[Cite as *Donahue v. Ohio Univ.*, 2015-Ohio-4849.]

IN THE COURT OF CLAIMS OF OHIO

MELISSA R. DONAHUE

Plaintiff

v.

OHIO UNIVERSITY

Defendant

Case No. 2014-00847-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} This matter is before the Court as a result of a claim filed by Melissa Donahue on October 23, 2014. In her claim, the Plaintiff alleged that on June 13, 2014 she tripped and fell over a high spot in a sidewalk on the grounds of Ohio University, the campus of which is located in Athens County, Ohio. The Plaintiff was on campus with her son attending student orientation activities. As a result of the fall, the Plaintiff's face hit the concrete sidewalk and she cracked parts of her teeth as well as cutting and bruising her chin. Plaintiff underwent major dental repair work, including two crowns, and she now seeks damages of $1,708.95, which is the balance of her dental bill that was not covered by her insurance.

{¶2} The Defendant, Ohio University, filed an Investigation Report with this Court on December 24, 2014. In this report, the Defendant does not dispute the facts of Plaintiff's complaint nor the amount of claimed damages. The Defendant does, however, deny any liability for Plaintiff's fall and subsequent injury.

{¶3} Defendant's contention that it is not responsible for Plaintiff's injury is based on the results of an investigation conducted by the University Health and Safety Director who found that there indeed was a raised area of concrete in the sidewalk where Plaintiff fell, but that this difference in the concrete slabs was only approximately ¾ of an

inch in height. It is Defendant's position that such a minor deviation in height in the sidewalk is not evidence of negligence on the part of the University. In support of its position, the Defendant cites a long line of Ohio cases beginning with *Helms v. American Legion*, 5 Ohio St. 2d 60, 213 N.E.2d 734, 1966 Ohio LEXIS 387, 34 Ohio Op. 2d 124 (Ohio 1966), which stands for the proposition that entities such as the Defendant here are not liable for injuries that occur on sidewalks where there is only minor height deviations.

{¶4} In a well-researched response filed with the Court on January 20, 2015, the Plaintiff provided a study that cites the Code of Federal Regulation which seems to indicate that the Americans with Disabilities Act specifies a trip hazard in sidewalks as any vertical deviation of ¼ inch or more. This figure is less than the ¾ inch raise that Plaintiff tripped over.

{¶5} While the Court is very impressed with Plaintiff's argument, advancing the applicability of ADA standards in her case, in order to find for the Plaintiff would require this Court to ignore present Ohio law in favor of federal regulations. As the Court of Claims is strictly a trial court, such a course of action is not an option. This Court must follow current Ohio law until such time as that law is modified either by the legislature or by a higher court.

{¶6} Thus, the Court must therefore decide if a deviation in the sidewalk of ¾ inch is so minor, that even if Plaintiff were invited on the premises and was unaware of the raise in the sidewalk, the Defendant could not be held liable for her injuries. In this case, the Court is persuaded that a ¾ inch raise is clearly a minor deviation and therefore not significant enough to hold the Defendant liable for Plaintiff's fall. This Court's rationale is similar to that of the court in *Helms*, when quoting the case of *Gastel v. City of New York*, 194 N.Y. 15, 86 N.E., 833 which found a municipality in that state not liable where the variation in height ranged from 3/8 inches to 3/4 inches:

{¶7} We think we may take judicial notice of the fact which ordinary observation discloses that there is scarcely a rod in the streets of any city in which there may not be discovered some little unevenness or irregularity in sidewalks, crosswalks, curbs, or

pavements. As the result of various causes, climatic and otherwise, they are constantly occurring and recurring. Ordinarily they cause no difficulties, and it would require a vast expenditure of money to remove them all.

{¶8} As the courts in *Helms* and *Gastel* make clear, it is unreasonable to expect that an entity be legally liable for every small defect in its sidewalks. This is especially so in cases such as this one, where it is clear that the Defendant had no prior actual notice of the deviation.

{¶9} Finally, as the Court finds that Ohio University should not be held liable for a minor deviation in the sidewalk, the Court need not determine whether the Plaintiff was an invitee nor whether the Plaintiff should have been aware of any such deviation in the sidewalk.

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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. The court shall absorb the costs in this case.

_____
MARK H. REED
Clerk

Entry cc:

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