[Cite as *Pannell v. Ohio State Univ. Med. Ctr.*, 2014-Ohio-5953.]

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

DERRIK PANNELL, Exec.

Plaintiff

v.

THE OHIO STATE UNIVERSITY MEDICAL CENTER

Defendant

Case No. 2013-00591

Judge Patrick M. McGrath
Magistrate Holly True Shaver

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On May 20, 2014, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On June 3, 2014, plaintiff filed a response. On June 10, 2014, defendant filed a motion for leave to file a reply, which is GRANTED. Defendant's motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶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.*, 50 Ohio St.2d 317 (1977).

{¶4} Plaintiff, Derrik Pannell, executor of the estate of Seron McGee, asserts that McGee was on defendant's premises at the Havener Eye Institute for a medical appointment. Shortly after entering an elevator, the elevator dropped suddenly, resulting in an injury to McGee's ankle. McGee was then trapped in the elevator for 45 minutes. In the complaint, the date that the alleged incident occurred is set forth as April 10, 2011.

{¶5} Eboney Bell, McGee's daughter, and John Bell, McGee's son-in-law, were both in the elevator with McGee when the incident occurred. According to their deposition testimony, neither Eboney nor John remember when the incident occurred. John stated that the incident may have occurred in 2012 but was not sure of the month. Eboney could not remember the month or the year when it occurred. John testified that he pressed the call button and spoke to maintenance workers or security guards about the problem, and approximately 45 minutes later, the elevator doors opened and they were able to leave the building. Neither Eboney, John, nor McGee reported the incident to anyone working at the eye institute on the day of the incident. According to Eboney and John, a pizza delivery man was also in the elevator with them at the time.

{¶6} Defendant asserts that there are no records that McGee was a patient at the eye institute in April 2011. In addition, there are no records that any elevator at the eye institute had the alleged operational issues in April 2011.

{¶7} Defendant asserts that summary judgment is appropriate because there is no evidence to support the allegations in plaintiff's complaint. Specifically, defendant asserts that plaintiff cannot show that an unreasonably dangerous condition existed on

defendant's premises when McGee was in the elevator, and as a consequence, plaintiff cannot establish that defendant was negligent.

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

{¶9} 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's decedent was on defendant's premises for purposes that 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 (10th 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, supra*, at 80. "[T]o establish that the owner or occupier failed to exercise ordinary care, the invitee must establish that: (1) the owner of the premises or his agent was responsible for the hazard of which the invitee has complained; (2) at least one of such persons had actual knowledge of the hazard and neglected to give adequate notice of its existence or to remove it promptly; or (3) the hazard existed for a sufficient length of time to justify the inference that the failure to warn against it or remove it was attributable to a lack of ordinary care." *Price v. United Dairy Farmers, Inc.*, 10th Dist. No. 04AP-83, 2004-Ohio-3392, ¶ 6.

{¶10} Defendant filed the affidavits of Amy Schoen, a senior mechanical engineer in the facilities services department, and Bob LaFollette, Chief Operation Officer of the OSU Havener Eye institute. Schoen averred as follows:

{¶11} "1. I am currently employed by The Ohio State University ('OSU') as a Senior Mechanical Engineer in the Facilities Services department. During 2010 and 2011, I worked this same position, which duties at that time included overseeing the individual who managed the elevator contracts, including overseeing the maintenance and repair work done on elevators at OSU;

{¶12} "2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶13} "3. I am aware that the Complaint filed in this case as well as the prior case of Seron McGee v. Ohio State University Medical Center, Court of Claims Case No. 2012-05886, alleges that Ms. McGee was trapped for 45 minutes in an elevator, at the OSU Havener Eye Institute on or about April 10, 2011, which dropped suddenly and allegedly caused her injury;

{¶14} "4. I have reviewed the elevator maintenance records for the OSU Havener Eye Institute for April, 2011 – and have found no records regarding such an incident;"

{¶15} "5. Pursuant to Ohio law, R.C. § 4105.191, OSU is required to notify the Department of Commerce within 72 hours of any elevator accident which results in death or bodily injury to any person;

{¶16} "6. Because no one in the facilities services department – which oversees the maintenance of elevators at OSU – was ever notified of any such accident, OSU never notified the Department of Commerce pursuant to R.C. § 4105.191."

{¶17} LaFollette averred as follows:

{¶18} "1. I am currently employed by The Ohio State University College of Medicine as the Administrator of the Department of Ophthalmology and Visual Science. In addition, I am duly employed by Ohio State University Physicians, Inc., as Chief Operation Officer to oversee the clinical operations of the OSU Havener Eye institute;

{¶19} "2. I have personal knowledge, and I am competent to testify to the facts contained in this Affidavit;

{¶20} "3. I am aware that the Complaint filed in this case as well as the prior case of Seron McGee v. Ohio State University Medical Center, Court of Claims Case No. 2012-05886, alleges that Ms. McGee was a patient of the OSU Havener Eye Institute on or about April 10, 2011, when she alleges she was injured in an elevator;

{¶21} "4. I have reviewed Ms. McGee's records for the OSU Havener Eye Institute. On the following dates, Ms. McGee was seen by Dr. David Hirsh at the Eye Institute: April 8, 2010; August 11, 2010; and June 23, 2011. On June 20, 2011, Ms. McGee was supposed to see Dr. Hirsh, but left without being seen by the doctor;

{¶22} "5. There are no records showing that Ms. McGee was a patient at the OSU Havener Eye Institute in April, 2011."

{¶23} Defendant asserts that plaintiff has presented no evidence that an unreasonably dangerous condition on the premises caused plaintiff's decedent's injuries, or that defendant breached its duty of ordinary care to her, because there is no record of her being on the premises on the date alleged in her complaint, and there is no record of any elevator malfunction that occurred on or prior to that date.

{¶24} In response, plaintiff states that the pizza delivery driver has been identified, and that he might have some records that would establish the date of the incident. However, Civ.R. 56(E) states: "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."

{¶25} Construing the evidence most strongly in favor of plaintiff, the only reasonable conclusion is that plaintiff has failed to establish either the date that McGee was injured, or that defendant had actual or constructive notice of any defective condition on its premises on or around that time. Plaintiff has also failed to rebut the testimony of Schoen and LaFollette regarding the fact that no reports of any problems with its elevators were reported in April 2011.

{¶26} For the foregoing reasons, the court concludes that there are no genuine issues as to any material fact and that defendant is entitled to judgment as a matter of law. Accordingly, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. 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.

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PATRICK M. MCGRATH
Judge

cc:

Daniel R. Forsythe
Stacy L. Hannan
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Shantae D. Clayborn
325 East Livingston Avenue
Columbus, Ohio 43215

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