[Cite as *Schneider v. MFB Hamilton Properties*, 2011-Ohio-5686.]

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

Jennifer Schneider	Court of Appeals No. L-11-1039
Appellant	Trial Court No. CI0200907488
v.	
MFB Hamilton Properties	**DECISION AND JUDGMENT**
Appellee	Decided: November 4, 2011

* * * * *

Kenneth L. Mickel and Kimberly C. Kurek, for appellant.

Jonathan W. Philipp and Jeffrey T. Peters, for appellee.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas granting summary judgment to appellee, MFB Hamilton Properties, in a premises liability slip and fall action. The matter stems from an incident occurring on a short flight

of entry stairs at the exterior entrance of the Hamilton Office Building in Toledo, Ohio. For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} On October 13, 2009, Jennifer Schneider, appellant, filed a complaint alleging negligence against appellee, the building owner. On November 9, 2009, appellee filed its answer. On September 30, 2010, appellee filed a motion for summary judgment. On January 31, 2011, the trial court granted appellee's motion for summary judgment. On February 25, 2011, timely notice of appeal was filed.

{¶ 3} From that judgment, appellant sets forth the sole assignment of error:

{¶ 4} "1. THE TRIAL COURT ERRED AS A MATTER OF LAW BY GRANTING MFB'S MOTION FOR SUMMARY JUDGMENT AND FINDING THAT MFB HAD NO PRIOR KNOWLEDGE OR NOTICE OF THE DEFECT IN QUESTION."

{¶ 5} The following undisputed facts are relevant to this appeal. On October 17, 2007, Schneider accompanied her boyfriend's mother to an appointment at offices located in the Hamilton Building. Appellant had successfully navigated the main entry steps into the structure on past occasions in the course of visiting the same offices.

{¶ 6} On October 17, 2007, appellant again entered the building using the concrete entry steps and checked her boyfriend's mother into the appointment without incident. Upon leaving the offices and descending the same steps outside of the building, appellant stepped on the seam or joint where the concrete sections forming the steps come together.

Appellant's heel landed on the seam. Appellant lost her footing. Appellant tripped and fell, sustaining injury.

{¶ 7} The joint between the sections of cement forming the steps contains a black tar substance so that the crevasse is filled. Appellee furnishes a maintenance crew of several men located directly on-site at the building. Reports of issues or concerns can be directly made to the on-site crew without first contacting appellee. Prior to this incident, neither appellee nor the on-site crew had ever received notification or possessed knowledge from any source regarding any concerns or issues in connection to the entry steps. In conjunction with this, a secretary who has worked in the office building for ten years testified that she had never been aware of any possible issues with the entry steps.

{¶ 8} The record reflects no prior incidents occurring on the steps. The record reflects no prior reports or communications to appellee or the maintenance crew in connection to the steps. The record contains no evidence of any defect in the condition of the steps suggesting a potential risk.

{¶ 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, 67. When a properly supported motion for summary judgment is made, an adverse party may

not rest on mere allegations or denials in the pleading, but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery* (1984), 11 Ohio St.3d 75, 79.

{¶ 10} To maintain an action for negligence, the plaintiff must show that the defendant owed a duty of care to the plaintiff, that the defendant breached that duty, and that the breach proximately caused the plaintiff's injuries. See *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285; *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.* (1988), 81 Ohio St.3d 677. Generally, an owner or occupier of land owes an "invitee" a duty of ordinary care to maintain a premises in a reasonably safe condition and a duty to warn the invitee of "latent or hidden dangers." *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, ¶ 5.

{¶ 11} Where negligence revolves around the question of the existence of a hazard or defect, the legal principle prevails that notice, either actual or constructive, of such hazard or defect is a prerequisite to the duty of reasonable care. *Heckert v. Patrick* (1984), 15 Ohio St.3d 402, 405.

{¶ 12} It is well-established that a business owner is not an insurer of a customer's safety or against all types of accidents that may conceivably occur on his premises. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203. Business invitees are to be warned of latent or concealed perils of which the business owner or building occupier has, or reasonably should have, knowledge. *Perry v. Eastgreen Realty Co.* (1978), 53 Ohio St.2d 51, 52. As such, an owner may be liable to an invitee only if he has actual

knowledge of the dangerous condition. *Cyr v.Bergstrom Paper Co.* (1982), 3 Ohio App. 3d 299, 300-301.

{¶ 13} Appellant correctly states that in order to prevail, a plaintiff asserting negligence must show:

{¶ 14} "1. That the defendant through its officers or employees was responsible for the hazard complained of; or 2. That at least one of such persons had actual knowledge of the hazard and neglected to give adequate notice of its presence or remove it promptly; or 3. That such danger had existed for a sufficient length of time reasonably to justify the inference that the failure to warn against it or remove it was attributable to a want of ordinary care." *Calabrese v. Romano's Macaroni Grill*, 8th Dist. No. 94385, 2011-Ohio-451, ¶ 8; citing *Johnson v. Wagner Provision Co.* (1943), 141 Ohio St. 584, 589.

{¶ 15} As the Supreme Court of Ohio has declared in *Presley v. City of Norwood* (1973), 36 Ohio St.2d 29, in the absence of proof that the owner or its agents created the hazard, or that the owner or its agents possessed actual knowledge of the hazard, no liability may attach. Id. at 32. As such, a lack of reported incidents constitutes evidence establishing lack of notice or knowledge. See *Calabrese v. Romano's Macaroni Grill*, 8th Dist. No. 94385, 2011-Ohio-451, ¶ 17. An injured party may not rely on mere speculation and conjecture to attempt to demonstrate that the substance, such as the tar-like matter before us, gave sufficient notice. Id. at ¶ 19.

{¶ 16} Appellant contends without supporting legal evidence that appellee had prior notice of the condition of the steps. Appellant maintains that the presence of the on-site maintenance crew somehow constitutes evidence of notice to appellee of the claimed dangerous condition. On the contrary, the record is devoid of any evidence of notice or knowledge of appellee of any potentially dangerous condition in connection to the entry steps.

{¶ 17} The record reflects no prior incidents on the steps. The record reflects no prior reports of issues or concerns in connection to the steps. The record contains testimony of an employee using the steps for ten years without concerns or incidents. The record reflects that appellant likewise used the same steps on prior occasions without incident. Given these facts and circumstances, reasonable minds can only conclude that appellee did not possess the requisite notice or knowledge of a potential hazard so as to constitute a genuine issue of material fact as to whether liability in negligence could be imposed. As such, summary judgment in favor of appellee was proper. Appellant's sole assignment of error is found not well-taken.

{¶ 18} Wherefore, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal 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