[Cite as *Foster v. Ohio Dept. of Transp.*, 2015-Ohio-5640.]

WINSTON FOSTER Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant	Case No. 2013-00298 Judge Patrick M. McGrath Magistrate Holly True Shaver ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On October 16, 2015, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). On October 28, 2015, plaintiff filed a response. The 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 December 28, 2011, plaintiff, a long-distance truck driver, stopped at a rest area located on I-70 in Preble County, Ohio. After parking his truck, plaintiff walked

through the parking lot toward the building in order to use the rest room. When plaintiff began to walk on the sidewalk, his foot slipped on a patch of ice and he fell to the ground, injuring his right arm and shoulder. The weather conditions were cold and plaintiff fell at approximately 8:00 a.m. After plaintiff was able to get up from the sidewalk, he walked into the building and reported his injuries to Shaun Rader, an employee of Twin Cedars, a vendor under contract with defendant as a caretaker of the rest area. Plaintiff asserts that defendant was negligent when it failed to maintain the sidewalk in a reasonably safe condition. Defendant asserts that it is entitled to judgment as a matter of law, in that plaintiff was a licensee at the rest area, and that it did not breach any duty it owed to him.

{¶5} In order for plaintiff to prevail on his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused his injuries. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, ¶ 8, citing *Menifee v. Ohio Welding Products, Inc.*, 15 Ohio St.3d 75, 77 (1984). Under Ohio law, the duty owed by an owner or occupier of premises ordinarily depends on whether the injured person is an invitee, a licensee, or a trespasser. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 315, 1996-Ohio-137.

{¶6} "The distinction between an invitee and a licensee is dependent on whether the guest enters the land for personal benefit or for the benefit of the owner. A guest who enters an owner's premises, with permission or acquiescence, for personal benefit, is a licensee. *Light v. Ohio Univ.*, 28 Ohio St.3d 66, 68 (1986). A guest who enters an owner's premises, with permission, for some purpose that is beneficial to the owner, is an invitee. *Id.* An owner has a duty to exercise ordinary care to protect an invitee. *Id.* In contrast, an owner merely owes a licensee a duty to refrain from wantonly or willfully causing injury. *Id*." *Heffern v. Univ. of Cincinnati Hosp.*, 142 Ohio App.3d 44, 52 (10th Dist.2001).

{¶7} "Individuals who use public roadside rest area facilities are, as a general rule, licensees for purposes of establishing the duty of care owed to them by the state or its agencies." *Provencher v. Ohio Dept. of Transp.,* 49 Ohio St.3d 265 (1990), syllabus; see also *Hoover v. State,* 10th Dist. Franklin No. 92AP-1529 (March 31, 1993). In *Provencher*, the court rejected the argument that the "use of the rest areas is of sufficient benefit to the state of Ohio to confer invitee status upon all highway travelers who stop at the rest areas." *Provencher, supra*, at 266. The Tenth District Court of Appeals has recognized, however, "that people who visit a public roadside rest area facility may on occasion be able to demonstrate that they are an invitee, not merely a licensee." *Talley v. Ohio Dept. of Transp.,* 10th Dist. Franklin No. 00AP-1037 (Feb. 6, 2001.)

{¶8} Plaintiff asserts that he was an invitee at the rest area because vending machines were present on the premises of the rest area, and that rest areas provide an implied invitation for members of the general public to enter the property. However, the fact that vending machines are present at a rest area is insufficient to find that ODOT derived some benefit from plaintiff's visit when it is undisputed that plaintiff did not use the vending machine. *See Carlson v. ODOT,* 10th Dist. Franklin No. 11AP-175, 2011-Ohio-5973, ¶ 12.

{¶9} Construing the evidence most strongly in favor of plaintiff, the only reasonable conclusion is that plaintiff stopped at the rest area to use the rest room, which was for his own benefit, and that defendant received no tangible benefit by virtue of his visit. Accordingly, the court concludes that plaintiff's status at the rest area was that of a licensee. Inasmuch as plaintiff has brought forth no evidence from which a reasonable trier of fact could infer that defendant's employees acted in a willful or wanton manner with regard to their acts or omissions in treating the sidewalk, 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.

PATRICK M. MCGRATH
Judge

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