[Cite as *Nitkiewicz v. Valleywood Golf Course*, 2011-Ohio-800.]

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

Frances L. Nitkiewicz, et al.	Court of Appeals No. L-10-1184
Appellants	Trial Court No. CI09-3450
v.	
Valleywood Golf Course, et al.	**DECISION AND JUDGMENT**
Appellees	Decided: February 18, 2011

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Jennifer J. Antonini, for appellants.

Carol K. Metz, for appellees.

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OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that granted summary judgment in favor of appellees regarding an injury appellant Frances Nitkiewicz suffered when she fell while walking on the Valleywood Golf Course. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} Appellants, Frances and Robert Nitkiewicz, set forth the following as their sole assignment of error:

{¶ 3} "I. The trial court erred in granting summary judgment because a genuine issue of material fact does exist as to how the hole that plaintiff fell into was created and therefore whether appellees should have had notice of the hole."

{¶ 4} The undisputed facts relevant to the issues raised on appeal are as follows. On August 15, 2007, Frances Nitkiewicz ("Nitkiewicz") lost her footing and fell while walking at the Valleywood Golf Course ("Valleywood"). As a result of her fall, Nitkiewicz sustained injuries which required medical treatment. On April 7, 2009, appellants filed a complaint against Valleywood alleging negligence and loss of consortium.[1] Thereafter, appellants filed first and second amended complaints. In their second amended complaint, appellants alleged that, as invitees of Valleywood, they were entitled to the highest duty of care. They further alleged that Valleywood was negligent in creating a dangerous condition by improperly repairing the sod on the course, by failing to maintain its premises in a reasonably safe condition, and by failing to warn Nitkiewicz of the hidden danger of a man-made hole.

{¶ 5} On January 29, 2010, appellees filed a motion for summary judgment asserting that appellants had produced no evidence to show that Valleywood had either constructive or actual notice of a defect on the course. They further asserted that there

[1]At the time of the injury, Valleywood was under bankruptcy supervision and was being managed by appellee GFOH8 Management, Inc.

was no evidence that the hole was man-made and had been covered up by an employee, as appellants alleged. In its May 28, 2010 judgment, the trial court found that it was undisputed that Valleywood had no indication that there was a hole under the sod where Nitkiewicz was walking. The trial court found that Valleywood had neither actual nor constructive notice of the existence of such a hole and concluded, therefore, that Valleywood was entitled to summary judgment as a matter of law.

{¶ 6} On appeal, appellants assert that there is a significant question of fact as to how the hole was created. Appellants argue that there is a "suggestion" that the hole was dug in order to reach and repair a drainage tile under the ground. Appellants state that it is possible to "infer" that someone associated with Valleywood recognized a drainage problem after recent heavy rains, dug a hole to make an "adjustment," and "moved on" without properly filling the hole.

{¶ 7} We note at the outset that an appellate court reviews a trial court's granting of summary judgment de novo, applying the same standard used by the trial court. *Lorain Nat'l. Bank v. Saratoga Apts*. (1989), 61 Ohio App.3d 127, 129; *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. Summary judgment will be granted when there remains no genuine issue of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 8} Generally, in order to establish negligence, a plaintiff has the burden to show the existence of a duty on the part of the defendant, a breach of that duty, and that

the breach proximately caused the aggrieved party's injury. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co*. (1998), 81 Ohio St.3d 677, 680. The issue of whether or not a duty exists in a negligence action is one of law for the court to determine. *Gin v. Yachanin* (1991), 75 Ohio App.3d 802, 804, citing *Mussivand v. David* (1989), 45 Ohio St.3d 314.

{¶ 9} It is undisputed that appellants were business invitees on the premises at the time of the accident. Therefore, appellees owed appellants a duty of ordinary care to maintain the premises in a reasonably safe condition; they were required to maintain the premises so that business invitees are not unreasonably exposed to dangerous conditions. *Paschal v. Rite Aid Pharmacy, Inc*. (1985), 18 Ohio St.3d 203.

{¶ 10} The Supreme Court of Ohio has held that "[a]n inference of negligence can arise only upon the proof of some fact from which such inference can be reasonably drawn and it can never arise from mere guess, speculation, or wishful thinking." *Parras v. Standard Oil Co*. (1953), 160 Ohio St.315, paragraph two of the syllabus.

{¶ 11} Terry Gaylord, the director of golf at Valleywood, testified at deposition that there had been no construction or digging in the area where Frances fell prior to the accident and that Valleywood had not had any problems with the ground in that area. Further, the golf course had not used sod at any time to cover a hole in the area as appellants suggested. According to Gaylord, Valleywood had no knowledge of a hole prior to the fall. Gaylord testified that heavy rain fell one or two days before the accident

and that when he looked at the area after Nitkiewicz fell, it appeared as if some dirt had washed away beneath the grass.

{¶ 12} Robert Nitkiewicz testified at deposition that the hole into which his wife stepped was a "man-made trench" and that he had seen that type of thing before, although he did not explain where. When he looked into the hole he saw what he believed to be a piece of drainage tile. Frances Nitkiewicz testified at deposition that she did not see anything in the grass before she stepped in the hole. The grass was perfectly kept with no dead spots, Nitkiewicz stated.

{¶ 13} This court has carefully reviewed the record in this case and we find that there is no evidence that Valleywood created a hazard or had any notice of the condition of the ground where Nitkiewicz fell. Appellants admitted that there was no "hole" visible prior to the fall. Further, there is no evidence that appellees had done any repair work at the site prior to the accident. Appellants offered no evidence in support of their claim that appellees failed to maintain the premises in a reasonably safe condition. Appellants infer negligence on the part of Valleywood but fail to present any facts from which such inferences could reasonably be drawn. Appellants' inferences appear to arise from "mere speculation." See *Parras*, supra.

{¶ 14} As such, there is no genuine issue of material fact remaining in dispute through which liability could be imposed on appellees. Accordingly, we find appellants' sole assignment of error not well-taken.

{¶ 15} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Costs of this appeal are assessed to appellants 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

Mark L. Pietrykowski, J. _____
JUDGE

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

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