

he exclaimed, "the next time you hit me in the head I'll call the dean." Plaintiff remained at his desk for the rest of the class.

{¶ 4} Hirschi testified that immediately after the incident, she apologized to plaintiff and asked if he was all right; that plaintiff replied that he was; and that she then continued with her lecture. Hirschi further testified that after class she asked plaintiff a second time if he was really okay and whether the bag had struck him, and that plaintiff again told her that he was okay and that the bag had not struck him.

{¶ 5} After Hirschi's class, plaintiff went to see his accounting and business professor, David Conrath. Plaintiff told Conrath that Professor Hirschi had thrown a book bag at him and that he had been injured by it. Conrath testified that plaintiff was very animated when talking to him and that plaintiff seemed more upset about Hirschi's conduct than about being physically injured. Conrath advised plaintiff to report the incident to Dean Dixie Stone. Plaintiff testified that he looked for Dean Stone but could not find her, then went to a study hall for an hour and then sat for a two-hour exam in Conrath's class.

{¶ 6} After taking the exam, plaintiff found Dean Stone in the cafeteria, accompanied her to her office and filled out an incident report, wherein he stated that Hirschi had thrown a book bag at him that was "full of books." (Plaintiff's Exhibit 1.) Plaintiff then drove himself to Marietta Memorial Hospital.

{¶ 7} Plaintiff asserts that the book bag struck him in the neck, causing a spinal cord contusion and aggravating a pre-existing neck injury. Plaintiff further asserts that he underwent neck surgery as a result of the injury. Defendant disputes that plaintiff was struck by the book bag and argues that even if

plaintiff were struck by the bag, the impact did not cause a spinal cord contusion. Defendant also argues that plaintiff's neck surgery was necessitated solely by his pre-existing neck condition.

{¶ 8} The court notes that there were differing accounts of the incident in the testimony of those students who were in the classroom when it occurred.

{¶ 9} Seth Dettorre testified that he was sitting near the front of the room and that plaintiff was sitting behind him in the same row. Dettorre testified that he saw the bag as it "grazed" plaintiff's left shoulder and arm and then fell to the floor.

{¶ 10} Stevi Elliott testified that she did not see the bag hit plaintiff but that plaintiff reacted immediately after the bag landed, and that plaintiff said something to the effect that, if it happened again, he would go to the dean.

{¶ 11} Jasmine Stincer testified that she did not see the bag land but remembers that plaintiff was very upset and agitated after the bag hit the floor.

{¶ 12} Jan Berry testified that she had an unobstructed view of plaintiff and that the bag did not strike him. Berry wrote a statement after the incident wherein she stated that she heard plaintiff say to Hirschi after class, "I have back problems. You have to be careful if something would hit me. I'm one step away from a wheelchair." (Defendant's Exhibit E.)

{¶ 13} Shauntae Noland testified that she saw the bag hit the floor and that she did not think that it hit plaintiff.

{¶ 14} Kristin Kennedy testified that her soft-sided, canvas book bag with a shoulder strap was on the floor at her feet when Hirschi asked her permission to use the bag. According to Kennedy, the bag contained her daily planner, three pencils and some gum

wrappers. Kennedy testified that Hirschi tossed the bag up and it landed behind her. Kennedy did not remember any reaction from plaintiff. Kennedy was later contacted by a private investigator who wanted to purchase her book bag with the contents that were in it at the time of the incident.

{¶ 15} Terry Irvine, an independent insurance adjuster, testified that he purchased Kennedy's book bag for use at trial. Irvine also testified that after he purchased the bag he went to Hensler's Farmer's Market in Marietta, Ohio and weighed the bag on a produce scale. Irvine supplied photographs of the bag on the scale which support his testimony that the bag and its contents weighed 1.44 pounds.

{¶ 16} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. Plaintiff was a student at the college and, therefore, his legal status was that of a business invitee. *Baldauf v. Kent State University* (1988), 49 Ohio App.3d 46. Accordingly, defendant owed to plaintiff the common law duty of reasonable care. *S.S. Kresge Co. v. Fader* (1927), 116 Ohio St. 718. Reasonable care is that which would be utilized by an ordinarily prudent person under similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310.

{¶ 17} The court finds that Hirschi breached her duty of reasonable care when she threw a book bag in a classroom filled with students. However, plaintiff also must prove that Hirschi's breach proximately caused his injuries.

{¶ 18} Plaintiff testified that he had worked as a carpenter since the 1970s. In 1980, plaintiff was working on the construction of a parking garage in Florida when a co-worker threw a 10-foot, 6-inch-long beam at him from a scaffolding. Plaintiff estimated that the beam weighed approximately 126 pounds. Plaintiff caught the beam but injured his shoulders, back, foot, and neck. In 1988, plaintiff was working at a cooling tower in Ohio as a general foreman when he was struck in the back and knocked into a pile of concrete. He hurt his lower back and aggravated his pre-existing injuries in that incident. In the early 1990s, plaintiff was working at a powerhouse when he slipped on ice, hit his head, back, neck, wrists and severely injured his knees. In 1994, plaintiff was injured in a car accident when his vehicle was struck from behind by another vehicle that was traveling approximately 30 miles per hour. Plaintiff sustained injuries to his neck, back, shoulders, and lower back in that accident. Plaintiff testified that he had been treated by chiropractors for his neck and back from 1990-2002 on approximately a monthly basis before the incident at defendant's university.

{¶ 19} Despite all of the above-mentioned injuries, when plaintiff was treated at the hospital, he denied having any history of neck problems. (Defendant's Exhibit J.)

{¶ 20} Plaintiff presented the testimony of his treating physician, Abdi Ghodsi, M.D. Dr. Ghodsi testified that plaintiff presented to the hospital on May 8, 2002, where he complained of having been struck in the head and neck by a book bag. Dr. Ghodsi diagnosed plaintiff with the following conditions after an MRI was taken: cervical spondylosis; central canal stenosis; a disk osteophyte protrusion into the spinal canal; and, a spinal cord

contusion at the C-6 level. Dr. Ghodsi explained that spondylosis is when arthritis causes bony spurs (osteophytes) to form in the spine over a period of time, and that central canal stenosis means having a congenitally narrow spinal canal. When asked to identify the most probable cause of plaintiff's spinal cord contusion, Dr. Ghodsi opined that "you have to go with the patient's history." Dr. Ghodsi treated plaintiff with steroids and examined plaintiff again four weeks after the incident. Although plaintiff's pain had improved, Dr. Ghodsi then performed neck surgery.

{¶ 21} On cross-examination, Dr. Ghodsi stated that plaintiff had failed to mention any prior neck problems to him at the time of treatment, and that Dr. Ghodsi was disappointed by that omission. Dr. Ghodsi also stated that he could not state with certainty whether the book bag was a proximate cause of plaintiff's injured neck because one reason for the surgery was the stenosis.

{¶ 22} Defendant presented the testimony of Benedict Colombi, M.D., a neurosurgeon. After reviewing plaintiff's medical records, including an MRI taken in 1998 and the one taken on the day of the incident, Dr. Colombi opined that there was no evidence of a spinal cord contusion, and that there was no significant difference in the two MRIs. Dr. Colombi testified that bone spurs and disk osteophytes were present on both MRIs.

{¶ 23} Dr. Colombi disagreed with Dr. Ghodsi's interpretation that the 2002 MRI showed evidence of a spinal cord contusion. Dr. Colombi further opined that plaintiff's neck surgery had no relation to any injury he may have sustained from the book bag, because the surgery was performed to correct the chronic condition of cervical stenosis.

{¶ 24} The court finds that plaintiff's testimony about the incident and alleged injuries that he sustained was not credible. Plaintiff's written statement regarding the incident states that the book bag was "full of books." However, the court concludes that the greater weight of the evidence shows that the book bag weighed 1.44 pounds and did not contain any books. Furthermore, the court finds it troubling that plaintiff failed to disclose his significant history of substantial neck and back injuries when he was treated at the hospital. Dr. Ghodsi testified that he relied on plaintiff's self-reported medical history in evaluating and treating him. The court finds that Dr. Ghodsi's opinions in this case did not have great probative value since they were based on limited information inasmuch as plaintiff failed to disclose both the injuries which he had sustained since 1980, and the fact that he had been treated regularly by chiropractors since 1990.

{¶ 25} Plaintiff's lack of candor, along with Berry's testimony both that she had an unobstructed view of plaintiff and that the bag did not strike him, persuades the court to find that plaintiff was not struck by the book bag. Accordingly, plaintiff has failed to prove that Hirschi's failure to use ordinary care proximately caused any injury to him. Therefore, judgment shall be rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO

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JOHN H. PARSONS :
Plaintiff : CASE NO. 2004-04825
v. : Judge J. Warren Bettis

JUDGMENT ENTRY

WASHINGTON STATE COMMUNITY :
COLLEGE :

Defendant

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This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the 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.

J. WARREN BETTIS
Judge

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Case No. 2004-04825

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JUDGMENT ENTRY

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