[Cite as *Schetter v. Miami Univ.*, 2004-Ohio-3274.]

IN THE COURT OF CLAIMS OF OHIO

LINDA MARIE SCHETTER	:	
Plaintiff	:	
v.	:	CASE NO. 2003-11151-AD
MIAMI UNIVERSITY	:	MEMORANDUM DECISION
Defendant	:	

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

{¶1} On April 6, 2003, at approximately 8:30 a.m., plaintiff, Linda M. Schetter, arrived on the campus of defendant, Miami University, to watch her daughter participate in a volleyball tournament held in a gymnasium and administrative facility identified as Withrow Court. When plaintiff went to the Withrow Court building she was directed to proceed to the balcony area which required walking up several steps. After entering the balcony area, plaintiff stopped and noticed the area was not well illuminated. Plaintiff described the lighting in the balcony area as "very poor." However, plaintiff seemingly moved about the area without any difficulty as she conversed with the mothers of other volleyball participants. At sometime, plaintiff pointed out she moved to a part of the balcony area where her daughter and her daughter's teammates were mingling. Plaintiff related, "[a]s I stepped forward, I did not know there was a step down." Apparently, plaintiff tripped over a concrete step breaking her right foot. Plaintiff stated the step she tripped over, "was dark concrete and unmarked by any signs or caution tape." Furthermore, plaintiff asserted the light above the particular site where she tripped was not working and apparently burned out. Plaintiff emphasized the fact that the parts of defendant's facility she walked in to reach the balcony were well lit, while the balcony area

itself was poorly illuminated.

{¶2} Within minutes after tripping over the concrete step plaintiff was driven to McCauley-Hyde Memorial Hospital for medical treatment. Plaintiff was placed in a leg cast and given crutches at the hospital. She stated she then returned to the Withrow Court building and went to the office area to file a report concerning her personal injury incident. Plaintiff considered the specific balcony area where she fell to be dangerous, particularly due to insufficient lighting. Plaintiff submitted photographs of the step she tripped over. The photographic evidence does not depict the step area as a generally dangerous condition, but according to plaintiff, the photographs cannot depict the danger created by the lack of proper lighting and, consequently, the inability to discern the step.

{¶3} Plaintiff filed this complaint contending her broken foot was the proximate result of negligence on the part of defendant, university, in maintaining a dangerous condition on its premises. Plaintiff seeks damages in the amount of $2,500.00, the maximum available for recovery under R.C. 2743.10. Plaintiff professed her damages included clothing, medical supplies, work loss, lost income opportunities, and the filing fee. Damages specifically asserted total $585.00 while unspecified damages amount to $1,915.00. Plaintiff mentioned items such as, "[i]nterest for payments made on home equity," general medical care, and doctor visits. Plaintiff submitted copies of medical bills and cancelled checks reflecting payments to medical providers. Plaintiff produced payment evidence of $395.41 to medical providers and $149.00 to a chiropractor. Plaintiff submitted the filing fee with the complaint.

{¶4} Plaintiff submitted a written statement from Sandra L. Williams, a witness to the April 6, 2003, personal injury incident. Sandra L. Williams noted the approaches to the actual balcony of

defendant's facility were "well lit," but the balcony itself was "poorly lit." Williams detailed her observations of the injury event by noting: "Linda Schetter was walking in front of my two daughters and myself and we were all carrying arm loads of equipment. Walking single file we were following the lowest level flooring along the front of the balcony, or so we thought. We did not realize that the floor dropped down a step, it was dark in that area (the floor) and there were no signs or markings on the floor to indicate there were [sic] a drop. As I was immediately following Linda, I saw her land awkwardly, as her foot stride was not expecting a drop down."

{¶5} Plaintiff filed a second written statement from another witness, identified as Sandy McKirahan. McKirahan related it was difficult to locate particular individuals in the balcony area of defendant's facility due to the fact, "the lighting wasn't real good." McKirahan further related she had also walked over the area where plaintiff tripped. McKirahan noted, "[w]hen I took a step I fell a little because there was a step there that I wasn't awhere [sic] of." McKirahan mentioned there were no signs posted to indicate the presence of a step. Furthermore, McKirahan stated she was told several girls from the volleyball team had previously stumbled over the step at the bottom of the balcony. According to McKirahan, shortly after she was seated in the balcony she saw plaintiff stumble while walking.

{¶6} Defendant denied any liability in this matter. Defendant explained the balcony area of the Withrow Court facility, "is an open seating area, constructed of stepped concrete with wooden bleachers installed." Defendant further explained, "Caution Watch Your Step" signs are installed at each entrance to the Withrow Court balcony area. From evidence presented, it appears that plaintiff's injury occurred at the bottom level of the Withrow

Court balcony, a site where plaintiff and witnesses insisted no warning signs were posted. Defendant denied plaintiff filed any report of the April 6, 2003, personal injury incident with Miami University Police. Consequently, defendant has no record of the event. Defendant denied plaintiff's trip and resulting foot injury were caused by any unsafe condition maintained on the premises of the Withrow Court facility. Defendant denied the balcony area, particularly the site where plaintiff tripped, was inadequately illuminated. Defendant related the balcony is "lighted by several large light fixtures with diffusers hanging approximately 25 feet above the seating area." Furthermore, according to defendant, "[w]hen one light is inoperative, the others provide sufficient light to provide normal safe use of the space." In addition, when addressing the lighting issue, defendant contended that, "even when no lights are operating there is sufficient ambient natural light from the hallway, through the tunnels, to make the 'Caution Watch Your Step' signs clearly visible." Although defendant asserted warning signs are still visible with no lights on in the balcony area, defendant did not indicate whether or not the concrete balcony steps are visible in the absence of lighting. Nevertheless, defendant has argued it did not maintain or fail to warn individuals of a dangerous condition on the Withrow Court premises.

{¶7} Assuming there is a determination of liability in this matter, defendant has disputed plaintiff's damage claim as excessive and unsupported. Specifically, defendant disputes plaintiff's claims for the cost of a cane and blue jeans as well as claims for work loss, "interest payments made on home equity," and future chiropractic care. Defendant argued plaintiff failed to introduce sufficient evidence to establish her entitlement to recover those distinct damages and the fact she actually suffered the expense claimed.

{¶8} Converse to defendant's position, plaintiff filed a response to the investigation report expressing disagreement on several issues of fact. Plaintiff again asserted that no caution signs were posted anywhere in the balcony area until after her injury, treatment, and return to Withrow Court. Plaintiff professed she did contact defendant's personnel about her injury; initially upon returning from the hospital when she

informed someone about the lack of caution signs and later through E-mail. Also, contrary to defendant's assertions, plaintiff reasserted there was insufficient lighting in the balcony for pedestrians, such as herself, to detect the presence of steps. Plaintiff insisted the balcony was dark and conditions were perceived as darker by the fact the tunnel leading to the balcony entrance was well lit. Consequently, under plaintiff's perception, the contrast in moving from a well lit area to a lesser lighted area, enhanced the darker aspects of the balcony and created a hazardous condition with the balcony steps.

{¶9} Regarding the damage issue, plaintiff stressed she should be permitted to recover the maximum damage amount allowable under R.C. 2743.10. In particular regard to disputed damages, plaintiff explained her blue jeans had to be destroyed in order to wear the clothing over a boot cast. Plaintiff maintained she was prevented from performing certain work because of her injury and did indeed suffer loss of employment. Additionally, plaintiff related she obtained a loan to pay her medical bills and therefore, believes she has the right to recover loan interest payments that have some relation to her April 6, 2003 injury.

{¶10} Plaintiff's cause of action is grounded in negligence. In order to prevail on a negligence action, plaintiff must establish: (1) a duty on the part of defendant to protect her from injury; (2) a breach of that duty; and (3) injury proximately resulting from the breach. *Huston v. Konieczny* (1990), 52 Ohio St. 3d 214, 217; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140; *Thomas v. Parma* (1993), 88 Ohio App. 3d 523, 527; *Parsons v. Lawton Co.* (1989), 57 Ohio App. 3d 49, 50.

{¶11} Based on plaintiff's status as an invitee on defendant's premises, defendant university owed her a duty to exercise reasonable care in keeping the premises in a safe condition and warning plaintiff of any latent or concealed dangers which defendant had knowledge. *Perry v. Eastgreen Realty Company* (1978), 53 Ohio St. 2d 51, 52-53; *Presley v. Norwood* (1973), 36 Ohio St. 2d 29, 31; *Sweet v. Clare-Mar Corp., Inc.* (1987), 38 Ohio App. 3d 6. However, a property owner is under no duty to protect a business invitee from hazards which are so obvious and apparent that the invitee is reasonably expected to discover and protect against them herself. *Sidle v. Humphrey*

(1968), 13 Ohio St. 2d 45, paragraph one of the syllabus; *Paschal v. Rite Aid Pharmacy* (1985), 18 Ohio St. 3d 203, 203-204; *Brinkman v. Ross* (1993), 68 Ohio St. 3d 82, 84.

{¶12} An unreasonably dangerous condition does not exist in situations where persons who are likely to encounter a condition may be expected to take good care of themselves without exercising any further precautions. *Baldauf v. Kent State Univ.* (1988), 49 Ohio App. 3d 46, 48. In the instant claim, plaintiff has not presented evidence to show the step she tripped over was defective or deficient in design. The apparent basis of plaintiff's action rests on the contention there was insufficient lighting to properly illuminate the step and, therefore, warning signs should have been posted to notify people of the presence of a step.

{¶13} The mere fact that plaintiff tripped does not establish any negligence on the part of defendant. *Green v. Castronova* (1966), 9 Ohio App. 2d 156, 161; *Kimbro v. Konni's Supermarket, Inc.* (June 27, 1996), 1996 Ohio App. LEXIS 2737, Cuyahoga App. No. 69666, unreported; *Costidakis v. Park Corporation* (Sept. 1, 1994), 1994 Ohio App. LEXIS 3894, Cuyahoga App. No. 66167, unreported. It is incumbent upon a plaintiff to show that there was a dangerous or latent condition on the premises that was the cause of the fall. *Paschal*, supra.

{¶14} A property owner has no duty to inform an invitee about open and obvious dangers on the property. "The open and obvious nature of the hazard itself serves as a warning." *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642, 644. In the present case, evidence is conflicting regarding the open and obvious nature of the particular step area where plaintiff fell. Plaintiff contended, the step presented an unknown hazard because of the lack of sufficient lighting. Conversely, defendant, university, argued the balcony area had adequate illumination for persons to readily discern steps. The trier of fact finds plaintiff has failed to produce sufficient evidence to establish the step she tripped over presented a danger by being hidden or indiscernible. Evidence has shown plaintiff was carrying an armload of equipment as she traversed the balcony, an area she described as dark. These facts lead the court to conclude plaintiff did not exercise the proper amount of care to protect herself from the conditions of the environment.

Consequently, plaintiff's claim is denied.

{¶15} 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:

Linda Marie Schetter
526 Ridgewood Avenue
Urbana, Ohio 43078

Plaintiff, Pro se

Paul S. Allen
Court of Claims Coordinator
Miami University
Roudebush Hall Room 218
Oxford, Ohio 45056

For Defendant

DRB/RDK/laa
5/6
Filed 5/25/04
Sent to S.C. reporter 6/22/04