**[Cite as *Manon v. Univ. of Toledo*, 2005-Ohio-2121.]**

**IN THE COURT OF CLAIMS OF OHIO**

| | | |
|---|---|---|
| MARSHA E. MANON | : | |
| Plaintiff | : | CASE NO. 2003-09840<br>Judge Fred J. Shoemaker |
| v. | : | Magistrate Anderson M. Renick |
| THE UNIVERSITY OF TOLEDO | : | MAGISTRATE DECISION |
| Defendant | : | |

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

**{¶1}** This case was tried to a magistrate of the court on the issue of liability. Plaintiff alleges a single claim of negligence arising from injuries that she sustained as a result of a "slip and fall" accident.

**{¶2}** In 1999, plaintiff was a student at the University of Toledo pursuing a Masters degree in counseling. At approximately 1:55 p.m. on November 1, 1999, plaintiff entered the south entrance to Snyder Memorial Hall, a classroom building on defendant's campus, to deliver papers to one of her professors. Three large recessed floor mats were located on the floor next to the exterior doors that led to the building lobby. The mats were level with the lobby floor and a drainage system was installed under the mats to prevent the accumulation of moisture. Additionally, three vinyl-backed mats were placed on the lobby floor adjacent to the recessed mats such that students and staff entering the building would walk from the recessed mats onto the vinyl-backed mats.

**{¶3}** Plaintiff testified that glare from the building prevented her from looking down as she walked into the building and that she was watching for other students who were entering and exiting the building. As plaintiff entered the building, she stepped onto one of the vinyl-backed mats and fell. Although plaintiff testified that she did not see the mat before she stepped on it, she observed that the mat was "bunched" after her fall and

she estimated that the bunched area was approximately six inches high. Plaintiff testified that a woman helped her to a nearby bench and then pulled the mat back into place so that it would lay flat on the floor. Plaintiff completed a student accident report and was treated at defendant's student medical center for pain in her right knee and right hip.

{¶4} In order for plaintiff to prevail upon her claim of negligence, she 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), 67 Ohio St.2d 282, 285. With regard to the duty of care owed to plaintiff, it is undisputed that as a student of a state university plaintiff's status was that of an invitee. *Shimer v. Bowling Green State Univ*. (1999), 96 Ohio Misc.2d 12, 16. Business invitees are owed a duty of ordinary care by the possessor of premises in maintaining their places of business in a reasonably safe condition so that customers are not exposed unnecessarily and unreasonably to danger. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203. However, defendant is not an insurer of its customers' safety, and it is under no duty to protect customers from conditions "which are known to such invitee or are so obvious and apparent to such invitee that [she] may reasonably be expected to discover them and protect [herself] against them." Id. at 203, quoting *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, paragraph one of the syllabus.

{¶5} As a business invitee, in order for a plaintiff to recover damages in a negligence action based on a slip and fall accident she must establish:

{¶6} "1. That the defendant through its officers or employees was responsible for the hazard complained of; or

{¶7} "2. That at least one of such persons had actual knowledge of the hazard and neglected to give adequate notice of its presence or remove it promptly; or

{¶8} "3. That such danger had existed for a sufficient length of time reasonably to justify the inference that the failure to warn against it or remove it was attributable to a

want of ordinary care." *Evans v. Armstrong,* (Sept. 23, 1999), Franklin App. No. 99AP-17, quoting, *Johnson v. Wagner Provision Co.* (1943), 141 Ohio St. 584, 589.

{¶9} With regard to the first element of the *Johnson* test, plaintiff asserts that defendant's failure to properly maintain the vinyl-backed floor mats caused the mat that plaintiff tripped on to "walk" from its original position and lodge against the inside of the entry door. To establish that defendant's negligent maintenance was responsible for creating a hazardous condition, plaintiff offered the testimony of James LaRiviere as an expert on floor mat maintenance. LaRiviere testified that the manufacturer of the mat recommended weekly cleaning for both the vinyl backing and the floor on which the mat was positioned. According to LaRiviere, defendant's failure to clean dirt and debris from underneath the mat "broke the seal" of the vinyl backing and allowed the mat to "walk." LaRiviere opined that the movement of the floor mat created a hazard to those who walked on it.

{¶10} Robert Boyd, the operations manager of defendant's building, testified regarding the maintenance schedule for cleaning the mats. Boyd testified that the mats were vacuumed daily and that the surrounding floor was swept and mopped by the building custodians "as needed." Boyd further testified that the mats were rolled up at least monthly to allow defendant's employees to clean the floor underneath. Additionally, Boyd explained that the mats were steam cleaned at least annually. Tony Gibson, a custodian who worked at Snyder Memorial Hall, corroborated Boyd's testimony regarding the cleaning schedule and testified that the mats were inspected daily and repositioned as needed.

{¶11} Although LaRiviere emphasized that the floor mat manufacturer recommended a weekly cleaning schedule for the floor mats, Gibson testified that he typically did not find much dirt or grit under the mats when they were rolled up for cleaning twice each month. Furthermore, Boyd testified that additional vacuuming and cleaning was performed when it became necessary. Boyd also testified that he believed the thickness of

the vinyl backing prevented bunching and that he has never observed bunching or "ripples" in the vinyl-backed mats. Based upon the testimony and evidence, the court finds that defendant's cleaning and inspection procedures were reasonable and that plaintiff failed to prove that defendant's maintenance procedure caused the floor mat to "walk" or to become bunched.

{¶12} With regard to the mat's position at the time of the incident, plaintiff asserts that the mat was lying on top of the recessed mats near the entry doors. However, Gibson explained that defendant's employees do not place the vinyl-backed floor mats over the recessed floor mats and that he has never observed the vinyl-backed floor mats positioned near the doorway. The court notes that photographs of the lobby that were taken by plaintiff's former attorney sometime after the incident show that the width of the vinyl-backed floor mats is approximately the same as the distance between the recessed mats and the stairway that leads from the lobby. (Plaintiff's Exhibits 1 to 4.) Although one of the three mats depicted in the photographs is slightly out of position (that is, a corner of the vinyl-backed mat overlaps a recessed mat by several inches), the mat is flat and positioned on the floor near the stairs. The court finds that Gibson's testimony regarding the placement of the floor mats was credible and that the evidence does not support plaintiff's assertion that the vinyl-backed floor mats were placed close to the doors on top of the recessed mats. The court further finds that plaintiff has failed to prove that defendant's employees were responsible for creating a hazard.

{¶13} Furthermore, "'[t]o establish negligence in a slip and fall case, it is incumbent upon the plaintiff to identify or explain the reason for the fall. Where the plaintiff, either personally or by outside witnesses, cannot identify what caused the fall, a finding of negligence on the part of the defendant is precluded. Negligence cannot be established by the mere fact that a person slipped and fell.'" *Hess v. One Americana L.P.*, Franklin App. No. 01AP-1200, 2002-Ohio-1076. (Citations omitted.) In *Hess*, plaintiff explained that she could not see where she was walking because "it was so sunny" that a

car in the parking lot where she fell "created a shadow" in front of her. Id. The Tenth District Court of Appeals declined to hold defendants in that case liable "where they had no control over shadows caused by the sun." Id.

{¶14} In this case, plaintiff testified that she could not see the floor mat as she entered the building because of glare from the sun on the door and because she was distracted by students who were exiting the building. Plaintiff testified that her view of the mats was obstructed by a six to eight-inch wide "kick-plate" that covered the bottom of the glass door. Plaintiff further testified that she assumed she tripped over the mat when she looked back and saw that the mat had "bunched up." However, "[a]n inference of negligence cannot arise from mere speculation." *Stouffer v. Kmart Corp*. (Jan. 11, 1994), Franklin App. No. 93AP-648; *Parras v. Standard Oil Co.* (1953), 160 Ohio St. 315. There was no testimony from anyone who saw either plaintiff's fall or a defect in the mat prior to her fall. The court finds that plaintiff failed to establish the existence of an unreasonably dangerous defect in the lobby mat prior to the incident or that such defect proximately caused her to fall.

{¶15} Even if plaintiff had proven that the floor mat caused her fall, she failed to establish the second and third elements of the *Johnson* test because plaintiff did not show that defendant had either actual or constructive notice of an unreasonably dangerous defect in the mats. "The liability of an owner or occupier for failure to protect an invitee against dangers on the premises must be predicated on superior knowledge of such dangerous conditions." *Howard v. J.C. Penny Co.* (Nov. 3, 1994), Franklin App. Nos. 94APE04-469, 94APE05-629, citing *Debie v. Cochran Pharmacy-Berwick, Inc.* (1967), 11 Ohio St.2d 38. Gibson testified that he inspected the mats every afternoon at 12:15 p.m. when he exited the building through the south entrance. Gibson further testified that his practice was to reposition the mats when he found them out of place. Plaintiff fell approximately 1 hour and 40 minutes after Gibson's shift ended. The court finds that there is insufficient evidence to establish that a hazard existed for a sufficient length of time

to justify the inference that defendant negligently failed to remove it. The court finds that plaintiff failed to prove that defendant had any superior knowledge of a hazard or defect concerning the floor mats.

**{¶16}** For the foregoing reasons, the court finds that plaintiff has failed to establish that defendant was negligent. Accordingly, judgment is recommended in favor of defendant.

**{¶17}** *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).*

_____
ANDERSON M. RENICK
Magistrate

Entry cc:

Marc G. Williams-Young — Attorney for Plaintiff
1000 Adams Street, Suite 200
Toledo, Ohio 43624-1507

Lisa M. Eschbacher — Attorney for Defendant
Assistant Attorney General
150 East Gay Street, 23rd Floor
Columbus, Ohio 43215-3130

AMR/cmd
Filed April 14, 2005
To S.C. reporter May 3, 2005