[Cite as *Edward Przybylski, Inc. v. Cleveland State Univ.*, 2009-Ohio-4022.]

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

EDWARD PRZYBYLSKI, Ind., etc.,
et al.

Plaintiffs

v.

CLEVELAND STATE UNIVERSITY

Defendant
Case No. 2005-10021

Judge Joseph T. Clark

DECISION

{¶ 1} Plaintiffs brought this action alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} This case arises as a result of an injury sustained by Jacob Przybylski, a minor child of plaintiff Edward Przybylski,[1] while on premises owned by defendant, Cleveland State University (CSU). Plaintiff was a graduate student at CSU and, on the day of the incident, he was on the 11th floor of CSU's Fenn Tower to obtain assistance concerning a discrepancy in his grade transcript. Three of plaintiff's children were with him at the time: Jacob, age 16 months; Nicolette, age 8; and Jessica, age 6.

{¶ 3} The 11th floor of Fenn Tower housed CSU's Office of Graduate Studies. According to plaintiff, when he entered the office, the secretary was involved in a telephone conversation and directed plaintiff to wait outside. Plaintiff returned to the hallway where he waited for approximately three to five minutes talking with his children.

Plaintiff contends that he was holding Jacob's hand when Nicolette, who was sitting on the floor beside a fire extinguisher cabinet, screamed out that Jacob was bleeding. Plaintiff then observed that Jacob had a deep laceration on his nose, to the extent that his nose was almost entirely severed from his face. Plaintiff looked around to see what had caused the injury and noticed that an approximately two-inch shard of glass in the shape of a triangle was protruding from the bottom front of the extinguisher cabinet. According to plaintiff, he did not see how Jacob's injury occurred or hear the sound of breaking glass prior to the accident. Emergency assistance was immediately summoned and Jacob was transported to the local hospital for treatment.

{¶ 4} Fenn Tower was originally built as a country club in 1929; it was purchased by Fenn College in 1939; and, in 1964, it was purchased by CSU.[2] The eleventh floor of the building was configured such that there were two hallways that formed a "T" intersection. Along the wall of one hallway there was a bank of elevators and on the other hallway there were offices. The Office of Graduate Studies was located at the intersection of the two hallways. There was a glass panel in the office door and a vertical panel of four rectangular windows in the office wall adjacent to the door through which the secretary had a view of the hallway, the elevators, and the wall where the fire extinguisher was located. The extinguisher was housed in a red metal cabinet with a glass panel on the front and was positioned approximately two feet from the floor. (Joint Exhibits B, F-1, F-2, F-3.) The cabinet was designed such that a small metal hammer attached to a chain hung from the side for use in breaking the glass in the event of an emergency; however, there is no evidence that the hammer was in place on the day of the accident.

{¶ 5} Plaintiff contends that defendant negligently allowed a dangerous condition to exist on its premises in that the fire extinguisher cabinet was improperly located and that, because its placement did not comply with standards set forth in the Ohio Basic Building Code, Ohio Adm.Code 4101:2-3-05 et seq., that defendant was negligent per se.

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[1]References to "plaintiff" in this decision are to plaintiff Edward Przybylski.

[2]The parties' pre-trial stipulations as to the history of the building and the admissibility of their joint exhibits are hereby APPROVED and adopted by the court.

{¶ 6} In order for plaintiff to prevail upon a claim of negligence, plaintiffs must prove by a preponderance of the evidence that defendant owed them a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused their injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶ 7} Under Ohio law, the duty owed by an owner or occupier of premises depends upon whether the injured person is an invitee, a licensee, or a trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 1996-Ohio-137. In this case there is no dispute that plaintiffs were invitees of the university. "It is the duty of the owner or occupier of premises to exercise ordinary or reasonable care for the safety of invitees, so that the premises are in a reasonably safe condition for use in a manner consistent with the purpose of the invitation." *Shimer v. Bowling Green State Univ*. (1999), 96 Ohio Misc.2d 12, 16, citing 76 Ohio Jurisprudence 3d (1987) 18-20, Premises Liability, Section 7; *Presley v. Norwood* (1973), 36 Ohio St.2d 29; *Light v. Ohio Univ.* (1986), 28 Ohio St.3d 66.

{¶ 8} Plaintiff contends that defendant created a dangerous condition on its premises because the fire extinguisher cabinet was mounted too low; that it protruded too far into the hallway, and that it was positioned too closely to the adjoining hallway. Plaintiff presented the testimony of Samuel Diaquila, an Ohio registered architect as to those issues. Diaquila testified that a fundamental purpose of the Ohio Basic Building Code is to establish safety standards for public buildings. According to Diaquila, the hallway where the fire extinguisher was located was an exit-access corridor for which the building code sets forth certain minimum width requirements and limitations on protrusions in order to provide for an unrestricted flow of traffic in emergency situations. He opined that the cabinet, which was approximately eight to ten inches deep, protruded too far into the hallway and was located too close to the end of the wall near the intersecting hallway, thus creating an impediment to a free flow of emergency traffic. He further opined that the extinguisher was mounted too low inasmuch as the top of the cabinet was below an adult's eye level. Diaquila testified that the version of the building code applicable in this case would be that which was in effect when the extinguisher

cabinet was installed; however, he acknowledged that he had been unable to determine when that had occurred. As such, he was unable to point to any specific code provisions in support of his opinions regarding safety violations allegedly created by defendant's placement of the extinguisher cabinet.

{¶ 9} Steven Regoli, a registered architect employed by the Ohio Board of Building Standards, testified on behalf of defendant on the issue of building code violations. The Ohio Board of Building Standards is responsible for promulgating the Ohio Basic Building Code. Regoli explained that the building code provisions apply to new constructions and those that are undergoing renovation, but that there is no duty for an owner to bring an existing building into compliance with a more current version of the code unless the building is renovated. He agreed that the applicable version of the building code in this case would be that which was in effect at the time that the extinguisher cabinet was installed, and he also acknowledged that he had been unable to determine that date. He did relate that the code requirements for fire extinguishers in school buildings were not promulgated until 1956 and that, at that time, the width requirement for hallways in school facilities was six feet. Regoli testified that the hallway in question was 6 feet and 11-1/2 inches wide. (Joint Exhibit B.) Thus, according to Regoli, even a cabinet depth of ten inches would not have reduced the hallway to a width that was less than the code requirements. Further, Ragoli testified that the code did not set forth any specification for the mounting height of an extinguisher cabinet and related that the primary requirement at the time was that the extinguisher be prominently displayed for ease in viewing and access. It was Ragoli's opinion that neither the type of cabinet installed on defendant's premises nor its placement violated the building code.

{¶ 10} Inasmuch as neither parties' expert could identify when the fire extinguisher had been installed, it cannot be determined whether any specific code requirement was violated. "[T]he violation of a specific, detailed requirement can be negligence per se in the appropriate case, [however] the violation of a requirement that is general or abstract is not negligence per se." *Zimmerman v. St. Peter'' Catholic Church* (1993), 87 Ohio App.3d 752, 761. Based upon the evidence presented, the court finds that plaintiff failed to prove defendant violated any provision of the Ohio

Basic Building Code so as to render it negligent per se. Accordingly, liability must be determined by principles of ordinary negligence. Id. citing *Eisenhuth v. Moneyhon* (1954), 161 Ohio St. 367, paragraph three of the syllabus.

{¶ 11} Plaintiff also contends that defendant breached its duty of care in that the placement of the extinguisher cabinet created a reasonably foreseeable danger that it could have taken precautions to eliminate. Specifically, plaintiff maintains that it was foreseeable that young children would be on the premises and could be injured as a result of a metal cabinet that was mounted at approximately their eye-level, and that the low placement of the cabinet rendered it more susceptible to damage, such as breaking of the front glass panel. Plaintiff further contends that the panel glass was broken before he and his children arrived, and that the dangerous condition created by the cabinet could have been remedied by installation of a flush-mounted extinguisher cabinet.

{¶ 12} In addition to the testimony of the parties' experts, the court also heard testimony from Nancy Kaltenbach, the secretary who was on duty at the time of the accident, and Shavon Youngblood, the paramedic who responded to the scene.

{¶ 13} Kaltenbach's testimony differed from plaintiff's with respect to how the incident occurred. She testified that she had a clear view of plaintiff and his children from her desk, which faced the glass windows in her office wall, and from there she could see the window at the far end of hallway leading to her office, the elevator bank, and the fire extinguisher cabinet. Kaltenbach testified that the blinds on the window were open, and that plaintiff had left the door to her office open when she sent him back into the hallway after he first arrived. She stated that she observed plaintiff's middle daughter (Jessica) standing on the base of the window at the end of the hallway and plaintiff standing behind her pointing to something outside. According to Kaltenbach, plaintiff's back was turned to Jacob and the oldest child (Nicolette) was sitting on the floor beside the extinguisher cabinet playing with Jacob by holding his hands and pushing and pulling him back and forth. Kaltenbach testified that she looked away for a moment and then heard screaming. When she looked up, she saw what had happened and called for an ambulance. Kaltenbach further testified that she walked by the cabinet every day when she arrived at work, when she left, when she ran errands, or

when she used the copy machine. She stated that she had never observed broken glass in the door panel before the accident.

{¶ 14} Youngblood testified regarding the "run report" that he filled out when he responded to the emergency medical call. (Defendant's Exhibit E.) He related that the purpose of such a report is to gather information about both the nature of the injury sustained and the manner in which it occurred, in order to properly diagnose and treat the injured party. In the run report documenting Jacob's injury, Youngblood wrote in the section captioned "history of present illness/injury" that "[f]ather [states] [patient] was running and hit a fire-box that broke the glass causing a [laceration] across his entire nose." Otherwise, Youngblood had no independent recollection of the accident.

{¶ 15} Upon consideration of all the evidence, the court finds that plaintiff failed to prove that defendant breached any duty of care owed to him or his children. Although neither plaintiff nor Kaltenbach witnessed the moment of Jacob's injury, the court finds that it is more likely than not that it occurred as a result of the children's activity in the hallway as opposed to the existence of any dangerous condition created by defendant. The evidence establishes that the extinguisher was inspected regularly (Joint Exhibits C-D) and that Kaltenbach and other employees walked past it several times each day in the course of their duties. The court is persuaded that if the glass panel on the cabinet had been broken prior to plaintiff's arrival on the 11th floor, it would have been readily discovered. The duty of care owed to invitees does not extend to dangers that are discernible to a reasonably prudent person exercising ordinary care. *Shimer*, supra, at 16.

{¶ 16} With respect to any common-law negligence attributable to defendant by reason of the type of cabinet or its location, the court found the testimony of defendant's expert to be the more competent and credible on the issue. Defendant had no duty to sua sponte upgrade its extinguisher cabinets to comply with more current standards. See *Zimmerman,* supra, at 760 citing Ohio Adm.Code 4101:2-8-04. The court is persuaded by Regoli's testimony that neither the style nor placement of the cabinet created a dangerous condition on defendant's premises. There was no evidence that the glass panel was itself defective, or that the cabinet in any other way created a safety

hazard that defendant would have had a duty to warn of, or to protect its invitees against.

{¶ 17} In short, the court finds that plaintiff failed to prove by a preponderance of the evidence that any negligence on the part of defendant was the proximate cause of Jacob's injuries. Accordingly, judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

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