[Cite as *DeGroff v. Kent State Univ.*, 2009-Ohio-1584.]

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

ASHLEY DEGROFF

Plaintiff

v.

KENT STATE UNIVERSITY

Defendant

Case No. 2008-01057-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Ashley DeGroff, filed this complaint against defendant, Kent State University ("KSU"), seeking to recover damages for personal injuries received while attending a painting class in the KSU Art Building on January 31, 2007. Plaintiff recalled she and other students "were moving easels around to get set-up to paint and as another student was getting her easel set up it tripped over and hit me in the face/eyebrow bone, knocking me to the ground." It was indicated the injuries plaintiff received from being struck by the falling easel included contusions of the face and eye, an open wound on her head along the eyebrow, and a concussion with accompanying general symptoms. Plaintiff related "[t]he easel tipped over because they are older and unstable and are not safe." Essentially, plaintiff contended her injuries were proximately caused by negligence on the part of defendant in authorizing the use of defective equipment in painting class. Plaintiff seeks damages in the amount of $2,000.00 representing expenses she incurred for medical treatment. The filing fee was paid.

{¶ 2} Defendant acknowledged plaintiff was struck in the area of her left eye by a toppling easel while attending painting class at KSU on January 31, 2007. However,

defendant specifically denied that the easel was defective or that students were not given proper instruction in positioning or setting up easels for use in class. Defendant explained the particular easel that injured plaintiff "was not damaged or malfunctioning," but toppled over due to the fact "the easel had not been properly tightened" by plaintiff's classmate. Defendant further explained the particular easel is still being used in KSU painting classes and has not required any repair. Defendant contended the sole proximate cause of plaintiff's injury was the act of an unidentified classmate and not any negligence on the part of KSU staff. Defendant asserted plaintiff has failed to offer any evidence to prove the easel was defective or that students did not receive proper instruction in setting up easels for use in the classroom.

{¶ 3} Defendant submitted an affidavit from Professor Charles Basham, who was the instructor in the painting class when plaintiff was injured on January 31, 2007. In regard to easel set-up, Basham explained: "On or about the first day of Painting 1 class 2007, I instructed my class on setting up their easels. My instruction included how to inspect and tighten the easels so they were stable. I informed my class at that time to always check their easel to be sure it was secure." In regard to the easel that struck plaintiff, Basham recalled: "I inspected the easel that fell on DeGroff. The easel was not damaged or malfunctioning. The easel had not been properly tightened by her classmate as I had instructed. The easel did not need repair and is still being used in Painting classes." Furthermore, Basham noted: "No easel used in Painting classes has been found to be defective or needing repair before or after DeGroff's injury."

{¶ 4} Under the facts of the present claim plaintiff was considered a business invitee in defendant's classroom at the time of the injury accident. Generally, a business owner owes a duty of ordinary and reasonable care for the safety of its invitees, and therefore, is required to keep the premises in a reasonably safe condition. *Perry v. Eastgreen Realty Co.* (1978), 53 Ohio St. 2d 51, 53, 7 O.O. 3d 130, 372 N.E. 2d 335. While a business owner is not an insurer of the safety of business invitees, a duty exists to warn invitees of latent dangers. Additionally, a business owner must inspect the premises to discover possible dangerous conditions, taking precautions to protect invitees from such dangers. *Perry* at 52. A premises owner will be charged with constructive notice of latent defects that would have been revealed with a reasonable inspection of the premises. *Shetina v. Ohio University* (1983), 9 Ohio App. 3d 240, 9

OBR 414, 459 N.E. 2d 587. Plaintiff, in the instant claim, failed to produce any evidence other than her own assertion that the easel which fell upon her head was defective or that defendant's staff knew about any defect in the particular art equipment. See *McFall v. Youngstown State University* (June 11, 1992), 10th Dist. No. 91AP-1357. Furthermore, plaintiff has failed to offer any evidence to prove students in the KSU painting class did not receive adequate instruction in utilizing proper technique for setting up and securing easels. See *Boyer v. Jablonski; Reinagle et al.*, (1980), 70 Ohio App. 2d 141, 24 O.O. 3d 173, 435 N.E. 2d 436.

{¶ 5} For plaintiff to prevail on a claim of negligence she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 15 OBR 179, 472 N.E. 2d 707. Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶ 6} "If any injury is the natural and probable consequence of a negligent act and it is such as should have been foreseen in the light of all the attending circumstances, the injury is then the proximate result of the negligence. It is not necessary that the defendant should have anticipated the particular injury. It is sufficient that his act is likely to result in an injury to someone. *Cascone v. Herb Kay Co.* (1983), 6 Ohio St. 3d 155, 160, 6 OBR 209, 451 N.E. 2d 815, quoting *Neff Lumber Co. v. First National Bank of St. Clairsville, Admr.* (1930), 122 Ohio St. 302, 309, 171 N.E. 327.

{¶ 7} In *Ross v. Nutt* (1964), 177 Ohio St. 113, 114, 29 O.O. 2d 313, 203 N.E. 2d 118, the court defined "proximate cause" as follows: "For an act to be the proximate cause of an injury, it must appear that the injury was the natural and probable

consequence of such act." To find that an injury was the natural and probable consequence of an act, it must appear that the injury complained of could have been foreseen or reasonably anticipated from the alleged negligent act. This court, as trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51, 14 OBR 446, 471 N.E. 2d 477.

{¶ 8} It is settled that: "[W]here the original negligence of the defendant is followed by the independent act of a third person which directly results in injurious consequences to plaintiff, defendant's earlier negligence may be found to be a proximate cause of those injurious consequences, if, according to human experience and in the natural and ordinary course of events, defendant could reasonably have foreseen that the intervening act was likely to happen." *Taylor v. Webster* (1967), 12 Ohio St. 2d 53, 56, 41 O.O. 2d 274, 231 N.E. 2d 870. Thus, even if it could be said that the defendant engaged in negligent conduct, that conduct would not be the proximate cause of the plaintiff's injury where an intervening act of a third party was not reasonably foreseeable from the standpoint of the defendant and such intervening act directly caused the plaintiff's injury. See, e.g. *Person v. Gum* (1983), 7 Ohio App. 3d 307, 7 OBR 390, 455 N.E. 2d 713.

{¶ 9} In the instant claim, plaintiff failed to establish any negligent act or omission of KSU personnel resulted in the injury claimed. Apparently the sole proximate cause of plaintiff's injury was the negligent act of plaintiff's classmate in manipulating the easel. Consequently, plaintiff's claim is denied since she has failed to establish any negligence on the part of defendant caused her injury.

ASHLEY DEGROFF

Plaintiff

v.

KENT STATE UNIVERSITY

Defendant

Case No. 2008-01057-AD

Deputy Clerk Daniel R. Borchert

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:

Ashley DeGroff
2322 Benning Drive
Powell, Ohio 43065

James R. Watson
Assistant Attorney General
Office of University Counsel
Kent State University
Executive Offices, Library
Kent, Ohio 44242

RDK/laa
12/15
Filed 1/7/09
Sent to S.C. reporter 3/31/09