[Cite as *Miracle v. Stone Lick State Park*, 2007-Ohio-3756.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

CAROLYN MIRACLE

Plaintiff

v.

STONE LICK STATE PARK

Defendant

Case No. 2006-07091-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} On June 10, 2006, at approximately 2:30 a.m., plaintiff, Carolyn Miracle, suffered personal injury when she tripped and fell at a campground site located on the premises of Stonelick State Park ("Park"), a facility under the operational control of defendant, Department of Natural Resources ("DNR"). Specifically, plaintiff suffered two fractured fingers, bruises, and other injuries on her left hand when she tripped in a depression near the entrance to a Park restroom and fell; striking her left hand against a recessed steel plate in the ground. Plaintiff explained the depression that caused her trip and fall was an unmarked ungraded area that had been excavated to install an underground water line to the park restrooms. Plaintiff described the site around the restrooms stating, "the area had not been graded, the ground was large clumps of dirt and there was no caution tape, barriers, straw," in place. Plaintiff noted her injuries occurred when she, "tripped in a hole in the dirt [and] when I fell my left hand hit a recessed sewer/water steel plate that was unmarked [and] uncovered." Plaintiff sought and received medical treatment for her hand injuries after the incident occurred.

{¶ 2} Later on June 10, 2006, plaintiff's injury incident was reported to Park personnel. A written report of the personal injury occurrence was compiled on June 12, 2006, by Park Officer Charles W. Carlson. Carlson wrote a description of plaintiff's personal injury event from an account told to him by the reporting individual. The report noted plaintiff was injured when she tripped and fell while walking from Park campsite 8/9

to the restroom across the street. Carlson recorded the precise location of plaintiff's injury incident occurred on the grass portion of campsite #40, which is situated between the street/roadway abutting and adjacent to campsite 8/9 and a Park restroom facility, plaintiff's intended destination. Carlson wrote plaintiff told him she tripped over the uneven land on campsite #40 that had recently been excavated and refilled (water main installation) and struck her left hand against the metal plate set into the ground for access to the new water main. Photographs of campsite #40 were taken. Although plaintiff's trip and fall occurred around 2:00 a.m., Carlson recorded plaintiff did not seek medical attention until after 9:00 a.m. when she awoke with pain and swelling in her left hand.

{¶ 3} The incident report contained a written statement from plaintiff's sister, Emily L. Kern, who was camping with plaintiff, was shown the injury to plaintiff's hand, and observed the area at campsite #40 where plaintiff's injury occurred. Kern related the area where plaintiff fell had, "very little lighting and the ground near the restroom was uneven and full of clumps of dirt due to construction." Kern stated she saw the condition of plaintiff's hand several hours after the injury initially occurred and recalled the hand, "was badly bruised and swollen." Kern apparently did not witness plaintiff's actual trip and fall.

{¶ 4} Plaintiff has contended her trip and fall and resulting hand injuries were proximately caused by negligence on the part of defendant in maintaining a hazardous condition on the Park campgrounds. Consequently, plaintiff filed this complaint seeking to recover $2,499.61 for unreimbursed medical expenses and work loss. The filing fee was paid.

{¶ 5} Defendant denied any liability in this matter based on the contention the land area where plaintiff fell represented an open and obvious condition and therefore, DNR owed no duty to protect or warn plaintiff of any danger presented. See *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45; *Brinkman v. Ross* (1993), 68 Ohio St. 3d 82, 84. Defendant related plaintiff registered at the Park for a campsite on June 9, 2006, at 12:27 p.m. and was injured on June 10, 2006, at approximately 2:30 a.m. Defendant maintained plaintiff

had multiple hours before her injury "to become acquainted with the general surroundings and observe the contours of the land," around her assigned campsite and the path she followed to use the Park restroom facility in the early morning of June 10, 2006. Therefore, defendant asserted plaintiff's inattention caused her injury since she failed to protect herself from an open and obvious condition of the premises that she should have discovered in the time she spent in the particular area during daylight hours. Furthermore, despite the specific circumstance plaintiff's injury incident occurred at night, defendant asserted that factual scenario does not invoke liability. Defendant contended plaintiff essentially should have protected herself from the condition; citing *Jeswald v. Hutt* (1968), 15 Ohio St. 2d 224, where the court at paragraph three of the syllabus noted, "[d]arkness is always a warning of danger, and for one's own protection it may not be disregarded."

{¶ 6} Defendant related plaintiff was injured when she tripped over an uneven surface area at an unoccupied campsite #40 while trying to walk to a Park restroom facility. The uneven ground surface at campsite #40 was due to a recently completed excavation for a water main. Defendant recorded, "[t]he excavation site, which was roughly restored and contained large clumps of dirty and a steel water main cover plate, was not marked by straw, caution tape, or any other barrier." Defendant submitted two photographs depicting the site where plaintiff fell. The photographs show the ground area at campsite #40 restored from the water main excavation. The ground surface, although uneven and rough, does not appear, from the photographic evidence, to be particularly hazardous considering the location of the site.

{¶ 7} Plaintiff's cause of action is grounded in negligence. As defendant pointed out, plaintiff, in order to prevail 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. Parma* (1993), 88 Ohio App. 3d 523, 527; *Parsons v. Lawton Co.* (1989), 57 Ohio App. 3d 49, 50.

{¶ 8} Based on plaintiff's status while camping on defendant's grounds, defendant owed her a duty to exercise reasonable care in keeping the premises in a safe condition and warning her of any latent or concealed dangers which defendant had knowledge. *Perry v. Eastgreen Realty Company* (1978), 53 Ohio St. 2d 51, 52-53; *Presley v. Norwood* (1973), 36 Ohio St. 2d 29, 31; *Sweet v. Clare-Mar Camp, Inc.* (1987), 38 Ohio App. 3d 6, 9. However, a property owner is under no duty to protect an invitee plaintiff from hazards which are so obvious and apparent that the plaintiff is reasonably expected to discover and protect against them herself. *Sidle v. Humphrey*, supra, at paragraph one of the syllabus; *Paschal v. Rite Aid Pharmacy* (1985), 18 Ohio St. 3d 203, 203-204.

{¶ 9} An unreasonably dangerous condition does not exist in situations where persons who are likely to encounter a condition may be expected to take good care of themselves without exercising any further precautions. *Baldauf v. Kent State Univ.* (1988), 49 Ohio App. 3d 46, 48. Although the ground condition at campsite #40 presented some danger to pedestrian traffic such as plaintiff, the ground contour variances by the water main installation did not present any unreasonably dangerous condition. Under general analysis, plaintiff has not produced sufficient evidence to establish the ground condition was concealed or particularly dangerous. The remaining basis of plaintiff's action rests on the contention there was insufficient warning of the ground condition when taking night time circumstances into consideration.

{¶ 10} "The mere fact that plaintiff tripped does not establish any negligence on the part of defendant. *Green v. Castronova* (1966), 9 Ohio App. 2d 156, 161; *Kimbro v. Konni's Supermarket, Inc.* (June 27, 1996), 1996 Ohio App. LEXIS 2737, Cuyahoga App. No. 69666, unreported; *Costidakis v. Park Corporation* (Sept. 1, 1994), 1994 Ohio App. LEXIS 3894, Cuyahoga App. No. 66167, unreported. It is incumbent upon a plaintiff to show under certain circumstances that there was a dangerous or latent condition on the premises that was the cause of the fall. *Paschal*, supra." *Orens v. Ricardo's Restaurant* (November 14, 1996), 1996 Ohio App. LEXIS 4944, Cuyahoga App. No. 70403.

{¶ 11} A property owner has no duty to inform an invitee about open and obvious dangers on the property. "[T]he open and obvious nature of the hazard itself serves as a warning." *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642, 644. "The determination of the existence and obviousness of a danger alleged to exist on a premises requires a review of the facts of a particular case." *Miller v. Beer Barrel Saloon*, 1991 Ohio App. LEXIS 2375 (May 24, 1991), Ottawa App. No. 90-OT-050, unreported.

{¶ 12} In the instant action, defendant maintained the ground condition which caused plaintiff's fall was open and obvious in nature, despite the circumstances the incident occurred at night and the area was not illuminated. Plaintiff, essentially countered that the lack of lighting in the area constituted an attendant circumstance thereby providing an exception to the open and obvious doctrine. See *Cummin v. Image Mart, Inc.*, Franklin App. NO. 03AP-1284, 2004-Ohio-2840, at ¶8 (citing *McGuire v. Sears, Roebuck & Co.* (1996), 118 Ohio App. 3d 494, 498). The attendant circumstance exception applies if something beyond the plaintiff's control contributes to the fall-other than, or in addition to, the open and obvious condition. *Backus v. Giant Eagle, Inc.* (1996), 115 Ohio App. 3d 155, 158. In *Barrett v. Enterprise Rent-A-Car Co.*, Franklin App. No. 03AP-1118, 2004-Ohio-4646, the Tenth District Court of Appeals found that "attendant circumstances" can include any distraction that would come upon a pedestrian in the same circumstances and reduce the degree of care an ordinary person would exercise at the time. "The attendance circumstances must, taken together, divert the attention of the pedestrian, significantly enhance the danger of the defect, and contribute to the fall. * * * Both circumstances contributing to and those reducing the risk of the defect must be considered." Id. at ¶14, quoting *McGuire v. Sears, Roebuck & Co.*, supra, at 499.

{¶ 13} Plaintiff in the present action did not comment about being distracted by anything while she was walking across the roadway and campsite #40 to her destination. The darkness plaintiff encountered increased rather than reduced the degree of care plaintiff should have exercised for her own safety. Plaintiff has failed to prove sufficient attendant circumstances existed to divert her attention and significantly enhance the danger presented to contribute to her fall. Therefore, plaintiff has not provided proof of sufficient attendant circumstances to obviate application of the open-and-obvious doctrine. Consequently, plaintiff's claim is denied.

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ENTRY OF ADMINISTRATIVE DETERMINATION

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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