[Cite as *Maloney v. University of Akron*, 2004-Ohio-5041.]

IN THE COURT OF CLAIMS OF OHIO

DAWN E. MALONEY	:	
Plaintiff	:	
	:	CASE NO. 2004-03691-AD
THE UNIVERSITY OF AKRON	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On February 2, 2004, at approximately 8:35 a.m., plaintiff, Dawn E. Maloney, suffered personal injury when she slipped and fell on ice covered pavement located in the parking lot to a Greek Orthodox Church at 129 Union Street, Akron, Ohio. Specifically, plaintiff related she sustained strains of her shoulder and lumbar area as a result of her slip and fall. Plaintiff received medical attention for her injuries. Plaintiff has asserted defendant, University of Akron, should bear liability for all damages associated with her injury despite the fact her slip and fall occurred on private property not owned or seemingly maintained by defendant, University. Submitted evidence has shown the church parking lot where plaintiff fell is not a designated lot of defendant, but signs are posted there indicating University parking is allowed in accordance with requirements of displaying a valid parking permit. Any relationship between the owner of the parking lot and defendant has not been established and is a matter of ambiguity to the trier of fact. Nevertheless, plaintiff filed this complaint against defendant, University of Akron, seeking to recover damages based on the February 2, 2004, slip and fall incident. Plaintiff paid the requisite material filing fee.

{¶ 2} 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), 62 Ohio St. 3d 214, 217; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 142; *Thomas v. Parma* (1993), 88 Ohio App. 3d 523, 527; *Parsons v. Lawson Co.* (1989), 57 Ohio App.

3d 49, 50. In the instant claim, plaintiff has failed to produce evidence to establish defendant had control over or exercised the maintenance responsibility for the parking lot where plaintiff's personal injury occurred. Consequently, it appears plaintiff has pursued her claim against an improper defendant. The named defendant did not own the parking lot. Plaintiff has not shown the named defendant assumed responsibility for care of the lot including snow and ice removal. Based on the dearth of evidence involving some sort of duty on the part of defendant, this claim shall be dismissed.

{¶ 3} However, if defendant agreed to assume responsibility for maintaining the parking lot premises, the University would bear the duty to exercise ordinary or reasonable care for plaintiff's 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. Although the occupant 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

{¶ 4} 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.

{¶ 5} "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.

{¶ 6} "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, 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.

{¶ 7} Plaintiff should have realized the parking lot 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.

IN THE COURT OF CLAIMS OF OHIO

DAWN E. MALONEY	:	
Plaintiff	:	
v.	:	CASE NO. 2004-03691-AD
THE UNIVERSITY OF AKRON	:	ENTRY OF ADMINISTRATIVE DETERMINATION
Defendant	:	

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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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