[Cite as *Butler v. Lake Pymatuning State Park*, 2008-Ohio-5162.]

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

SHARON BUTLER

Plaintiff

v.

LAKE PYMATUNING STATE PARK

Defendant

Case No. 2007-07884-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Sharon Butler, filed this complaint against defendant, Lake Pymatuning State Park ("Park"), seeking to recover unreimbursed medical expenses for a personal injury she suffered as a result of a trip and fall while walking on a sidewalk on Park premises. Plaintiff recalled her trip and fall injury incident occurred on June 11, 2007 during a period when she was staying at rental cabin #42 on Park grounds. Plaintiff related she had returned to the Park from a shopping trip and began walking back on the concrete sidewalk to her rental cabin accompanied by her friends Rita and Wayne Hayes. Plaintiff stated, "[t]he sidewalk had a big hole in it and I walked into (and) fell, twisting my ankle." Plaintiff observed she suffered a hairline fracture when she twisted her ankle and fell.

{¶ 2} On June 12, 2007, plaintiff filed a "Voluntary Witness Statement" (copy submitted) with Park personnel regarding her personal injury event of June 11, 2007. In this statement plaintiff wrote she was "[c]oming home from shopping, we were carrying packages." Plaintiff provided this written recollection: "I was walking toward cabin #42 and stepped into a hole where the concrete has eroded."

{¶ 3} Wayne S. Hayes also filed a "Voluntary Witness Statement" (copy submitted) concerning his recollection of plaintiff's trip and fall injury incident that he witnessed. Hayes recorded that he, Rita Hayes, and plaintiff arrived back at the Park from shopping and all three began walking in single file on the sidewalk toward cabin

#42 with Rita in the lead, followed by plaintiff, and then himself in the rear. According to Hayes, all three individuals were carrying bags and chatting as they walked on the sidewalk surface. Hayes described plaintiff's injury incident noting plaintiff suddenly "went down; [s]he had caught her foot in a pothole in the sidewalk."

{¶ 4} Plaintiff contended her trip and fall and resulting ankle injury were proximately caused by negligence on the part of defendant in maintaining a hazardous condition on Park premises. Plaintiff asserted defendant's sidewalk area constituted a substantial defect and consequently, defendant should bear liability for the claimed medical expenses of $265.00, for unreimbursed emergency room physician fees. The $25.00 filing fee was paid.

{¶ 5} Initially, defendant denied liability in this matter based on the contention that plaintiff was a recreational user of Park premises as defined under statute and therefore defendant did not owe her any duty to keep the premises safe for use. Defendant related plaintiff did not pay a fee to enter Pymatuning State Park. Based on the fact a fee was paid on plaintiff's behalf to rent a cabin, but plaintiff did not pay a fee to enter Park premises, defendant contended the immunity provision of the recreational user statute is applicable under the circumstances of the instant claim.

{¶ 6} Since plaintiff's personal injury incident did occur on Pymatuning State Park grounds, defendant qualifies as the owner of "premises" under R.C. 1533.18, et seq.

{¶ 7} "Premises" and "recreational user" are defined in R.C. 1533.18 as follows:

{¶ 8} "(A) 'Premises' means all privately owned lands, ways, and waters, and any buildings and structures thereon, and all privately owned and state-owned lands, ways, and waters leased to a private person, firm, or organization, including any buildings and structures thereon.

{¶ 9} "(B) 'Recreational user' means a person to whom permission has been granted, without payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state,

or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, swim, or to operate a snowmobile, all-purpose vehicle, or four-wheel drive motor vehicle, or to engage in other recreational pursuits."

{¶ 10} R.C. 1533.181(A) states:

{¶ 11} "(A) No owner, lessee, or occupant of premises:

{¶ 12} "(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

{¶ 13} "(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;

{¶ 14} "(3) Assumes responsibility for or incurs liability for any injury to person or property caused by an act of recreational user."

{¶ 15} The state owes no duty to recreational users of state parks, who pay no fee or consideration for admission, to keep the premises safe for entry or use. *Phillips v. Ohio Dept. of Natural Resources* (1985), 26 Ohio App. 3d 77, 26 OBR 252, 498 N.E. 2d 230. In situations where some fee is paid to rent facilities, the recreational user statute with all immunity provisions may still be applicable as a defense to liability. In cases where an injury occurs on premises held open for recreational pursuit and some fee has been paid applicability of the recreational user statute is determined by focusing on the character of the property upon which the injury occurs and the type of activities for which the property is held open to the public. See *Reed v. City of Miamisburg* (1993), 96 Ohio App. 3d 268, 644 N.E. 2d 1094.

{¶ 16} Defendant, in the instant claim, acknowledged a fee was paid on plaintiff's behalf to stay in a cabin at Pymatuning State Park. However, defendant asserted the payment of a cabin rental fee "does not equate to an entrance fee where such rental is not required to enjoy the overall benefits of the park." Therefore, defendant contended plaintiff was a recreational user of Park premises when her injury incident occurred. See *Reed v. Miamisburg*; also, *Howell v. Buck* (2001), 144 Ohio App. 3d 227, 759 N.E. 2d 892.

{¶ 17} In *Reed*, the plaintiff was injured when he stepped into an unfilled hole on the premises of Mound Park in Miamisburg, Ohio. A fee had been paid to rent a shelter house at the Mound Park. The court in applying the recreational user statute with its immunity provisions to the facts of that case determined the fee to pay for the shelter house rental did not equate to a fee to utilize the overall benefits of the park including the park grounds where the unfilled hole was located.

{¶ 18} In *Howell*, plaintiffs who had rented a cabin at Buck Creek State Park were injury when a steel catwalk leading from the shore to wooden docks at the marina collapsed causing plaintiffs to fall into the Park reservoir. The court in applying the recreational user statute to the facts of *Howell* adopted the reasoning in *Reed* that a rental fee to utilize a particular service did not equate to a Park entrance fee or particularly a fee to proceed to the Park marina.

{¶ 19} Despite defendant's contentions regarding applicability of the recreational user statute to the instant claim, the court finds the facts and circumstances do not support a determination that defendant is entitled to the protections afforded by the recreational user statute. Essentially, the recreational user statute is not applicable to the present claim. The facts of this claim establish plaintiff was injured when she stepped into a hole on a concrete sidewalk that provided a means of access to a rental cabin. The purpose and use of the sidewalk from a parking area to Park rental cabins fell outside the purview of immunity afforded by R.C. 1533.81. The sidewalk access to the Park cabins constitutes part of the rental property and therefore, a fee was paid to utilize the benefit the sidewalk provided. Since the sidewalk area is considered part of the cabin rental area the recreational user statute has no application. This claim will be determined upon a straight negligence analysis.

{¶ 20} Defendant contended plaintiff failed to offer sufficient evidence to prove the sidewalk area where she tripped and fell was negligently maintained. Furthermore, defendant contended plaintiff did not show the hole in the sidewalk was anything more than an open and obvious condition and consequently, defendant was not charged with

any duty to protect plaintiff from such a condition she could be expected to discover. Defendant explained plaintiff began staying at cabin #42 on June 9, 2007 two days before her injury incident. Defendant observed plaintiff had ample opportunity before her trip and fall to "familiarize herself with her surroundings and could not have overlooked what she described as a 'big hole' in the middle of the sidewalk leading to her cabin." Defendant asserted plaintiff did not provide proof of the necessary elements to maintain a negligence action: 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. *Hutson v. Konieczny* (1990), 62 Ohio St. 3d 214, 217, 581 N.E. 2d 513; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 142, 539 N.E. 2d 614; *Thomas v. Parma* (1993), 88 Ohio App. 3d 523, 527, 624 N.E. 2d 337. Defendant offered that no liability can attach when a plaintiff is injured by a hazardous condition that is open and obvious. See *Simmers v. Bentley Constr. Co.*, 64 Ohio St. 3d 642, 1992-Ohio-42, 597 N.E. 2d 504. Defendant advised a property owner does not owe any duty to protect a plaintiff who suffers injury from an open and obvious hazardous condition. *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, 42 O.O. 2d 96, 233 N.E. 2d 589; *Paschal v. Rite Aid Pharmacy* (1985), 18 Ohio St. 3d 203, 18 OBR 267, 480 N.E. 2d 474.

{¶ 21} Based on plaintiff's status as an invitee on defendant's premises, defendant owed her 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 51, 52-53, 7 O.O. 3d 130, 372 N.E. 2d 335; *Presley v. City of Norwood* (1973), 36 Ohio St. 2d 29, 31, 65 O.O. 2d 129, 303 N.E. 2d 81; *Sweet v. Clare-Mar Camp, Inc.* (1987), 38 Ohio App. 3d 6, 9, 526 N.E. 2d 74. 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 protect against them herself. *Brinkman v. Ross*, 68 Ohio St. 3d 82, 84, 1993-Ohio-72, 623 N.E. 2d 1175.

{¶ 22} A property owner has no duty to inform an invitee about open and obvious

dangers on the property. "The open and obvious nature of the hazard itself serves as a warning." *Simmers*, 64 Ohio St. 3d 642 at 644, 1992-Ohio-42, 597 N.E. 2d 504. When circumstances show the open and obvious doctrine does not apply the owner of a premises generally owes a duty of ordinary care. "[T]he 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, 40 O.O. 2d 52, 227 N.E. 2d 603.

{¶ 23} However, negligence cannot be established by the mere fact that a person slipped and fell. *Hess v. One Americana Ltd. Partnership*, Franklin App. No. 01AP-1200, 2002-Ohio-1076. "[State entities] [and] [land] owners or occupiers of private premises are not insurers of the safety of pedestrians traversing those premises, and minor or trivial imperfections therein, which are not unreasonably dangerous and which are commonly encountered and to be expected, as a matter of law do not create a liability on the part of such owners or occupiers toward a pedestrian who, on account of such minor imperfection, falls and is injured." *Helms v. American Legion, Inc.* (1966), 5 Ohio St. 2d 60, 34 O.O. 2d 124, 213, N.E. 2d 734, syllabus. See, also *Kimball v. City of Cincinnati* (1953), 160 Ohio St. 370, 52 O.O. 237, 116 N.E. 2d 708.

{¶ 24} The trier of fact must consider all of the attendant circumstances in making its determination of whether the defect is substantial enough to support a finding of liability. *Cash v. Cincinnati* (1981), 66 Ohio St. 2d 319, 20 O.O. 3d 300, 421 N.E. 2d 1275. Plaintiff, in the instant claim, failed to produce any evidence to show her injuries were caused by any breach of a duty of care owed by defendant for her protection. Plaintiff did not offer any set of facts establishing any act or omission on the part of defendant proximately caused her injuries. Plaintiff failed to prove her fall and resulting injuries were caused by any hidden defect or unreasonably dangerous condition. See *Koenig v. Bowling Green State Univ.*, Ct. of Cl. No. 2002-09919-AD, 2003-Ohio-6603.

Additionally, based on photographic evidence of the sidewalk area the court finds the defective sidewalk was an open and obvious condition and the condition itself constituted a minor imperfection. Consequently, plaintiff has failed to establish any grounds for liability in this matter.

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LAKE PYMATUNING STATE PARK

Defendant

Case No. 2007-7884

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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:

Sharon Butler
312 W. 15th Street
The Dalles, OR 97058

Charles G. Rowan
Department of Natural Resources
1930 Belcher Drive, D-3
Columbus, Ohio 43224-1387

RDK/laa
6/20
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