

evidence or stipulation construed most strongly in the party's favor. ***" See, also, *Williams v. First United Church of Christ* (1974), 37 Ohio St.2d 150; *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} In plaintiffs' complaint, plaintiffs John Cooper and his mother Tina Cooper allege that John Cooper burned the bottom of his foot when he stepped on a hot coal on the beach at Delaware State Park. According to paragraph 12 of the complaint, John Cooper was visiting the park with his aunt and cousin at the time that he sustained the injury.

{¶5} The basis for defendant's motion for summary judgment is that defendant is immune from liability to plaintiff, as a matter of law, under the Ohio Recreational User law. The court agrees.

{¶6} Under R.C. 1533.181, "[w]here a park is held open to the public, without fee, for recreational purposes, the recreational user's statute will provide immunity." *Reed v. Miamisburg* (1993), 96 Ohio App.3d 268, 270.

{¶7} R.C. 1533.18 defines the term "recreational user" as follows:

{¶8} "(B) 'Recreational user' means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency thereof, to enter upon premises to hunt, fish, trap, camp, hike, swim, or engage in other recreational pursuits."

{¶9} In *Reed*, supra, plaintiff was enjoying a family reunion at Mound Park when the incident occurred. The family had rented and paid for a shelter house at the park in order to assure the availability of the shelter, but plaintiff was not required to pay a fee in order to utilize the public services of the park. The Second District Court of Appeals held that the trial court

appropriately applied the recreational user statute in determining that the park owed no duty to plaintiff as a matter of law. Id.

{¶10} Similarly, as here, plaintiffs do not even allege that they were required to pay a fee to enter the park or utilize the beach. Additionally, in support of the motion for summary judgment, defendant submitted the affidavit of William Edens, a park officer at Delaware State Park who averred that no fees are charged to visitors of the park for admission or for parking.

{¶11} The Tenth District Court of Appeals has stated:

{¶12} "The moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of fact on a material element of one or more of the nonmoving party's claims for relief. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. If the moving party satisfies this initial burden by presenting or identifying appropriate Civ.R. 56(C) evidence, the nonmoving party must then present similarly appropriate evidence to rebut the motion with a showing that a genuine issue of material fact must be preserved for trial. *Norris v. Ohio Standard Oil Co.* (1982), 70 Ohio St.2d 1, 2.

The nonmoving party does not need to try the case at this juncture, but its burden is to produce more than a scintilla of evidence in support of its claims. *McBroom v. Columbia Gas of Ohio, Inc.* (June 28, 2001), Franklin App. No. 00Ap-1110." *Nu-Trend Homes, Inc. et al. v. Law Offices of DeLibera, Lyons & Bibbo et al.*, Franklin App. No. 01AP-1137, 2003-Ohio-1633.

{¶13} As stated above, plaintiffs did not respond to defendant's motion for summary judgment. In light of the standard of review, the court finds that the only reasonable conclusion to be drawn from the undisputed evidence set forth above is that plaintiff, John Cooper, was a recreational user at the time of his

injury and that defendant is protected from liability under R.C. 1533.181, the recreational user statute. Consequently, there are no genuine issues of material fact for trial and defendant is entitled to judgment as a matter of law.

{¶14} Defendant's motion for summary judgment shall be GRANTED.

{¶15} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JUDGE

Entry cc:

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