed this complaint seeking to recover $1,500.00 for "physical damage to wrist and shoulder." Plaintiff seeks additional recovery for damage to a video camera and video tape she was carrying at the time of her slip and fall incident. Plaintiff acknowledged she has insurance coverage for medical care. Plaintiff contended her physical injury and property damages were proximately caused by negligence on the part of defendant in maintaining a defective condition on its premises (icy steps and sidewalk).

**{¶2}** Defendant denied any liability in this matter. Defendant argued it had no duty to protect plaintiff from the obvious hazards associated with natural accumulations of ice and snow.

**{¶3}** On June 13, 2003, plaintiff submitted a response to defendant's investigation

report. Plaintiff insisted defendant should bear liability for all damages claimed. Plaintiff implied defendant owed her a duty to keep its walkways free of snow and ice.

**{¶4}** Plaintiff, as a student, was an invitee on defendant's premises. The duty owed to an invitee is to exercise ordinary or reasonable care for her safety and protection, and this includes having the premises in a reasonably safe condition and warning her 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}** Although the owner owes this duty of ordinary care, "the liability of an owner or occupant to an invitee for negligence in failing to render the premises reasonably safe for the invitee, or in failing to warn him of dangers thereon, must be predicated upon a superior knowledge concerning the dangers of the premises to persons going thereon." 38 American Jurisprudence, 757, Negligence, Section 97, as cited in *Debie v. Cochran Pharmacy- Berwick, Inc.* (1967), 11 Ohio St. 2d 38, 40.

**{¶6}** "The knowledge of the condition removes the sting of unreasonableness from any danger that lies in it, and obviousness may be relied on to supply knowledge. Hence the obvious character of the condition is incompatible with negligence in maintaining it. If plaintiff happens to be hurt by the condition, he is barred from recovery by lack of defendant's negligence towards him, no matter how careful plaintiff himself may have been." 2 Harper and James, Law of Torts (1956), 1491, as cited in *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, 48. In short, if the condition or circumstances are such that the invitee has knowledge of the condition in advance, there is no negligence. *Debie*, supra.

**{¶7}** "In a climate where the winter brings frequently recurring storms of snow and rain and sudden and extreme changes in temperature, these dangerous conditions appear with a frequency and suddenness which defy prevention and, usually, correction. Ordinarily, they disappear before correction would be practicable. . . To hold that a liability results from these actions of the elements would be the affirmance of a duty which it would often be impossible, and ordinarily impracticable . . . to perform." *Norwalk v. Tuttle* (1906), 73 Ohio St. 242, 245 as quoted in *Sidle*, supra. Therefore, the danger from ice and snow

is an obvious danger and an occupier of the premises should expect that an invitee will discover and realize that danger and protect herself against it. *Sidle*, supra; *Debie*, supra.

**{¶8}** Plaintiff should have realized the steps would have been slippery from a natural accumulation of falling snow and climatic conditions. Consequently, there is no actionable negligence upon which she can recover.

**{¶9}** 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.

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DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa
7/3
Filed 7/11/03
Sent to S.C. reporter 7/22/03