

# 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

PHYLLIS L. SMITH

Plaintiff

v.

THE OHIO STATE UNIVERSITY HOSPITAL EAST

Defendant

Case No. 2013-00523-AD

Interim Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} Plaintiff, Phyllis Smith, asserted on June 6, 2013, while admitted to defendant's Ohio State University Hospital East ("OSUE") she tripped over some "electrical cords" on the floor near her bed. Plaintiff contended that her wedding band and engagement rings were damaged as a result of being tangled up during the fall. She recalled the incident as follows: "In the early morning hours of the above date, I was awoken from my sleep having to use the bathroom. Upon my attempt at reaching the bathroom area, I became entangled in some electrical cords that were across the floor of the room, leading to medical equipment, I lost my footing and began falling, attempting to brace the fall my wedding band and engagement rings that has a raised set of diamonds was caught in the cords and separated from the engagement portion of the ring." Plaintiff asserted that she was informed by hospital employee (Mrs. Tara) that the defendant would have her ring repaired. However, the claim filed with OSUE was denied.

{¶2} Plaintiff filed a complaint against defendant, OSUE, contending that OSUE's negligence in failing to provide a safe walking surface, resulted in her property

damage. Plaintiff seeks damages in the amount of \$900.00, the total cost to repair her rings. Plaintiff contended that the insurance she has available to cover her rings is only applicable in the event of a total loss. Plaintiff submitted the filing fee with the complaint.

{¶3} Defendant filed an investigation report and while acknowledging that plaintiff was a patient of the hospital and, therefore, a business invitee, defendant stated it was not liable for plaintiff's injuries since it did not breach its duty of ordinary care. Further, defendant asserted that the property damage was caused by a condition that was open and obvious at the time of incident and that the plaintiff assumed the risk by failing to call a staff member for assistance in walking to the bathroom, even though she was urged multiple times to do so, by refusing to store her valuables, including her rings, in the on-site safe, also as suggested by hospital staff, and refusing to wear a hospital gown, opting instead to wear her own, personal clothing. Defendant further suggested that the time and date offered by the plaintiff for the occurrence of this event does not comport with its records, suggesting the incident actually occurred on June 9, 2013, alleging the plaintiff discussed the incident with hospital employees on that date. The defendant also contended that the plaintiff's account of the incident in the complaint is inconsistent with the account reported to the OSUE security department on June 14, 2013.

{¶4} Plaintiff filed a response to defendant's investigation report arguing that, contrary to defendant's assertion, she did in fact use the call-button in an attempt to get some assistance walking to the restroom. She stated: I "did call for assistance. There was no answer. Several more attempts were made to get assistance when finally a person . . . answered my requests stating the nurse would be in shortly. After waiting and no response, I made an additional call for assistance. At that time the call was answered [I] stated a second time [that I] had to use the facilities. The person answering the call light stated she'd send a nurse in. [I] could not wait any longer." Plaintiff also provided photos of the cords and tubing on the floor next to her bed.

## CONCLUSIONS OF LAW

{¶5} In order for plaintiff to prevail on 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 Company, Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573, 788 N.E. 2d 1088, ¶8 citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707 (1984).

{¶6} 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.*, 49 Ohio App. 3d 46, 47, 550 N.E. 2d 517 (10<sup>th</sup> Dist. 1988). 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*, at ¶5.

{¶7} An owner or occupier of premises owes a business invitee a duty of ordinary care to maintain the premises in a reasonably safe condition so that its customers are not unnecessarily and unreasonably exposed to danger. *Paschal v. Rite Aid Pharmacy, Inc.*, 18 Ohio St. 3d 203, 480 N.E. 2d 474 (1985). Ordinary care connotes that which an ordinarily reasonable and prudent person exercises. *Parson v. Lawson Co.*, 57 Ohio App. 3d 49, 50, 566 N.E. 2d 698 (5<sup>th</sup> Dist. 1989). "An owner is not, however, an insurer of the customer's safety." *Blain v. Cigna Corp.*, 10<sup>th</sup> Dist. No. 02AP-1442, 2003-Ohio-4022, ¶7.

{¶8} Plaintiff argues that defendant was negligent in failing to ensure that the floor in her room was free of cords and tubing, so that one could safely walk across the floor to access the restroom. Although the defendant owes a 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.*, 11 Ohio St. 2d 38, 40, 227 N.E. 2d 603 (1967).

{¶9} “The knowledge of the condition removes the sting of unreasonableness from any danger that lies in it, and obviousness may be relied on to supply knowledge. Hence the obvious character of the condition is incompatible with negligence in maintaining it. If plaintiff happens to be hurt by the condition, he is barred from recovery by lack of defendant’s negligence towards him, no matter how careful plaintiff himself may have been.” 2 Harper and James, Law of Torts (1956), 1491, as cited in *Sidle v. Humphrey*, 13 Ohio St. 2d 45, 48, 233 N.E. 2d 589 (1968). In short, if the condition or circumstances are such that the invitee has knowledge of the condition in advance, there is no negligence. *Debie*. Based on the photographs provided by the plaintiff, the court finds that the cords and tubing were open and obvious, therefore, the duty to warn was not breached.

{¶10} Furthermore, plaintiff has a duty to exercise some degree of care for her own safety while walking. See *Lydic v. Lowe’s Cos.*, 10<sup>th</sup> Dist. No. 01AP-1432, 2002-Ohio-5001, at ¶16. Defendant noted that, “[i]n the process of providing life sustaining medical care to an ill patient it is frequently necessary to utilize multiple types of medical equipment, i.e. IV pumps, oxygen, and telemetry to name a few. Medical equipment used in a hospital setting typically is going to have cords, tubing and other types of lines. For this very reason each patient is oriented on how to use the nurse call button to summon assistance for such things as getting up to the chair or with ambulation to the restroom.” Defendant further contended, “[p]laintiff was aware that she had an IV connected by tubing to an electric pump, she was aware that there was tubing providing her oxygen, and she was aware that there were wires attached to the cardiac monitor. Plaintiff assumed the risk of this fall and subsequent damage to her wedding ring by

ignoring the instructions of the nursing staff and Mr. Williams.” Even if the court believes the plaintiff’s recollection of the event, in that she did actually call for assistance, there remains the fact that an employee of the defendant, Mr. Williams, noticed that the plaintiff was having trouble moving around in her “flowing caftan” and suggested that she replace the article of clothing with a hospital gown. He also noticed that she was “wearing multiple bracelets and other jewelry” and suggested they “be secured in the OSUE’s Security Department’s safe pursuant to hospital policy.”

{¶11} Given the open and obvious nature of this particular, potentially hazardous condition, coupled with the fact the plaintiff refused to follow the suggestions of hospital staff that could have assured that this incident did not occur, or at the least mitigated the damages, the plaintiff’s claim is hereby 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  
Interim Clerk

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MEMORANDUM DECISION

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