

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

GLORIA WILLIAMS

Plaintiff

v.

UNIVERSITY OF AKRON

Defendant

Case No. 2008-08914

Judge Clark B. Weaver Sr.

DECISION

{¶ 1} On June 1, 2009, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). Plaintiff did not file a response. On July 2, 2009, the court conducted an oral hearing on the motion.

{¶ 2} Civ.R. 56(C) states, in part, as follows:

{¶ 3} “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party’s favor.” See also

Gilbert v. Summit Cty., 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶ 4} Plaintiff relates that on July 12, 2008, she attended her daughter's wedding reception at defendant's Quaker Square Inn. Plaintiff alleges that while walking across the reception hall, she tripped and fell on the edge of a portable dance floor and suffered injuries. Plaintiff claims that defendant was negligent in maintaining the dance floor such that its surface was not even with the floor of the reception hall.

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

{¶ 6} Under Ohio law, the duty owed by an owner or occupier of premises generally depends on whether the injured person is an invitee, licensee, or trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 315, 1996-Ohio-137. Plaintiff was on defendant's premises for purposes that would classify her as an invitee, defined as a person who comes "upon the premises of another, by invitation, express or implied, for some purpose which is beneficial to the owner." *Baldauf v. Kent State Univ.* (1988), 49 Ohio App.3d 46, 47. An owner or occupier of premises owes its invitees "a duty of ordinary care in maintaining the premises in a reasonably safe condition and has the duty to warn its invitees of latent or hidden dangers." *Armstrong*, *supra*, at 80.

{¶ 7} However, "[w]here a danger is open and obvious, a landowner owes no duty of care to individuals lawfully on the premises." *Id.* at syllabus. This rule is based upon the rationale that the very nature of an open and obvious danger serves as a warning, and that the "owner or occupier (of land) may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves." *Id.* at 80, quoting *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St.3d 642, 644.

{¶ 8} In support of its motion, defendant submitted the affidavit of Lisa Rinella, defendant's manager of food services. Rinella states that she was the "manager in charge" of the reception. She describes the dance floor upon which plaintiff fell as approximately one inch above the floor of the reception hall and trimmed with a "transition strip" that gradually slopes down from its edge toward the reception hall floor to "allow a smooth transition." Rinella states that the outer edge of the transition strip is situated approximately a quarter-inch above the reception hall floor.

{¶ 9} In her affidavit, Rinella authenticates several photographs of the dance floor as it appears when assembled. The photographs demonstrate that the parquet dance floor and gold transition strip encompass a large area and contrast with the carpeted reception hall floor. Based upon these photographs, reasonable minds can only conclude that persons attending the reception could identify the dance floor upon ordinary inspection. Accordingly, the court finds that to the extent the dance floor posed a danger, such danger was open and obvious and defendant therefore owed no duty of care toward plaintiff.

{¶ 10} As stated above, plaintiff did not file a response to defendant's motion, nor did she provide the court with any affidavit or other permissible evidence to support her allegations. As the non-moving party, plaintiff has the burden of producing more than a scintilla of evidence in support of her claims. *Nu-Trend Homes, Inc. v. Law Offices of DeLibera, Lyons & Bibbo*, Franklin App. No. 01AP-1137, 2003-Ohio-1633, ¶ 17.

{¶ 11} Civ.R. 56(E) states, in part, as follows:

{¶ 12} "* * * When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party."

{¶ 13} Based upon the foregoing, the court finds that there are no genuine issues of material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment shall be granted and judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

An oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

CLARK B. WEAVER SR.
Judge

cc:

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