[Cite as *Lavalle v. Kent State Univ.*, 2009-Ohio-1585.]

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

MICHAEL LAVALLE

Plaintiff

v.

KENT STATE UNIVERSITY

Defendant

Case No. 2008-02932-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶ 1} Plaintiff, Michael Lavalle, filed this action against defendant, Kent State University ("KSU"), alleging his 1999 Toyota Camry was damaged while parked in a lot on the KSU campus on February 2, 2008. Plaintiff stated the "[p]arking lot was in an icy condition causing another vehicle to strike my vehicle resulting in extensive damage." Plaintiff implied his car was damaged as a proximate cause of negligence on the part of defendant in failing to remove ice and snow from the KSU parking lot. In his complaint, plaintiff requested damage recovery in the amount of $1,226.48 for automotive repair costs. The filing fee was paid.

{¶ 2} Defendant contended plaintiff failed to offer any evidence to prove his vehicle was damaged as a proximate cause of any negligent act or omission on the part of KSU. Defendant specifically denied any vehicle owned by KSU collided with plaintiff's car in a KSU parking lot on February 2, 2008. Defendant explained the particular KSU parking lot was very icy on February 2, 2008 due to a natural accumulation of snow and freezing rain that fell on February 1, 2008. Defendant asserted KSU owed no duty to protect plaintiff or his property from the dangers

associated with the natural accumulation of ice and snow. See *Simmers v. Bentley Constr. Co.*, 64 Ohio St. 3d 642, 1992-Ohio-42, 597 N.E. 2d 504. Defendant seemingly indicated without the existence of a duty there can be no negligence and consequently, no liability.

{¶ 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, 556 N.E. 2d 505; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 142, 539 N.E. 2d 614; *Thomas v. City of Parma* (1993), 88 Ohio App. 3d 523, 624 N.E. 2d 337; *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49, 50, 566 N.E. 2d 698. Based on plaintiff's status, KSU generally has a 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. *Durst v. Van Gundy* (1982), 8 Ohio App. 3d 75, 8 OBR 103, 455 N.E. 2d 1319; *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, 40 O.O. 2d 52, 227 N.E. 2d 603.

{¶ 4} In the instant claim, plaintiff contended his property damage was proximately caused by defendant's failure to remove ice and snow from the KSU parking lot. KSU was not charged to protect plaintiff from hazards normally associated with such natural accumulations. See *Brinkman v. Ross*, 68 Ohio St. 3d 82, 1993-Ohio-72, 623 N.E. 2d 1175. Defendant denied plaintiff's property damage was related to any negligent act or omission on the part of KSU.

{¶ 5} An owner of land generally owes a duty to individuals such as plaintiff to maintain the premises in a reasonably safe condition. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St. 3d 203, 18 OBR 267, 480 N.E. 2d 474. However, a landowner ordinarily owes no duty to business invitee, such as plaintiff, to remove natural

accumulations of ice and snow on the premises or to warn the invitees of dangers associated with these natural accumulations. *Brinkman*, 68 Ohio St. 3d 82, 1993-Ohio-72, 623 N.E. 2d 1175. Everyone is assumed to appreciate the risks presented by such snow and ice accumulations and consequently, everyone is expected to bear responsibility for protecting himself from such risks presented by natural accumulations of ice and snow. *Brinkman*.

{¶ 6} "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, 76 N.E. 617, as quoted in *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45, 49, 42 O.O. 2d 96, 233 N.E. 2d 589.

{¶ 7} Consequently, plaintiff cannot recover damages from defendant based on any failure to remove natural accumulations of ice and snow.

{¶ 8} In the matter concerning plaintiff's claim for property damage, the court concludes plaintiff has failed to prove his particular injury was proximately caused by any negligence on the part of defendant.

{¶ 9} Proximate cause has been defined as follows:

{¶ 10} "[A]n act or failure to act which in the natural and continuous sequence directly produces the [injury] claimed, and without which it would not have occurred. Cause occurs when the [injury] is the natural and foreseeable result of the act or failure to act." 11 Ohio Jury Instructions (1995), Section 11.10(2) at 171.

{¶ 11} "[T]he term 'proximate cause,' is often difficult of exact definition as applied to the facts of the particular case. However, it is generally true that, where an original act is wrongful *** and in a natural and continuous sequence produces a result which would not have taken place without the act, proximate cause is established, and the fact that some other act unites with the original act to cause injury does not relieve the initial offender from liability." *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 287, 21 O.O. 3d 177, 423 N.E. 2d 467, quoting *Clinger v. Duncan* (1957), 166 Ohio St. 216, 2 O.O. 2d 31, 141 N.E. 2d 156.

{¶ 12} Based on the evidence available, the trier of fact finds the proximate cause of plaintiff's damage was the negligent driving maneuver of an unidentified third party and not any negligence on the part of defendant. 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.

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DANIEL R. BORCHERT

Deputy Clerk

Entry cc:

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