

[Cite as *Koenig v. Bowling Green State Univ.*, 2003-Ohio-6603.]

IN THE COURT OF CLAIMS OF OHIO

NICOLE KOENIG :

Plaintiff :

v. :

CASE NO. 2002-09919-AD

BOWLING GREEN STATE UNIVERSITY :

MEMORANDUM DECISION

Defendant :

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{¶1} On November 3, 2001, plaintiff, Nicole Koenig, suffered personal injury while performing marching band activities at the stadium of defendant, Bowling Green State University. Specifically, plaintiff sprained her right ankle as she stepped into a sewer drain hole located at the northwest corner of the football field of defendant’s stadium. Plaintiff stated she was marching with the marching band, was looking forward, and did not observe the sewer drain hole. Plaintiff further stated she “fell into the hole” and consequently suffered torn ligaments in her right ankle. Plaintiff did not offer any addition description of the condition which caused her trip and fall. Plaintiff did not submit any demonstrative evidence depicting the sewer drain hole at defendant’s stadium.

{¶2} Plaintiff sought and received medical treatment after injuring her ankle. Plaintiff has contended defendant is liable for her ankle injury. She has implied her injury was proximately caused by defendant’s negligence in maintaining a hazardous condition on the stadium field. Plaintiff has consequently filed this complaint seeking to recover \$608.79. The filing fee was submitted with the complaint.

{¶3} Defendant denied any liability in this matter. Defendant asserted plaintiff has

failed to prove her injury was proximately caused by the maintenance of a known dangerous condition. Defendant argued plaintiff did not produce any evidence to establish any negligence on the part of Bowling Green State University.

{¶4} In order to prevail upon her claim of negligence, plaintiff 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), 7 Ohio St. 2d 282, 285.

{¶5} There is no dispute that plaintiff was on university property as an invitee. *Baldauf v. Kent State University* (1988), 49 Ohio App. 3d 46. Therefore, defendant owed plaintiff the common law duty of reasonable care. *S.S. Kresge Co. v. Fader* (1927), 116 Ohio St. 718. Reasonable care is that which would be utilized by an ordinary prudent person under similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St. 2d 310.

{¶6} In order to recover from the occupier of a premises for personal injuries claimed to have been caused by the condition of those premises, an invitee must allege and prove that the fall was proximately caused by some unreasonably dangerous condition on the premises. *Baldauf*, supra.

{¶7} “[Governmental entities] [a]nd owners or occupiers of private premises are not insurers of the safety of pedestrians traversing those premises, and minor or trivial imperfections therein, which are not unreasonably dangerous and which are commonly encountered and to be expected, as a matter of law do not create liability on the part of such owners or occupiers toward a pedestrian who, on account of such minor imperfection, falls and is injured.” *Helms v. American Legion, Inc.* (1966), 5 Ohio St. 2d 60, syllabus. See, also *Kimball v. City of Cincinnati* (1953), 160 Ohio St. 370.

{¶8} The trier of fact must consider all of the attendant circumstances in making its determination of whether the defect is substantial enough to support a finding of liability. *Cash v. Cincinnati* (1981), 66 Ohio St. 2d 319. 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 defendant proximately caused her injuries. Plaintiff failed to prove her fall and resulting injuries were caused by any hidden defect or unreasonably dangerous condition.

{¶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:

Nicole Koenig  
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Plaintiff, Pro se

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For Defendant

RDK/laa  
10/29  
Filed 11/13/03  
Sent to S.C. reporter 12/9/03