[Cite as *Goblirsch v. El Camino Real Sky, Ltd.*, 2011-Ohio-5421.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Sarah Goblirsch, et al.

Appellants

v.

El Camino Real Sky, Ltd., et al.

Appellees

Court of Appeals No. L-11-1030

Trial Court No. CI0200907068

DECISION AND JUDGMENT

Decided: October 21, 2011

* * * * *

Chad M. Tuschman and James D. Caruso, for appellants.

John R. Kuhl, for appellees.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment in the Lucas County Court of Commons Pleas, which dismissed appellants' personal injury action against appellees, El Camino Real Sky, Ltd. and El Camino Properties, LLC, and granted summary judgment to appellees in this premises liability slip and fall matter stemming from an incident in a restaurant parking lot in Oregon, Ohio, occurring on a rainy day. For the reasons set forth more fully below, this court affirms the judgment of the trial court.

{¶ 2} On September 22, 2009, appellants filed a personal injury lawsuit against appellees arising from the slip and fall incident at appellees' restaurant. Appellants' complaint was amended on December 7, 2009, to include damages based on spoliation of evidence.

{¶ 3} On September 3, 2010, appellees filed a motion for summary judgment. On January 13, 2011, the motion was granted and appellants' amended complaint was dismissed. On February 15, 2011, notice of appeal was filed.

{¶ 4} From that judgment, counsel for appellants sets forth the following two assignments of error:

{¶ 5} "1. THE TRIAL COURT ERRED IN GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BECAUSE REASONABLE MINDS COULD DIFFER RELATIVE TO THE ISSUE OF WHETHER THE HAZARD IN THIS CASE, A SMOOTH, SLICK CONCRETE SLAB AMONGST OTHER LESS-SMOOTH CONCRETE SLABS, WAS OR SHOULD HAVE BEEN OBVIOUS TO AN 11 YEAR OLD SUCH AS SARAH GOBLIRSCH.

{¶ 6} "2. THE TRIAL COURT ERRED WHEN IT RULED THAT THE APPELLANTS' SPOLIATION CLAIM WAS WITHOUT MERIT BECAUSE THE HAZARD WAS OPEN AND OBVIOUS - WHEN ONE ISSUE HAS NOTHING TO DO WITH THE OTHER."

{¶ 7} The following undisputed facts are relevant to this appeal. On the morning of August 8, 2009, Sarah Goblirsch, an 11-year old female, arrived with her parents

Linda and Jeff Goblirsch at El Camino Real Sky restaurant in Oregon, Ohio. It was a dreary, rainy day.

{¶ 8} They got out of the vehicle and proceeded towards the restaurant from the parking lot. Sarah followed her mother through the rainy conditions and approached the restaurant by way of a concrete landing at the entrance. In the context of these rainy conditions, she slipped and fell backwards on concrete prior to entering the building, landing on her right arm. After the slip and fall, Sarah's father and the rest of the group continued into the restaurant to eat their meal while she was taken to the hospital by her mother to be treated. Medical service providers determined that she had broken her right arm and treated same.

{¶ 9} When reviewing a trial court's summary judgment decision, the appellate court conducts a de novo review. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. Summary judgment will be granted when there are no genuine issues of material fact, and when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶ 10} In the first assignment of error, appellants contend that reasonable minds could differ relative to whether the concrete entry area on the outside of the restaurant constituted an open and obvious danger during wet and rainy conditions. Appellants maintain that because the concrete slab was slippery when wet, Sarah should have been warned. We do not concur.

{¶ 11} As the Supreme Court of Ohio has established, a property owner typically owes its business invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition and has a duty to warn its invitees of latent or hidden dangers. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 80. However, the open-and-obvious doctrine obviates the duty to warn and, when applicable, operates as a complete bar to liability rooted in negligence claims. Id. In addition, a business owner is not an insurer of a customer's safety or an insurer against all types of accidents that may occur on its premises. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203.

{¶ 12} A property owner has no duty to warn invitees of potentially hazardous conditions determined to be open and obvious to a reasonable person such that the owner may reasonably anticipate that they will discover those dangers and engage in responsive actions to protect themselves from the dangers. *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St.3d 642, 644.

{¶ 13} The existence of a duty depends on the foreseeability of the injury. *Nageotte v. Cafaro Co.* (2005), 160 Ohio App.3d 702, ¶ 36; citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. The test for foreseeability is whether a reasonably prudent person would have anticipated that an injury is likely to result from his action. Id. In making such a determination, the question of whether one should be aware of the danger depends largely on the likelihood of encountering the danger in a particular location under the conditions that were present. *Sollo v. Goodnight Inn, Inc*. (Jan.16, 1998), 6th Dist. No. S-96-049. As applied to the instant case, the wet

and slippery conditions were encountered on the outside of the building on concrete during rainy conditions. Thus, under these facts and circumstances, it cannot be said that the presence of the wet concrete and the dangerous, slippery conditions associated with it were unexpected. Similarly, this court has previously found the open and obvious doctrine applicable to a slip and fall which occurred indoors at a restaurant. The incident took place inside a restaurant entryway during a period of snow where snow was being tracked in and wiped off on an entry rug and resulted in wet conditions on the rug and adjacent tile floor in that area. This court determined that it is commonly known that when people enter a building during moist weather, floor mats at or near doors will become wet which causes wet and slippery conditions on adjacent floor surfaces. *Young v. Rosie's Fine Foods, Inc*., 6th Dist. No. L-06-1271, 2007-Ohio-1329. Applying this relevant reasoning to this case, we find that it is commonly known that encountering exterior concrete during rainy weather entails a risk of slippery and dangerous conditions while traversing that wet surface. Those moisture related slippery conditions could reasonably be expected at that location.

{¶ 14} Thus, we find that the conditions underlying this case constituted an open and obvious danger. The trial court properly determined that a reasonable person could expect that walking on concrete during rainy conditions can be slippery, causing someone to slip and fall. The hazard posed was an open and obvious danger. As a result, appellees did not owe a duty of care to appellant and no liability in negligence is possible

as a matter of law. Thus, there is no genuine issue of material fact. Appellant's first assignment of error is not well-taken.

{¶ 15} Appellant's second assignment of error is moot as a matter of law given our determination in response to the first assignment that no duty was owed and thus no liability rooted in negligence can exist in connection to this matter. As such, appellant's second assignment of error is likewise not well-taken.

{¶ 16} Wherefore, we find substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay costs pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE