[Cite as *Berkowitz v. Kent State Univ.*, 2006-Ohio-7261.]

IN THE COURT OF CLAIMS OF OHIO

STACEY L. BERKOWITZ	:	
Plaintiff	:	
v.	:	CASE NO. 2006-03028-AD
KENT STATE UNIVERSITY	:	MEMORANDUM DECISION
Defendant	:	

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

{¶ 1} On December 2, 2005, at approximately 11:00 a.m., plaintiff, Stacey L. Berkowitz, a student attending defendant, Kent State University ("KSU"), suffered personal injury while walking in a parking lot on the premises of KSU's Ashtabula Branch. Specifically, plaintiff fractured her wrist when she slipped and fell on ice covering the parking lot. Plaintiff received medical attention for her injuries. Plaintiff has asserted defendant should bear liability for all damages associated with her slip and fall injury. Consequently, plaintiff filed this complaint seeking to recover $225.00, her out-of-pocket expense for medical care, plus a claim for filing fee reimbursement. The filing fee was paid.

{¶ 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), 52 Ohio St. 3d 214, 217; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 142; *Thomas v. City of Parma* (1993), 88 Ohio

App. 3d 523; *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49, 50. Based on plaintiff's status, KSU has a duty to exercise ordinary or reasonable care for plaintiff's safety andprotection, 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. 3d 75; *Wells v. University Hospital* (1985), 85-01392-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 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.

{¶ 3} "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.

{¶ 4} "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.

{¶ 5} 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

STACEY L. BERKOWITZ	:	
Plaintiff	:	
v.	:	CASE NO. 2006-03028-AD
KENT STATE UNIVERSITY	:	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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RDK/laa
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