[Cite as *Alsbury v. Dover Chem. Corp.*, 2009-Ohio-3831.]

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DOUGLAS ALSBURY	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellant	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008 AP 10 0068
DOVER CHEMICAL CORPORATION	:	
	:	
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Tuscarawas County Court of Common Pleas Case No. 2007 CT 04 0300
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	July 24,2009

APPEARANCES:

For Plaintiff-Appellant:

RONALD A. APELT
Two Commerce Park Square
23220 Chagrin Blvd., Suite 300
Beachwood, OH 44122

For Defendant-Appellee:

RANDOLPH SNOW
220 Market Ave. S., Suite 1000
Canton, OH 44702

Delaney, J.

{¶1} Plaintiff-Appellant, Douglas Alsbury, appeals the September 12, 2008 judgment entry of the Tuscarawas County Court of Common Pleas granting summary judgment in favor of Defendant-Appellee, Dover Chemical Corporation. For the reasons that follow, we affirm the judgment of the trial court.

STATEMENT OF THE FACTS AND THE CASE

{¶2} Appellant was employed as a truck driver with PVS Chemical Corporation located in Detroit, Michigan. On September 21, 2005, PVS Chemical Corporation directed Appellant to pick up a load of raw acid from Appellee, located in Dover, Ohio. Appellee specializes in the production of chemicals and chemical compounds for commercial and industrial uses. Appellant had been to Appellee's facility two times previously that same week to pick up loads of raw acid. Appellant was then to drive the load of raw acid to Ohio Pickling.

{¶3} For large sales of chemicals, Appellee offers a loading station for tanker trucks to pick up loads. At the loading station, the truck driver drives their tanker forward until the tanker is properly positioned under a fixed rack where the chemicals can be pumped into the tanker. An employee of Appellee on the loading rack directs the truck driver with hand signals to tell the truck driver how to properly position the truck for loading purposes. The truck driver does not need to exit his truck during this process.

{¶4} On the day in question, Appellant's truck was next in line to be directed into the loading station. Another PVS Chemical Corporation truck driven by Bob Boberick was in the loading station, but Appellee had filled the truck with too much acid

causing spillage. Appellee's employees were focused on that truck and one of Appellee's employees told Appellant to line up his truck under the loading rack himself. Appellant climbed down from the cab of his truck, facing the cab, to walk around his truck to determine his progress in lining up his truck under the loading rack.

{¶5} After walking to establish the position of his truck in relation to the loading rack, Appellant determined that he had to pull his truck forward. Appellant walked back to his truck. As Appellant walked back to his truck, he looked to see if there was anything in his tire or oil leaking from his truck. When Appellant reached the cab of his truck, he grabbed for the railing to climb into the truck, but Appellant fell to the ground causing injuries to his left ankle, right elbow and wrist.

{¶6} After Appellant fell, Bob Boberick asked Appellant if he was okay. Appellant did not know how he fell. Mr. Boberick told Appellant that Appellant had stepped into a hole or a trench in the concrete floor.[1] Appellant was able to climb into the cab of his truck and move the truck forward to the loading rack. Gerald Contini, Environment, Health and Safety Manger for Appellee, immediately investigated Appellant's fall and spoke with Appellant. Appellant refused medical treatment at Appellee's location, but Appellant determined he was in too much pain to drive his truck back to Michigan. Another PVS Chemical Corporation employee, Douglas Duynslager, drove Appellant to Toledo where Appellant's wife picked him up. Appellant told Mr. Duynslager that he had tripped on a crack in the concrete. Mr. Duynslager did not see Appellant fall.

[1] Mr. Boberick passed away in 2006.

{¶7} On a return trip to Appellee's facility a few days later, Mr. Duynslager took photographs of the area where he believed Appellant fell. The photographs were taken at the request of PVS Chemical Corporation. The photographs show large portions of pitted and uneven concrete near the tire of Mr. Duynslager's truck cab parked in the loading station. Mr. Duynslager's truck cab is a sleeper cab, which is longer than the cab of the truck Appellant was driving on the day of the accident.

{¶8} On April 25, 2007, Appellant filed a complaint against Appellee in the Tuscarawas County Court of Common Pleas, alleging Appellant sustained injuries as a result of a slip and fall that occurred at Appellee's facility on September 21, 2005.

{¶9} Appellee filed a motion for summary judgment on March 14, 2008. Appellant responded to the motion. On September 12, 2008, the trial court granted Appellee's motion for summary judgment. It is from this judgment Appellant now appeals.

{¶10} Appellant raises one Assignment of Error:

{¶11} "THE TRIAL COURT ERRED IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT SINCE GENUINE ISSUES OF MATERIAL FACT EXISTED DEMONSTRATING THAT DEFENDANT BREACHED ITS DUTY OF CARE TO PLAINTIFF, DOUGLAS ALSBURY, TO MAINTAIN ITS PREMISES IN A REASONABLY SAFE CONDITION WHICH BREACH DIRECTLY AND PROXIMATELY CAUSED INJURIES AND DAMAGES TO PLAINTIFF DOUGLAS ALSBURY."

{¶12} We review Appellant's Assignment of Error pursuant to the standard set forth in Civ.R. 56. Said rule was reaffirmed by the Supreme Court of Ohio in *State ex rel. Zimmerman v. Tompkins,* 75 Ohio St.3d 447, 448, 1996-Ohio-211:

{¶13} "Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (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 nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. *State ex. rel. Parsons v. Fleming* (1994), 68 Ohio St.3d 509, 511, 628 N.E.2d 1377, 1379, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 4 O.O3d 466, 472, 364 N.E.2d 267, 274."

{¶14} As an appellate court reviewing summary judgment motions, we must stand in the shoes of the trial court and review summary judgments on the same standard and evidence as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35.

{¶15} In order to establish a claim for negligence, a plaintiff must show: (1) a duty on the part of defendant to protect the plaintiff from injury; (2) a breach of that duty; and (3) an injury proximately resulting from the breach. *Huston v. Koncieczny* (1990), 52 Ohio St.3d 215, 217; *Jeffers v. Olexo* (1989), 43 Ohio St.3d 140, 142, 539 N.E.2d 614. If a defendant points to evidence illustrating that the plaintiff will be unable to prove any one of the foregoing elements and if the plaintiff fails to respond as Civ.R. 56 provides, the defendant is entitled to judgment as a matter of law. *Aycock v. Sandy Valley Church of God*, Tuscarawas App. No. 2006 AP 09 0054, 2008-Ohio-105, ¶ 20.

{¶16} In a premises liability case, the relationship between the owner or occupier of the premises and the injured party determines the duty owed. *Aycock*, supra at ¶ 21

citing *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 315, 1996-Ohio-137, 662 N.E.2d 287; *Shump v. First Continental-Robinwood Assocs.* (1994), 71 Ohio St.3d 414, 417, 644 N.E.2d 291. Ohio adheres to the common-law classifications of invitee, licensee, and trespasser in cases of premises liability. *Shump v. First Continental-Robinwood Assoc.* (1994), 71 Ohio St.3d 414, 417, 1994-Ohio-427, 644 N.E.2d 291, 294; *Boydston v. Norfolk S. Corp.* (1991), 73 Ohio App.3d 727, 733, 598 N.E.2d 171, 175. In the case at bar, the parties do not dispute that Appellant is an invitee.

{¶17} An invitee is defined as a person who rightfully enters and remains on the premises of another at the express or implied invitation of the owner and for a purpose beneficial to the owner. *Gladon v. Greater Cleveland Regional Authority* (1996), 75 Ohio St.3d 312, 315, 1996-Ohio-137, 662 N.E. 287. The owner or occupier of the premises owes the invitee a duty to exercise ordinary care to maintain its premises in a reasonably safe condition, such that its invitees will not unreasonably or unnecessarily be exposed to danger. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203, 480 N.E.2d 474. A premises owner must warn its invitees of latent or concealed dangers if the owner knows or has reason to know of the hidden dangers. See *Jackson v. Kings Island* (1979), 58 Ohio St.2d 357, 358, 390 N.E.2d 810. However, a premises owner is not, an insurer of its invitees' safety against all forms of accidents that may happen. *Paschal v. Rite Aid Pharmacy, Inc,* 18 Ohio St.3d at 204. Invitees are expected to take reasonable precautions to avoid dangers that are patent or obvious. See *Brinkman v. Ross* (1993), 68 Ohio St.3d 82, 84, 623 N.E.2d 1175; *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, 233 N.E.2d 589, paragraph one of the syllabus.

Therefore, when a danger is open and obvious, a premises owner owes no duty of care to individuals lawfully on the premises. See *Armstrong v. Best Buy Co.,* 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088; *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, 233 N.E.2d 589, paragraph one of the syllabus.

{¶18} Appellee first argued in its motion for summary judgment, and the trial court agreed, that Appellant could not demonstrate a causal explanation for Appellant's slip and fall. The mere fact that Appellant fell does not establish any negligence on the part of Appellee; there must be evidence showing that some negligent act or omission caused Appellant to slip and fall. *Green v. Castronova* (1966), 9 Ohio App.2d 156, 161, 223 N.E.2d 641. Negligence will not be presumed and cannot be inferred simply because the accident occurred. See *Beair v. KFC Nat. Mgmt. Co*., Franklin App. No. 03AP-487, 2004-Ohio-1410, ¶ 9.

{¶19} To establish negligence in a slip and fall case, it is incumbent upon the plaintiff to identify or explain the reason for the fall. *Stamper v. Middletown Hosp. Assn*., (1989), 65 Ohio App.3d 65, 67-68 582 N.E.2d 1040, citing *Cleveland Athletic Assn. Co. v. Bending* (1934), 129 Ohio St. 152, 194 N.E. 6. Where the plaintiff, either personally or by outside witnesses, cannot identify what caused the fall, a finding of negligence on the part of the defendant is precluded. Id.

{¶20} Upon review of Appellant's deposition testimony, we agree that Appellant cannot personally, or through outside witnesses, identify the cause of his fall. In trying to explain the cause of his fall, Appellant's deposition testimony demonstrates the following sequence:

{¶21} "Q. Okay. And when you were on your way back and fell, I believe that you said that you believed you were reaching for the handle to get back up into your truck?

{¶22} "A. Yes.

{¶23} "Q. And when you fell did you fall right next to your truck, the tractor of your truck?

{¶24} "A. You know, I was close. I don't know. Right close to my truck, yes.

{¶25} "Q. And you don't have any idea what caused you to fall?

{¶26} "A. I do now.

{¶27} "Q. And how do you mean you do now?

{¶28} "A. I do now because I seen the pictures.

{¶29} "Q. Okay. But without the pictures, you don't know what caused you to fall?

{¶30} "A. Well, Bob told me I stepped into a hole or a dropoff. You know, a trench is what he said, trench.

{¶31} "Q. When did he tell you that?

{¶32} "A. When I was laying on the ground.

{¶33} "Q. Did he see you step into a trench?

{¶34} "A. He was there.

{¶35} "Q. Well, where was Bob located when –

{¶36} "A. Bob was on the back end of his trailer, and him and another Dover employee, they were lining – doing their stuff to hook stuff up to take acid from him.

{¶37} "Q. Do you know whether Bob actually saw you fall?

{¶38} "A. I don't know that.

{¶39} "Q. Okay. But the first thing or what he told you was that you fell in some trench?

{¶40} "A. He says, 'You fell.' That's all I know. I don't even remember exactly –

{¶41} "Q. You don't remember what he said?

{¶42} "A. No sir." (Appellant Depo., pp. 46-47).

{¶43} Appellant goes on to explain that he now knows what caused him to fall because of the photographs of the uneven concrete taken by Mr. Duynslager. (Appellant Depo. pp. 47-48, 59, 67-68). However, as Appellant's deposition and Mr. Duynslager's deposition further reveals, Mr. Duynslager's photographs were not taken at the same location where Appellant fell. First, Mr. Duynslager did not witness Appellant fall. (Appellant Depo., p. 48; Duynslager Depo., p. 12). Second, Mr. Duynslager took the pictures by the cab of his truck, not Appellant's truck, as it was parked in the loading station. Both parties testified that Mr. Duynslager's cab was longer than Appellant's truck cab. (Appellant Depo., p. 55; Duynslager Depo., pp. 24-27).

{¶44} We further find that Appellant cannot establish that other witnesses knew the cause of Appellant's fall. Appellant states Mr. Boberick told Appellant that he fell on a trench or drop off in the concrete near Appellant's truck cab. There is no Civ.R. 56 evidence that Mr. Boberick witnessed Appellant fall. Appellant did not know if Mr. Boberick witnessed Appellant fall.

{¶45} Appellant testified:

{¶46} "Q. And you don't know what caused you to fall?

{¶47} "A. I do now.

{¶48} "Q. Well, you say you do now –

{¶49} "A. I do now because of the – I'm looking at it now. Right here, I just caught the edge and rolled my ankle.

{¶50} "Q. Caught the edge of what?

{¶51} "A. The concrete.

{¶52} "Q. Where do you mean you caught the edge of the concrete, can you show me on one of those pictures?

{¶53} "A. I don't know exactly when. I don't know.

{¶54} "Q. Okay. And you don't remember that you even caught the edge, do you?

{¶55} "A. I don't know. I fell." (Appellant Depo., pp. 67-68).

{¶56} Upon the Civ.R. 56 evidence presented, we find the evidence does not create a genuine issue of material fact as to the cause of Appellant's fall, either through Appellant's personal knowledge or by witnesses.

{¶57} Assuming *arguendo* that Appellant can establish there is a genuine issue of material fact as to cause of his fall, we find Appellant's claim of negligence is barred by the open and obvious doctrine. As stated above, invitees are expected to take reasonable precautions to avoid dangers that are patent or obvious. *Aycock*, supra. This Court recently wrote a comprehensive review of the law regarding open and obvious dangers in *Aycock*, supra, and we cite to the same in our discussion of the relevant law. Open and obvious dangers are not concealed and are discoverable by ordinary inspection. *Parsons v. Lawson Co.* (1989), 57 Ohio App.3d 49, 50-51, 566

N.E.2d 698. The dangerous condition at issue does not actually have to be observed by the claimant to be an open and obvious condition under the law. *Lydic v. Lowe's Cos., Inc.,* Franklin App. No. 01AP-1432, 2002-Ohio-5001, at paragraph 10. Rather, the determinative issue is whether the condition is observable. Id.

{¶58} The underlying rationale is that "the open and obvious nature of the hazard itself serves as a warning. Thus, the owner or occupier may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves." *Armstrong* Supra, citing *Simmers v. Bentley Construction Co.* (1992), 64 Ohio St.3d 642, 644, 1992-Ohio-42, 597 N.E.2d 504. "The fact that a plaintiff was unreasonable in choosing to encounter the danger is not what relieves the property owner of liability. Rather, it is the fact that the condition itself is so obvious that it absolves the property owner from taking any further action to protect the plaintiff." *Armstrong*, supra. When applicable, the open and obvious doctrine obviates the duty to warn and acts as a complete bar to any negligence claim. Id.

{¶59} In most situations, whether a danger is open and obvious presents a question of law. See *Hallowell v. Athens,* Athens App. No. 03CA29, 2004-Ohio-4257, at paragraph 21; see, also, *Nageotte v. Cafaro Co.,* 160 Ohio App.3d 702, 2005-Ohio-2098, 828 N.E.2d 683. However, under certain circumstances disputed facts may exist regarding the openness and obviousness of a danger thus rendering it a question of fact. As the court explained in *Klauss v. Marc Glassman, Inc.,* Cuyahoga App. No. 84799, 2005-Ohio-1306, at paragraph 17-18: "Although the Supreme Court of Ohio has held that whether a duty exists is a question of law for the court to decide, the issue of whether a hazardous condition is open and obvious may present a genuine issue of fact

for a jury to review. Therefore, where only one conclusion can be drawn from the established facts, the issue of whether a risk was open and obvious may be decided by the court as a matter of law. *Anderson v. Hedstrom Corp.* (S.D.N.Y.1999), 76 F.Supp.2d 422, 441; *Vella v. Hyatt Corp.* (S.D. MI 2001), 166 F.Supp.2d 1193, 1198; see, also, *Parsons v. Lawson Co.* (1989), 57 Ohio App.3d 49, 566 N.E.2d 698. where reasonable minds could differ with respect to whether a danger is open and obvious, the obviousness of the risk is an issue for the jury to determine. *Carpenter v. Marc Glassman, Inc.* (1997), 124 Ohio App.3d 236, 240, 705 N.E.2d 1281; *Henry v. Dollar General Store,* Greene App. No.2002-CA-47, 2003-Ohio-206; *Bumgarner v. Wal-Mart Stores, Inc.,* Miami App. No.2002-CA-11, 2002-Ohio-6856." Accordingly "[t]he determination of the existence and obviousness of a danger alleged to exist on a premises requires a review of the facts of the particular case." *Miller v. Beer Barrel Saloon* (May 24, 1991), Ottawa App. No. 90-OT-050.

{¶60} "Attendant circumstances" become part of the analysis and may create a genuine issue of material fact as to whether a hazard is open and obvious. See *Cummin v. Image Mart, Inc.,* Franklin App. No. 03AP1284, 2004-Ohio-2840, at paragraph 8, citing *McGuire v. Sears, Roebuck & Co.* (1996), 118 Ohio App.3d 494, 498, 693 N.E.2d 807. An attendant circumstance is a factor that contributes to the fall and is beyond the injured person's control. See *Backus v. Giant Eagle, Inc.* (1996), 115 Ohio App.3d 155, 158, 684 N.E.2d 1273. "The phrase refers to all circumstances surrounding the event, such as time and place, the environment or background of the event, and the conditions normally existing that would unreasonably increase the normal risk of a harmful result of the event." *Cummin,* at paragraph 8, citing *Cash v.*

Cincinnati (1981), 66 Ohio St.2d 319, 324, 421 N.E.2d 1275. An attendant circumstance has also been defined to include any distraction that would come to the attention of a person in the same circumstances and reduce the degree of care an ordinary person would have exercised at the time. *McGuire,* 118 Ohio App.3d at 499. Attendant circumstances do not include the individual's activity at the moment of the fall, unless the individual's attention was diverted by an unusual circumstance of the property owner's making. See *McGuire,* 118 Ohio App.3d at 498.

{¶61} Also, an individual's particular sensibilities do not play a role in determining whether attendant circumstances make the individual unable to appreciate the open and obvious nature of the danger. As the court explained in *Goode v. Mt. Gillion Baptist Church,* Cuyahoga App. No. 87876, 2006-Ohio-6936, at paragraph 25: "The law uses an objective, not subjective, standard when determining whether a danger is open and obvious. The fact that a particular appellant herself is not aware of the hazard is not dispositive of the issue. It is the objective, reasonable person that must find that the danger is not obvious or apparent."

{¶62} In determining whether the concrete floor was an open and obvious hazard as argued in the alternative by Appellee, we have reviewed the photographs taken by Mr. Duynslager that Appellant argues support the cause of his fall and subsequent injuries. Appellee attached the photographs as exhibits to Appellee's motion for summary judgment and the exhibits were testified to by Appellant and Mr. Duynslager in their depositions. The photographs show pitted and uneven concrete slabs near the truck tire of Mr. Duynslager's truck cab.

{¶63} We find as a matter of law that reasonable minds can only come to but one conclusion that the pitted and uneven concrete slabs would be an open and obvious danger. Appellant utilizes the photographs to demonstrate the hazardous condition of the parking lot that Appellee should have been aware of and should have warned Appellant against. However, Appellant's use of the photographs to establish the obviously pitted and uneven concrete directly below the truck cab area as the cause of Appellant's fall cannot be equated with Appellant's argument that then the uneven concrete floor was a latent or concealed defect that Appellant could not have been aware of. That Appellant should have been aware of the open and obvious danger of the pitted and uneven concrete floor is supported by Appellant's deposition testimony describing the manner in which Appellant exited his truck cab, then walked to return to his truck cab:

{¶64} "A. When I stepped down [from the truck cab], I stepped down. I didn't have no problems when I stepped down.

{¶65} "Q. And you looked and you saw where you were stepping down?

{¶66} "A. I climbed down, I'm looking at my truck. I get out of my seat and I grab my truck and I climb down. I don't jump down.

{¶67} "Q. Right. And you are looking back in toward your truck or are you looking toward the ground?

{¶68} "A. I'm looking at my truck where I'm putting my feet and I'm looking down.

{¶69} "Q. Because you want to know where you're putting your feet; correct?

{¶70} "A. Yes.

{¶71} "Q. And you want to make sure you're on solid ground or you're not on something that is going to cause some problem with you getting down; correct?

{¶72} "A. I'm not stepping in grease or something, right, yes.

{¶73} "Q. Right. And you're not stepping on different levels of pavement that may twist an ankle or something?

{¶74} "A. Yes.

{¶75} "Q. Okay. So you looked down to see where you were when you got down?

{¶76} "A. Yes.

{¶77} "Q. And you were on solid ground?

{¶78} "A. Yes.

{¶79} "Q. Okay. And then you walked back toward your tanker?

{¶80} "A. Yes.

{¶81} "Q. Okay. And when you returned you followed approximately the same path; correct?

{¶82} "A. That's what I believe.

{¶83} "Q. And you looked at the ground as you were walking back; correct?

{¶84} "A. And bam. Lights went out.

{¶85} "Q. Well, no. As you were walking back toward the tanker you looked at the ground?

{¶86} "A. I was looking – a good driver will look at everything.

{¶87} "Q. Well, and all of us are taught, aren't we, that we look where we walk?

{¶88} "A. That's correct.

{¶89} "Q. Okay, and you didn't see any defects or imperfections when you were walking back; correct?

{¶90} "A. No, I did not.

{¶91} "Q. Okay. And you can't tell us today that this imperfection or this difference in the concrete was in your path either going back toward the back of your truck or coming back toward your cab, toward your door, correct?

{¶92} "A. Yes." (Appellant Depo., pp. 61-64).

{¶93} Even in cases in which the plaintiff did not actually notice the condition until after he or she fell, this Court has found no duty to exist when the plaintiff could seen the condition if he or she had looked. *Dunkle v. Cinemark USA, Inc*., Licking App. No. 04 CA 70, 2005-Ohio-3049, ¶ 12.

{¶94} We further find there is no genuine issue of material fact that "attendant circumstances" existed at the time of Appellant's fall that would reduce the degree of care that an ordinary individual would have exercised in Appellant's position. An attendant circumstance is a factor that contributes to the fall and is beyond the injured person's control. Appellant argues the attendant circumstances that distracted Appellant from noticing the pitted and uneven concrete were that as Appellant walked back to his truck cab, Appellant checked his tire, looked for leaking oil, and the loading area was chaotic because of the spilled acid in Mr. Boberick's truck. (Appellant Brief, pp. 15-16). We find these circumstances do not rise to level of creating as genuine issue of material fact as to the existence of attendant circumstances as described above. Appellant testified that he was looking where he walked as he returned to his

truck and the actions of looking at his tire and looking for oil leaks were within Appellant's control.

{¶95} Based our de novo review of the arguments, we find the trial court did not err in granting Appellee's motion for summary judgment. Appellant's Assignment of Error is overruled.

{¶96} The judgment of the Tuscarawas County Court of Common Pleas is affirmed.

By: Delaney, J.

Gwin, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

PAD:kgb

[Cite as *Alsbury v. Dover Chem. Corp.*, 2009-Ohio-3831.]

IN THE COURT OF APPEALS FOR TUSCARAWAS COUNTY, OHIO

FIFTH APPELLATE DISTRICT

DOUGLAS ALSBURY	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
DOVER CHEMICAL CORPORATION	:	
	:	
	:	Case No. 2008 AP 10 0068
Defendant-Appellee	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Tuscarawas County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS