[Cite as *Blair v. Univ. of Akron*, 2014-Ohio-5968.]

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

RACHEL J. BLAIR

Plaintiff

v.

THE UNIVERSITY OF AKRON

Defendant

Case No. 2014-00296

Judge Patrick M. McGrath
Magistrate Anderson M. Renick

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On June 19, 2014, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On July 9, 2014, plaintiff filed a response. 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} On March 23, 2012, plaintiff was a student at defendant, the University of Akron (UA), where she attended mathematics classes in Crouse Hall, a large lecture classroom. In her deposition, plaintiff testified that she chose to sit near the back of the classroom to have a clear view of the lecturer and board. Plaintiff explained that she usually sat in the same seat for each class, including the day of the incident. The chair that had been located to the left of plaintiff's seat had been removed, leaving a post with a metal plate onto which the chair had been attached. Plaintiff estimated that each side of the square metal plate was approximately three to four inches in length and a "couple centimeters" thick. Plaintiff testified that the post in question was substantially similar to the post that is depicted in Plaintiff's Exhibit A.

{¶5} According to plaintiff, approximately three minutes before class was scheduled to begin, her backpack spilled over, and when she turned to pick it up, someone called her name, whereupon plaintiff "took a step forward thinking [she was] clear of the post, and [she] hit the post." (Plaintiff's deposition, page 18.) Plaintiff's leg came into contact with the metal plate, causing a cut across her right shin. Plaintiff was subsequently treated with a tetanus shot and she received seven stitches to close the wound.

{¶6} Plaintiff asserts that defendant was negligent in failing to maintain the premises in a reasonably safe condition. Defendant maintains that any danger of injury from contacting the chair post and metal plate was an open and obvious condition, which precludes liability.

{¶7} 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 Prods., Inc.*, 15 Ohio St.3d 75, 77 (1984).

{¶8} 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. As a student at UA, plaintiff's legal status was that of a business invitee. *Kleisch v. Cleveland State Univ.*, 10th Dist. Franklin No. 05AP-289, 2006-Ohio-1300; *Baldauf v. Kent State Univ.*, 49 Ohio App.3d 46 (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.

{¶9} 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.*, 64 Ohio St.3d 642, 644 (1992). "Open-and-obvious dangers are those not hidden, concealed from view, or undiscoverable upon ordinary inspection." *Thompson v. Ohio State Univ. Physicians, Inc.,* 10th Dist. Franklin No. 10AP-612, 2011-Ohio-2270, citing *Lydie v. Lowe's Cos., Inc.*, 10th Dist. Franklin No. 01AP-1432, 2002-Ohio-5001. "A person does not need to observe the dangerous condition for it to be an 'open-and-obvious' condition under the law; rather, the determinative issue is whether the condition is observable." *Id*., citing *Sherlock v. Shelly Co.*, 10th Dist. Franklin No. 06AP-1303, 2007-Ohio-4522.

{¶10} Plaintiff contends that the hazardous condition was not open and obvious because she was unaware of the sharp edge of the metal plate. However, the alleged sharp edge of the metal plate was neither hidden nor concealed, and plaintiff testified that she "had been sitting next to that post all semester." The condition of the metal

plate was discoverable from ordinary inspection and plaintiff had an opportunity to observe and discover any hazard prior to the incident. *See Rigdon v. Great Miami Valley YMCA*, 12th Dist. Butler No. CA2006-06-155, 2007-Ohio-1648 ¶ 21-22 (finding that the sharp edges of a door were observable and discoverable by ordinary inspection such that the condition was an open and obvious hazard.)

{¶11} Although plaintiff alleges that she was distracted by spilling her backpack and by an acquaintance who called her name, the court notes that such distractions do not constitute attendant circumstances which can serve as an exception to the open and obvious doctrine. "To serve as an exception to the open and obvious doctrine, an attendant circumstance must be 'so abnormal that it unreasonably increased the normal risk of a harmful result or reduced the degree of care an ordinary person would exercise.'" *Mayle v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 09AP-541, 2010-Ohio-2774, ¶ 20, quoting *Cummin v. Image Mart, Inc.*, 10th Dist. Franklin No. 03AP-1284, 2004-Ohio-2840, ¶ 10. "Attendant circumstances do not include the individual's activity at the time of the [accident] unless the individual's attention was diverted by an unusual circumstance *of the property owner's making*." (Emphasis added.) *McConnell v. Margello*, 10th Dist. Franklin No. 06AP-1235, 2007-Ohio-486 0, ¶17.

{¶12} Construing the evidence most strongly in plaintiff's favor, the court finds that the condition of the chair post and metal plate was observable, and, thus, it was an open and obvious condition. Plaintiff's attention was not diverted by any unusual circumstance of defendant's making when her leg was cut by the metal plate. Accordingly, defendant owed no duty to plaintiff, and plaintiff's claim of negligence is barred as a matter of law.

{¶13} Based upon the foregoing, 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.

_____
PATRICK M. MCGRATH
Judge

cc:

Eric A. Walker
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130

Thomas Kelley
159 South Main Street, Suite 720
Akron, Ohio 44308-1337

Filed August 11, 2014
Sent To S.C. Reporter 11/5/15