[Cite as *Holliman v. Columbus State Community College*, 2004-Ohio-1921.]

IN THE COURT OF CLAIMS OF OHIO

KIMBERLY HOLLIMAN	:	
Plaintiff	:	CASE NO. 2003-05470 Lewis F. Pettigrew, Magistrate
v.	:	MAGISTRATE DECISION
COLUMBUS STATE COMMUNITY COLLEGE	:	
Defendant	:	

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{¶1} Plaintiff brought this action against defendant alleging negligence. The issues of liability and damages were bifurcated and the case was tried to a magistrate of the court on the issue of liability.

{¶2} On March 31, 2003, at approximately 2:00 p.m., plaintiff fell at the entrance to Madison Hall located at Columbus State Community College, defendant herein. At the time of her fall, plaintiff was a student at defendant's college of nursing. Plaintiff was wearing tennis shoes, was carrying some books and her purse, and was en route to Madison Hall to make some changes to her class schedule. It was a windy but dry day. When plaintiff approached the entrance way, the automatic doors opened. Plaintiff testified that she did not look down but as she began to step through the doorway, she tripped and fell forward. When plaintiff looked back, she noticed that the rug just inside the doors was partially turned over. Plaintiff sustained minor scrapes and bruises as a result of her fall.

{¶3} Plaintiff reported her fall to Diane James, an employee in defendant's enrollment department who was seated at a desk just around the corner from the area where plaintiff had fallen. James did not see plaintiff fall and, at trial, she did not recognize

plaintiff. According to plaintiff, James told her that she was the third person to fall that day and that James had reported the two prior incidents.

{¶4} Plaintiff's sister took her to a hospital emergency room for an examination and treatment. Plaintiff later returned to the college and asked James to write down what had been told to her about prior falls. At trial, plaintiff showed James a small "Post-it" sized handwritten note that read: "2 people tripped previously." Although the name "Diane James" appears at the bottom of the note, it is not in signature form. At trial, James testified that she remembered someone asking for her name, but she did not remember writing a note or making the statement attributed to her in the note. When asked if the note was in her own handwriting James answered that she was not sure.

{¶5} The parties have agreed that plaintiff was an invitee when she entered the college for the purpose of changing her class schedule. "A 'business invitee' is one who is upon the premises of another, by invitation, express or implied, for some purpose that is beneficial to the owner." *Sweet v. Clare-Mar Camp, Inc.* (1987), 38 Ohio App.3d 6. The owner of the premises must exercise reasonable or ordinary care for the invitee's safety and protection. Included is the duty to maintain the premises in a reasonably safe condition and to warn the invitee of latent or concealed defects of which the possessor has or should have knowledge. *Scheibel v. Lipton* (1951), 156 Ohio St. 308. However, the owner is not an insurer against all forms of risk. *S.S. Kresge v. Fader* (1927), 116 Ohio St. 718. The Supreme Court of Ohio in *Helms v. American Legion, Inc.* (1966), 5 Ohio St.2d 60, refused to impose liability where the alleged defect was minor, normally encountered and not unreasonably dangerous. See *Baldauf v. Kent State Univ.* (1988), 49 Ohio App.3d 46. Whether defendant has breached a duty to plaintiff is generally a question of fact.

{¶6} In this case, there was insufficient evidence presented to establish the existence of a defect in the rug. Plaintiff admitted that she did not notice the condition of the rug prior to her fall, and that she noticed the edge of the rug was turned over only after she had fallen. It is a matter of common knowledge that a rug or mat can be partially

overturned as a result of one's foot catching an edge. Indeed, on cross-examination, plaintiff testified that she did not know whether the rug had been turned over before she fell or whether the rug simply was turned over as a result of her tripping and falling.

{¶7} Additionally, testimony from defendant's building maintenance staff convinces the court that even if the rug had been partially overturned prior to plaintiff's fall, such a condition could not have existed for more than a short time prior to plaintiff's fall.

{¶8} Lowell Syrus, defendant's supervisor of building services for more than 17 years testified at trial. Syrus' duties included overseeing a staff of employees responsible for cleaning and general maintenance of the grounds, including Madison Hall. He testified that the rug in question was one of many supplied to defendant by the "Spirit Company," (Spirit) an independent contractor, that he and his staff continually inspected the condition of Madison Hall, and his staff was instructed either to remove damaged or defective rugs immediately or to have Spirit deliver a new one. Syrus described the rugs as being heavy rubber and carpet mats, measuring 10 feet by 6 feet. Syrus stated that the rugs in Madison Hall were blue and gray and that they were very easy to see when placed on the tile floor in the entrance way. In all the years that Syrus had worked for defendant he could not recall a single day where three people had tripped and fallen at Madison Hall.

{¶9} One of Syrus' staff, Michael Yuille, testified quite credibly that when he arrived at the scene of plaintiff's fall he saw nothing wrong with the rug; that it was just a bit off center. Although Yuille did not see any problem with the rug in question, he placed a small yellow sign on the rug reading "wet floor." Yuille stated that he did so "just in case." Yuille testified that he constantly patrolled Madison Hall looking for safety issues, including spills and problems with furniture or rugs. He was certain that the only call he received about a rug on March 31, 2003, was the call involving plaintiff.

{¶10}Given the credible and persuasive testimony outlined above, the court is convinced that defendant satisfied its duty to keep the premises in a reasonably safe condition.

{¶11}With regard to plaintiff's claim that the persons at the college had noticed that two other people had fallen over the same rug prior to her fall, the court notes that plaintiff's claim is supported only by her own testimony that James made the statement to her about the two prior falls and the unsigned handwritten note that does not mention anything about a rug. Moreover, even if James had made the statement and penned the note, whether others had fallen does not require the inference of a defect in the rug. This is particularly true where there is no evidence that anything was wrong with the rug. There is no evidence that the rug was worn or tattered, that there were any protruding edges, or that there was any moisture present.

{¶12}In short, under these circumstances, plaintiff has failed to prove that her fall was caused by a defective condition upon defendant's premises. Consequently, she cannot prevail upon her claim of negligence. Judgment is recommended in favor of defendant.

{¶13}*A party may file written objections to the magistrate's decision within 14 days of the filing of the decision. A party shall not assign as error on appeal the court's adoption of any finding or conclusion of law contained in the magistrate's decision unless the party timely and specifically objects to that finding or conclusion as required by Civ.R. 53(E)(3).*

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LEWIS F. PETTIGREW
Magistrate

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LP/cmd
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