[Cite as *Dagnan v. Ohio Dept. of Transp.*, 2005-Ohio-5076.]

IN THE COURT OF CLAIMS OF OHIO

MARTHA B. DAGNAN	:	
Plaintiff	:	
v.	:	CASE NO. 2005-03563-AD
DEPT. OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On April 8, 2004, plaintiff, Martha B. Dagnan, was traveling in a vehicle on Interstate 77 accompanied by her husband, Jack F. Dagnan, and her daughter, Susan Weeks. Between 12:00 and 1:30 p.m. on April 8, 2004, plaintiff stopped at a roadside rest area located adjacent to Interstate 77 in Tuscarawas County. The rest area facility is maintained by and under the control of defendant, Department of Transportation ("DOT"). After stopping at the rest area parking lot, plaintiff left her vehicle and began walking with her daughter upon the paved concrete sidewalk leading to the main building at the rest area facility. As plaintiff and her daughter approached the entrance to this building, plaintiff's foot caught on an uneven pavement portion of the sidewalk causing her to trip and fall to the ground. When plaintiff tripped and fell over the uneven concrete sidewalk slab, she suffered a fractured arm and various lacerations and abrasions on her body. After sustaining these injuries, plaintiff sought and received medical care.

{¶ 2} Plaintiff has contended her physical injuries were proximately caused by negligence on the part of DOT in maintaining a defective condition (uneven sidewalk) on the premises of the rest area. Specifically, plaintiff contended the raised sidewalk slab

portion which she tripped upon constituted a defective condition of such a degree and nature that defendant should be liable for the damages she suffered. Plaintiff claimed damages in the amount of $2,500.00 for medical expenses, medication, special clothing, and pain and suffering all associated with the April 8, 2004, incident. The $25.00 filing fee was paid.

{¶ 3} Plaintiff submitted a photograph of the raised sidewalk portion she tripped over. Upon examining the photograph, it appears to the trier of fact that the height deviation between concrete sidewalk slabs is one inch or less at its maximum point. Plaintiff implied she did not notice the uneven sidewalk area before she tripped over it. Plaintiff's daughter, who submitted a statement regarding her recollection of the trip and fall occurrence, also implied she did not observe the uneven sidewalk pavement condition until after her mother's personal injury incident.

{¶ 4} Defendant denied any liability in this matter. Defendant argued plaintiff failed to produce evidence proving her injuries were the result of any negligent act or omission on the part of DOT staff. Defendant offered that plaintiff, as a user of the roadside rest area, was classified under the law as a licensee and DOT, therefore, owed her a duty to only refrain from willful or wanton conduct causing injury. *Provencher v. Ohio Department of Transportation* (1990), 49 Ohio St. 3d 265. DOT contended continued maintenance of a sidewalk area with a minor height deviation did not amount to actionable negligence in a claim of this type.

{¶ 5} Defendant also denied any individuals working at the rest area had any knowledge of the sidewalk condition. Defendant noted, DOT, as the entity in control of the rest area premises, "is not liable to a licensee for injury caused to the licensee by ordinary negligence of the landowner. *Light v. Ohio University* (1986), 28

Ohio St. 3d 66. Rather:

{¶ 6} "A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, *** (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and *** (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and *** (c) the licensees do not know or have reason to know of the condition and the risk involved. 2 Restatement of the Law 2d, Torts (1965), Section 342."

{¶ 7} Additionally, defendant submitted photographs of the sidewalk portion which caused plaintiff's injuries. These photographs depict a height deviation of less than one inch at the sidewalk site where plaintiff tripped. Defendant related that, "[u]nder Ohio Law, a plaintiff is generally barred from recover[y] if the uneven walkway in question has less than a two inch differential." *Cash v. Cincinnati* (1981), 66 Ohio St. 2d 319, 330; *Blain v. Cigna Corp.*, Franklin Co. App. No. 02AP-1442, unreported, 2003-Ohio-4022.

{¶ 8} On August 1, 2005, plaintiff filed a response to defendant's investigation report. Plaintiff acknowledged she tripped and fell over a minor height deviation at the rest area walkway. However, plaintiff believes DOT should still bear liability for her injuries due to maintaining this minor defect. Furthermore, plaintiff contended she should be classified under the law as an invitee when using the rest area facilities.

{¶ 9} Ohio law classifies an individual using a public roadside rest area as a licensee. *Provencher v. Ohio Department of Transportation*, supra, at the syllabus. Accordingly, plaintiff was

a licensee while at defendant's rest area. Therefore, defendant generally owed plaintiff a duty to refrain from wanton and willful conduct which might result in injury to her. Id. at 266.

{¶ 10} Under existing case law, a licensor does not owe a licensee any duty except to refrain from wilfully injuring her and not to expose her to any hidden danger, pitfall, or obstruction. If the licensor knows such a danger is present, the licensor must warn the licensee of this danger which the licensee cannot reasonably be expected to discover. *Salemi v. Duffy Construction Corporation* (1965), 3 Ohio St. 2d 169, at paragraph two of the syllabus; *Hannan v. Ehrlich* (1921), 102 Ohio St. 176, at paragraph four of the syllabus.

{¶ 11} "A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, *** (a) the possessor knows or has reason to know of the condition and should realize that it involved an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and *** (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and *** (c) the licensees do not know or have reason to know of the condition and the risk involved." 2 Restatement of the Law 2d, Torts (1965), Section 342. In the instant claim, evidence has shown defendant probably had knowledge about the uneven sidewalk condition prior to plaintiff's injury. A caretaker, an agent of defendant, is present at the rest area site for significant time. The fact an attendant is regularly on duty at the rest stop renders the notice issue irrefragable. Despite notice of a minor uneven sidewalk pavement variance, a defendant cannot be found liable for injuries caused by a slip and fall over a slight sidewalk height variation imperfection. *Helms v. Am. Legion, Inc.* (1966), 5 Ohio St. 2d 60.

The facts of the present claim clearly show plaintiff's injuries were caused by tripping over a minor insubstantial height difference between concrete sidewalk slabs. Maintaining such a slight disparate condition cannot constitute negligence and consequently, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

MARTHA B. DAGNAN	:	
Plaintiff	:	
v.	:	CASE NO. 2005-03563-AD
DEPT. OF TRANSPORTATION	:	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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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DRB/RDK/laa
8/17
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