[Cite as *Seib v. Univ. of Akron*, 2006-Ohio-7280.]

IN THE COURT OF CLAIMS OF OHIO

BRENDAN G. SEIB	:	
Plaintiff	:	
v.	:	CASE NO. 2006-02811-AD
UNIVERSITY OF AKRON	:	MEMORANDUM DECISION
Defendant	:	

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

{¶ 1} On December 9, 2005, plaintiff, Brendan G. Seib, suffered personal injury when he slipped and fell over snow and ice covered steps at the John R. Buchtel statue located on the campus of defendant, University of Akron. Specifically, plaintiff asserted he fell down about twelve steps and bruised his shoulder, back, and hip. Plaintiff has contended defendant should bear liability for damages he suffered as a proximate cause of his slip and fall. Plaintiff filed this complaint seeking to recover $2,052.62 for his medical treatment expenses, medications, work loss, and pain and suffering resulting from the December 9, 2005, personal injury incident.

{¶ 2} Defendant filed an investigation report denying liability in this matter. Plaintiff filed a response to defendant's investigation report asserting defendant should have been more diligent in their snow and ice removal. Plaintiff contends defendant's lack of diligence caused his injuries.

{¶ 3} 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 him 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; *Thomas v. City of Parma* (1993), 88 Ohio App. 3d 523, 527; *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49, 50.

{¶ 4} Based on plaintiff's status as a student, he is considered an invitee on defendant's premises, defendant university owed him a duty to exercise reasonable care in keeping the premises in a safe condition and warning plaintiff of any latent or concealed dangers which defendant had knowledge. *Perry v. Eastgreen Realty Company* (1978), 53 Ohio St. 2d 41, 52-43; *Presley v. Norwood* (1973), 36 Ohio St. 2d 29, 31; *Sweet v. Clare-Mar Camp, Inc.* (1987), 38 Ohio App. 3d 6. However, a property owner is under no duty to protect a business invitee from hazards which are so obvious and apparent that the invitee is reasonably expected to discover and protect against them himself. *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, paragraph one of the syllabus; *Paschal v. Rite Aid Pharmacy* (1985), 18 Ohio St. 3d 203, 203-204; *Brinkman v. Ross* (1993), 68 Ohio St. 3d 82, 84.

{¶ 5} However, since defendant agreed to assume responsibility for snow and ice removal, the University would bear the duty to exercise ordinary or reasonable care for plaintiff's safety and protection, and this includes having the premises in a

reasonably safe condition and warning him of latent or concealed defects or perils which the possessor has or should have knowledge. *Dursty 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.

{¶ 6} "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*, supra. 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.

{¶ 7} "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 would 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, and 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 himself against it. *Sidle*, supra; *Debie*; supra.

{¶ 8} Plaintiff should have realized the steps would have been slippery from a natural accumulation of falling snow and climatic conditions. Consequently, there is no actionable negligence upon which he can recover.

IN THE COURT OF CLAIMS OF OHIO

BRENDAN G. SEIB :

Plaintiff :

v. : CASE NO. 2006-02811-AD

UNIVERSITY OF AKRON : ENTRY OF ADMINISTRATIVE DETERMINATION

Defendant :

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

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
8/21
Filed 9/19/06
Sent to S.C. reporter 6/5/07