[Cite as *Hall v. Dept. of Natural Resources*, 2006-Ohio-7151.]

IN THE COURT OF CLAIMS OF OHIO

HIWATHA BYRD HALL	:	
Plaintiff	:	
v.	:	CASE NO. 2005-09936-AD
DEPARTMENT OF NATURAL RESOURCES	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On August 13, 2005, plaintiff, Hiwatha Byrd Hall, rented a cabin at Buck Creek State Park ("Buck Creek"), a facility owned and operated by defendant, Department of Natural Resources ("DNR"). Plaintiff related that sometime after she arrived at the cabin she discovered the air conditioner in a cabin utility room was leaking water onto the hallway floor leading to the cabin bathroom. According to plaintiff the leaking air conditioner unit, "made the floor in the hallway to the restroom soaking wet." Plaintiff stated as she walked on the wet hallway carpet toward the bathroom she "slipped on the carpet and fell on the tile" floor of the cabin bathroom. After this incident, plaintiff informed Buck Creek personnel about the leaking air conditioning unit. On August 16, 2005, plaintiff sought medical treatment for an injury she may have received from the August 13, 2005, slip and fall occurrence. Plaintiff was treated at the University Medical Center of The Ohio State University and was released from care on the same day. Plaintiff was diagnosed as suffering from a bruised tail-bone and was instructed to

treat the affected area with ice. Pain medication was prescribed and administered. Apparently plaintiff fully recovered from the injury.

{¶ 2} Plaintiff has asserted her slip and fall and resulting bone bruise was proximately caused by negligence on the part of DNR in maintaining a hazardous condition in the cabin at Buck Creek. Consequently, plaintiff filed this complaint seeking to recover $2,500.00, presumedly for medical expenses and pain and suffering related to the August 13, 2005, incident. The filing fee was paid.

{¶ 3} Defendant denied liability in this matter based on the contention plaintiff's injury was caused by an open and obvious condition known to her and therefore, DNR owed no duty to protect or warn her of the wet floor condition. Both plaintiff and defendant knew the air conditioner at the Buck Creek cabin was leaking water onto the cabin's hallway floor. According to defendant, "Buck Creek Park staff had previously been to the cabin to clean up wet floor caused by the air conditioner in the cabin." Plaintiff acknowledged she knew the hallway floor was wet from a leaking air conditioner before she experienced her slip and fall event. Defendant cited *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45 for the proposition that a defendant owes no duty to protect a plaintiff from dangers known to her or which are so obvious and apparent to a particular plaintiff she should be reasonably expected to discover such danger and protect herself against injury from the known dangerous condition.

{¶ 4} To establish a cause of action for negligence, a

plaintiff must show the existence of a duty, breach of that duty, and an injury proximately caused by the breach. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.* (1998), 81 Ohio St. 3d 677, 680. Generally, in the area of premises liability, the status of a person who enters upon the land of another determines the scope of the duty the premises owner owes the entrant. *Shump v. First Continental-Robinwood Assoc.* (1994), 71 Ohio St. 3d 414,417. Under the facts of the instant claim, plaintiff's status was that of an invitee. See *Baldauf v. Kent State Univ.* (1988), 49 Ohio App. 3d 46; *Shimer v. Bowling Green State Univ.* (1999), 96 Ohio Misc. 2d 12, 16.

{¶ 5} "[T]he possessor of premises owes a duty to an invitee to exercise ordinary or reasonable care for his or her safety and protection. This duty includes maintaining the premises in a reasonably safe condition and warning an invitee of latent or concealed defects of which the possessor has or should have knowledge." *Baldauf*, supra, at 48 citing *Scheibel v. Lipton* (1951), 156 Ohio St. 308. "However, it is also well-established that balanced against this duty, the owner of premises is not to be held as an insurer against all forms of risk." Id at 48, citing *S.S. Kresge Co. v. Fader* (1927), 116 Ohio St. 718. Although the owner of premises generally owes a 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 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. There is no duty on the part of a premises owner to warn or protect an invitee of a hazardous condition, where the condition is so obvious and apparent that the invitee should reasonably be expected to discover the danger and protect herself from it. *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49; *Blair v. Ohio Department of Rehabilitation and Correction*, (1989), 61 Ohio Misc. 2d 649. This rationale is based on principles that an open and obvious danger is itself a warning and the premises owner may expect persons entering the premises to notice the danger and take precautions to protect themselves from such dangers. *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642. 644. The open and obvious doctrine is determinative of the threshold issue, the landowner's duty. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, at ¶13. If an alleged hazard is open and obvious, whether the plaintiff can prove the elements of negligence other than duty is superfluous. *Horner v. Jiffy Lube Internatl., Inc.*, Franklin App. No. 01AP-1054, 2002-Ohio-2880, at ¶17.

{¶ 6} Open and obvious hazards are those conditions that are neither hidden nor concealed from view and are discoverable by ordinary inspection. *Parsons v. Lawson*, supra. "[T]he dangerous condition at issue does not actually have to be observed by the plaintiff in order for it to be an 'open and obvious' condition under the law. Rather, the determinative issue is whether the condition is observable." *Lydic v. Lowe's*

Cos., Inc., Franklin App. No. 01AP-1432, 2002-Ohio-5001, at ¶10. Put another way, "the crucial inquiry is whether 'a customer exercising ordinary care under [the] circumstances would have seen and been able to guard him or herself against the condition.'" *Kidder v. The Kroger Co.*, Montgomery App. No. 20405, 2004-Ohio-4261, at ¶11, citing *Youngerman v. Meijer, Inc.* (Sept. 20, 1996), Montgomery App. No. 15732. A determination

{¶ 7} of liability depends largely on the facts of a particular case where the issue involved relates to the open and obvious doctrine. *Lawson v. Columbia Gas of Ohio, Inc.* (1984), 20 Ohio App. 3d 208. The facts of the present claim clearly demonstrate plaintiff was aware of the open and obvious nature of the wet hallway floor and could therefore have taken precaution to protect herself from potential dangers of this known condition. Consequently, defendant did not owe plaintiff any duty to protect her from the open and obvious condition which caused the slip and fall injury. This claim is denied.

IN THE COURT OF CLAIMS OF OHIO

HIWATHA BYRD HALL	:	
Plaintiff	:	
v.	:	CASE NO. 2005-09936-AD
DEPARTMENT OF NATURAL RESOURCES	:	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

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2/24
Filed 3/22/06
Sent to S.C. reporter 4/14/06