[Cite as *Zoya v. Dept. of Transp.*, 2008-Ohio-1604.]

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

DELREESE ZOYA

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2007-07523-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Delreese Zoya, related she suffered personal injury when she tripped and fell while walking on a sidewalk at a rest stop area located adjacent to Interstate 77 North near Cambridge, Ohio. Plaintiff recalled the trip and fall incident occurred at approximately 3:00 p.m. on August 4, 2007. According to plaintiff, as she was walking on the rest stop sidewalk she noted, "a few holes next to the edge." Plaintiff stated she tripped and fell when, "[m]y foot caught on the edge of the sidewalk and teetered into the hole which the result was the rolling of my ankle." Plaintiff asserted the holes abutting the rest stop sidewalk should have been repaired by defendant, Department of Transportation ("DOT"), the entity charged with the maintenance responsibility for the rest stop grounds.

{¶2} On the same day of her trip and fall injury event plaintiff received medical treatment for her leg injury. Plaintiff contended her trip and fall and resulting leg injuries were proximately caused by negligence on the part of DOT in maintaining a hazardous condition on the rest area premises. Consequently, plaintiff filed this complaint seeking to recover $1,401.21 for medical expenses and work loss she incurred after being injured on August 4, 2007.

{¶3} Defendant denied any negligent act or omission on the part of DOT caused plaintiff's injury. Additionally, defendant asserted plaintiff failed to produce

sufficient evidence to establish the necessary elements of liability in a claim of this type. Defendant pointed out that plaintiff as a user of a rest stop, "was classified under the law as a licensee and, therefore, the defendant owed her a duty to refrain from wanton or willful conduct, which may result in injury." See *Provencher v. Ohio Dept. of Transp.* (1990), 49 Ohio St. 3d 265, 551 N.E. 2d 1257. Defendant contended plaintiff failed to prove DOT engaged in wanton or willful conduct and that such conduct proximately caused her injury.

{¶4} Defendant also pointed out that a licensee generally is barred from recovery for injuries caused by ordinary negligence of an owner or occupier of premises. See *Light v. Ohio University* (1986), 28 Ohio St. 3d 66, 28 OBR 165, 502 N.E. 2d 611. Defendant did note there are factual circumstances obviating the general rule of no liability for injuries to licensees caused by a landowner's negligence by citing 2 Restatement of the Law 2d Torts (1965), Section 342. The Restatement advises:

{¶5} "A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, *** (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and *** (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and *** (c) the licensees do not know or have reason to know of the condition and the risk involved."

{¶6} Defendant denied having any knowledge of any problem with the paved sidewalk at the Cambridge rest area. Defendant explained the rest area grounds are subject to bi-weekly inspections and no problems were recorded regarding the condition of the sidewalk during the course of multiple previous inspections. Defendant submitted photographs depicting the sidewalk where plaintiff's trip and fall incident occurred. The paved sidewalk depicted appears in excellent condition with negligible deviations in height between the paved slab portions constituting the entire sidewalk area. Minor height deviations are shown between the paved area and abutting grassy areas. Some

areas adjacent to the paved sidewalk appear devoid of grass with areas of exposed ground. According to defendant, the exposed ground condition arises due to winter season salt applications on the paved sidewalk spreading onto the abutting grass portion. The spreading salt kills the grass exposing the ground area. Plaintiff fell upon one of the exposed ground areas. All exposed ground areas appear from the photographs to constitute minor deviations in height from the adjacent paved sidewalk. Defendant observed that a plaintiff is generally barred from recovery for injuries received in tripping over an uneven sidewalk containing minor height differentials. Citing *Cash v. Cincinnati* (1981), 66 Ohio St. 2d 319, 330, 20 O.O. 3d 300, 421 N.E. 2d 1275; *Blain v. Cigna Corp.*, Franklin Co. App. No. 02AP-1442, unreported, 2003-Ohio-4022. Defendant argued plaintiff's trip and fall was, according to the facts presented, caused by minor height deviation of the sidewalk and therefore, no liability shall attach under such circumstances.

{¶7} Ohio law classifies an individual using a public roadside rest area as a licensee. *Provencher*, 49 Ohio St. 3d 265, 551 N.E. 2d 1257, at the syllabus. Accordingly, plaintiff was a licensee while at defendant's rest area. Therefore, defendant generally owed plaintiff a duty to refrain from wanton and willful conduct which might result in injury to her. *Provencher* at 266.

{¶8} Under existing case law, a licensor does not owe a licensee any duty except to refrain from wilfully injuring her and not to expose her to any hidden danger, pitfall, or obstruction. If the licensor knows such a danger is present, the licensor must warn the licensee of this danger which the licensee cannot reasonably be expected to discover. *Salemi v. Duffy Construction Corporation* (1965), 3 Ohio St. 2d 169, 32 O.O. 2d 171, 209 N.E. 2d 566, at paragraph two of the syllabus; *Hannan v. Ehrlich* (1921), 102 Ohio St. 176, 131 N.E. 5004, at paragraph four of the syllabus.

{¶9} "A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if, *** (a) the possessor knows or has reason to know of the condition and should realize that it involved an unreasonable risk

of harm to such licensees, and should expect that they will not discover or realize the danger, and *** (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and *** (c) the licensees do not know or have reason to know of the condition and the risk involved." 2 Restatement of the Law 2d, Torts (1965), Section 342.

{¶10} Evidence in the instant claim established plaintiff tripped over a paved sidewalk on defendant's premises. The sidewalk appeared in excellent condition with extremely minor uneven areas between paved slabs. It has been previously held that a defendant cannot be found liable for injuries caused by a slip and fall over a slight sidewalk height variation imperfection. *Helms v. Am. Legion, Inc.* (1966), 5 Ohio St. 2d 60, 34 O.O. 2d 124, 213 N.E. 2d 734. The facts of the present claim clearly show plaintiff's injuries were caused by tripping over a minor insubstantial height difference between concrete sidewalk slabs. Maintaining such a slight disparate condition cannot constitute negligence and 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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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RDK/laa

1/8
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