[Cite as *Blair v. Vandalia United Methodist Church*, 2011-Ohio-873.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

LISA M. BLAIR	:	
Plaintiff-Appellant	:	C.A. CASE NO. 24082
v.	:	T.C. NO. 08CV9930
VANDALIA UNITED METHODIST CHURCH	:	(Civil appeal from Common Pleas Court)
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the 25th day of February, 2011.

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DONOVAN, J.

{¶ 1} Plaintiff-appellant Lisa M. Blair appeals from a decision of the Montgomery County Court of Common Pleas, General Division, sustaining defendant-appellee Vandalia

United Methodist Church's (hereinafter "VUMC") motion for summary judgment. VUMC filed its motion for summary judgment on September 25, 2009. On May 5, 2010, the trial court filed a written decision sustaining said motion. Blair filed a timely notice of appeal with this Court on June 4, 2010.

I

{¶ 2} On September 14, 2005, VUMC entered into a contract with the Montgomery County Board of Elections (MCBE) whereby VUMC agreed to offer its premises as a voting location for MCBE. In exchange, MCBE agreed to pay VUMC $75.00 for each election precinct which chose to utilize VUMC as a voting location. VUMC is located at 200 South Dixie Drive in Vandalia, Ohio.

{¶ 3} On November 7, 2006, Blair traveled to VUMC to cast her vote in the election. At the time, Blair was recovering from an ankle sprain which required her to use crutches in order to walk. Blair had borrowed the crutches from an acquaintance. Because she could not drive, Blair asked her friend, Tawni Lester, to transport her to the polling place. It was raining on the day in question, and Blair was aware that she needed to be careful since she was walking on crutches.

{¶ 4} Upon arriving at the VUMC polling location, Lester parker her vehicle a short distance from the entrance to the church. Upon entering the church, Blair noticed a rectangular rug in the doorway commonly used as a weather mat. As she stepped off of the weather mat just inside the door, both of Blair's crutches slipped on the floor in the entranceway of the church, and she fell, sustaining injury. Blair testified that initially she could not identify what she had slipped on. Lester testified in her deposition that she

informed Blair that she had had slipped on a "wet substance." Blair asserted that Reverend Tom Weeks of the VUMC appeared next to her after her fall and informed her that he had almost fallen when he had come through the same entrance earlier that morning.

{¶ 5} On November 3, 2008, Blair filed a complaint against VUMC asserting negligence and premises liability claims. Specifically, Blair argued that VUMC breached its duty to her when it failed to keep rainwater from accumulating at the entrance to the VUMC polling facility, as well as failing to provide a warning of the dangerous condition when an employee of the VUMC possessed actual notice of the existence of the hazard. VUMC subsequently filed a motion for summary judgment on September 25, 2009, asserting that Blair was a licensee, that VUMC exercised ordinary care, and that Blair's injuries were not caused by any willful or wanton conduct. VUMC also pointed out that Blair could not identify the substance which she slipped on. Moreover, VUMC argued that any accumulation of water in the entrance to the church was caused by the rain which fell that day, and was therefore, open and obvious.

{¶ 6} The trial court sustained VUMC's motion for summary judgment in a written decision filed on May 5, 2010. The trial court found that Blair was a business invitee to whom VUMC owed a duty to exercise ordinary care and to maintain the premises in a safe condition. The court, however, held that VUMC did not have superior knowledge of the hazard caused by the rainwater and did not breach its duty of care to Blair by failing to eliminate the rainwater on the floor which had been tracked in from outside.

{¶ 7} It is from this judgment that Blair now appeals.

II

STANDARD OF REVIEW

{¶ 8} An appellate court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. We apply the same standard as the trial court, viewing the facts in the case in a light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12.

{¶ 9} Pursuant to Civil Rule 56(C), summary judgment is proper if:

{¶ 10} "(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327. To prevail on a motion for summary judgment, the party moving for summary judgment must be able to point to evidentiary materials that 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. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. The non-moving party must then present evidence that some issue of material fact remains for the trial court to resolve. *Id*.

III

{¶ 11} Blair's sole assignment of error is as follows:

{¶ 12} "THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANT/APPELLEE, VANDALIA UNITED METHODIST CHURCH."

{¶ 13} In her sole assignment, Blair contends that the trial court erred when it sustained VUMC's motion for summary judgment and dismissed all of her claims. Specifically, Blair argues that a genuine issue exists regarding whether VUMC possessed superior knowledge of the dangerous condition which caused her injuries.

{¶ 14} Initially, we note that we agree with the trial court's finding that Blair was a business invitee, rather than a licensee, because VUMC received a $75.00 payment from MCBE for each voting precinct that used the church as a polling location. In *McLorey v. Hamilton Cty. Bd. Of Elections* (Dec. 7, 1994), Hamilton App. No. C-930946, the court held that an individual who entered a church to vote was an invitee because the church received a payment of $50.00 from the board of elections for the use of the facility. "'Business invitees are persons who enter the premises of another for a purpose that is beneficial to the owner.' (Citation omitted). 'Store owners owe invitees "a duty of ordinary care in maintaining the premises in a reasonably safe condition so that its customers are not unnecessarily and unreasonably exposed to danger."'" *Johnston v. Miamisburg Animal Hosp.* (Aug. 31, 2001), Montgomery App. No. 18863, 2001-Ohio-1467. Although the parties contested the issue in the trial court regarding whether Blair was an invitee or a licensee at the time of her fall, the parties do not dispute the court's determination that appellant was a business invitee.

{¶ 15} An owner or occupier of a premises owes business invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition so that invitees are not unnecessarily and unreasonably exposed to danger. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203. The owner or occupier, however, is not an insurer of an

invitee's safety and owes no duty to protect invitees from open and obvious dangers on the property. Id. at 203-204; citing *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45. Open and obvious hazards are those hazards that are neither hidden nor concealed from view and are discoverable by ordinary inspection. *Parsons v. Lawson Co.* (1989), 57 Ohio App.3d 49, 50-51. "[T]he dangerous condition at issue does not actually have to be observed by the plaintiff in order for it to be an 'open and obvious' condition under the law. Rather, the determinative issue is whether the condition is observable." *Caravella v. West-WHI Columbus Northwest Partners*, Franklin App. No. 05AP-499, 2005-Ohio-6762. We have held that the crucial inquiry is whether an invitee exercising ordinary care under the circumstances would have seen and been able to guard himself against the condition. *Kidder v. The Kroger Co.*, Montgomery App. No. 20405, 2004-Ohio-4261.

{¶ 16} In *Paschal v. Rite Aid Pharmacy*, 18 Ohio St.3d at 204, the Ohio Supreme Court found that a pharmacy did not breach its duty of ordinary care to a customer by failing to eliminate, or failing to warn the customer about, a puddle of water in the pharmacy caused by snow tracked in by other customers. Thus, the Supreme Court held that the pharmacy was not liable to a customer on crutches who slipped and fell on the puddle. Citing *S.S. Kresge Co. v. Fader* (1927), 116 Ohio St. 718, 723-724, the Supreme Court stated the follwing:

{¶ 17} "'Owners or lessees of stores, *** are not insurers against all forms of accidents that may happen ***. *It is not the duty of persons in control of such buildings to keep a large force of moppers to mop up the rain as fast as it falls or blows in, or is carried in by wet feet or clothing or umbrellas, for several very good reasons, all so obvious that it*

is wholly unnecessary to mention them here in detail.' See, also, *Boles v. Montgomery Ward & Co.* (1950), 153 Ohio St. 381, ***, paragraph two of the syllabus ('Ordinarily, no liability attaches to a store owner or operator for injury to a patron who slips and falls on the store floor which has become wet and slippery by reason of water and slush tracked in from the outside by other patrons.')"

{¶ 18} At her deposition, Blair testified as follows:

{¶ 19} "Counsel for VUMC: What did Tawni [Lester] do while you guys were going into the church? Was she beside you?

{¶ 20} "Blair: Yeah. Actually, she held the door open for me.

{¶ 21} "Q: Did she tell you to be careful because it was wet outside?

{¶ 22} "A: Yes.

{¶ 23} "Q: And did you know to be careful because it was wet outside?

{¶ 24} "A: Yes.

{¶ 25} "***

{¶ 26} "Q: Okay. Was there anything about the interior layout of the church that distracted your ability to see what was ahead of you?

{¶ 27} "Blair: No.

{¶ 28} "Q: Was there any obstructions on the floor which would have made you detour around as you were walking in to vote?

{¶ 29} "A: No.

{¶ 30} "***

{¶ 31} "Q: I know that there weren't any signs, but in light of what you told me, you

knew that it was raining, correct?

{¶ 32} "A: Yes.

{¶ 33} "Q: You knew that you had to be careful because it was raining, correct?

{¶ 34} "A: Correct.

{¶ 35} "***

{¶ 36} "Q: Doesn't it flow logically that since it was wet outside, since you've acknowledged that you knew you had to be careful because it was wet, that once you walked off that runner rug, that the floor could be slippery?

{¶ 37} "Plaintiff's Counsel: Objection.

{¶ 38} "Blair: Yes."

{¶ 39} In *Schmitt v. Duke Realty, L.P.*, Franklin App. No. 04AP-251, 2005-Ohio-4245, a plaintiff slipped, fell, and suffered injury on water that had accumulated on the floor from rain tracked inside by people entering the building. The plaintiff in *Schmitt* slipped and fell approximately 15 to 20 steps inside the door rather than immediately inside the door. The Tenth District Court of Appeals concluded that "the issue of whether a hazard is open and obvious may be a question for the jury to resolve before the court determines whether the landowner has a duty to the business invitee." Id. at ¶ 17. Construing the evidence in the plaintiff's favor, the court held that a genuine issue existed regarding the open and obvious nature of the water on the floor and reversed the trial court's grant of summary judgment. The court acknowledged, however, that "[h]ad the water in this case been only a few steps inside the door of the building, *we would agree with the trial court that the water, as a matter of law, was an open an obvious hazard*; reasonable minds

could not differ about whether someone entering the building should be charged with knowledge that the floor might be wet." Id. at ¶ 18

{¶ 40} Like the plaintiffs in *Paschal* and *Schmitt*, Blair slipped and fell on water which had accumulated inside an entryway as it was raining. Unlike the plaintiff in *Schmitt*, however, Blair slipped and fell immediately after she stepped off the weather mat and entered the building. Although Blair did not see what she slipped on, Blair acknowledged that she knew it was a "wet substance." Blair also testified that she knew it was raining outside and that she had to be careful because the entrance to the church was likely wet from people who had walked into the church before her. Thus, the presence of water just inside the entrance to the church tracked inside by those entering the building was an open and obvious condition, and VUMC had no duty to warn Blair of its presence. "Everybody knows that the hallways between the outside doors of such buildings and the elevators or business counters inside the building during a continued rainstorm are tracked all over by the wet feet of people coming from the wet sidewalks, and thereby rendered more slippery than they would otherwise be." *S.S. Kresge Co. v. Fader*, 116 Ohio St. at 723-724.

{¶ 41} We have reviewed the cases relied upon by Blair in support of her appeal and find that they are markedly different from the facts involved in the instant case. Specifically, in *Ray v. Ramada Inn North*, 171 Ohio App.3d 1, 2007-Ohio-1341 and *Sauter v. One Lytle Place*, Hamilton App. No. C-040266, 2005-Ohio-1183, the plaintiffs slipped and fell on tile floors that were rendered hazardous by the amount of wax applied by janitorial crews. Moreover, the *Ray* and *Sauter* courts found that the slippery condition of the floors were not open and obvious. Rather, the property owners were aware of the latent

man-made conditions causing the floors to be slippery but failed to warn invitees of the hazards before they were injured. We note that in *Sauter*, the court stated that "everyone knows, or indeed ought to know, that tile is generally slippery and becomes more so when wet." Id. at ¶ 14.

{¶ 42} In *Donato v. Honey Baked Ham Co.*, Lake App. No. 98-L-200, the Eleventh District Court of Appeals relied on the deposition testimony of the store manager regarding the "very slippery" nature of the tile floor in reversing a trial court's grant of summary judgment to the store when a customer slipped and fell. The store manager testified that the slippery nature of the floor was caused by the type of tile and that he was aware that employees routinely slipped and fell while mopping the floor. Thus, the court held that the abnormally slippery nature of the tile floor created a genuine issue regarding whether the store had superior knowledge of a latent defect.

{¶ 43} Blair places a great deal of emphasis on the fact that Rev. Weeks informed her after she fell that he had almost fallen earlier on the day in question. Blair argues that Rev. Weeks alleged admission to her constituted superior knowledge of the wet conditions at the church entrance, and he was duty bound to post warnings at the entrance to provide notice to invitees of the hazardous condition. However, even assuming VUMC, through Rev. Weeks, possessed *prior* knowledge of the wet condition of the entryway, its knowledge was no greater than Blair's. No evidence was adduced which established that the floor in the entrance to the church was abnormally slippery like the floor in *Donato*. Moreover, the slippery condition was not caused by any actions on the part of VUMC. The area just inside the entrance to the church was naturally wet from rain tracked in by members of the voting

public. The wet condition at the entrance to the church was not a latent or hidden defect, and VUMC did not have a duty to post a warning for the open and obvious condition. By her own admission, Blair was aware that the floor in and around the church entrance might be slippery because it was raining outside. Blair acknowledged as much in her deposition testimony. Based on the open and obvious nature of the wet conditions present when she arrived at the church, Blair was on notice that the area in and around the entrance could be hazardous, and she had a duty to adjust her actions accordingly. Thus, the trial court did not err when it sustained VUMC's motion for summary judgment.

{¶ 44} Blair's sole assignment of error is overruled.

IV

{¶ 45} Blair's sole assignment of error having been overruled, the judgment of the trial court is affirmed.

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FROELICH, J. and HALL, J., concur.

Copies mailed to:

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