[Cite as *Oglesbee v. Pfeil Funeral Homes, Inc.*, 2014-Ohio-339.]

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

Teresa D. Oglesbee	Court of Appeals No. E-13-041
Appellant	Trial Court No. 2012-CV-0637
v.	
Pfeil Funeral Homes, Inc.	**DECISION AND JUDGMENT**
Appellee	Decided: January 31, 2014

* * * * *

William H. Smith, Jr., for appellant.

Kurt R. Weitendorf, for appellee.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} In this premises liability case, Teresa Oglesbee appeals from the judgment of the Erie County Court of Common Pleas, which granted summary judgment in favor of Pfeil Funeral Homes, Inc. ("Pfeil"). For the following reasons, we affirm.

{¶ 2} Early in the evening, on September 12, 2010, Oglesbee attended a private viewing at Pfeil. Oglesbee parked in front of the funeral home, but walked around the building and entered through the back door. To enter the back door, she ascended a handicap accessible ramp. After the viewing, she exited the funeral home through the front door, since it was then raining and the front door provided a shorter path to her car. When she left, a funeral home official escorted her, carrying an umbrella. Oglesbee and the official proceeded down the steps from the building and traversed a short cement walkway that leads to the public sidewalk. On the walkway, Oglesbee moved ahead of the official. At the end of the walkway, there is an eight-inch drop to the sidewalk. The drop was not marked, nor did the official warn Oglesbee about the step down. Oglesbee did not observe the drop, and she fell, causing her to suffer injury.

{¶ 3} Oglesbee initiated the present suit against Pfeil, arguing that her fall,

> * * * was proximately caused by the neglect and failure of [Pfeil] to provide and keep posted adequate warnings at the scene under the conditions existing at the time of [her] fall. Such conditions, in the absence of any light, sign or warning device, constituted a dangerous condition and a hazard to the movement of invitees leaving [Pfeil's] establishment.

{¶ 4} Following discovery, Pfeil moved for summary judgment on the basis that the eight-inch drop constituted an open and obvious danger, and thus it had no duty to warn Oglesbee of it. The trial court granted Pfeil's motion for summary judgment, and Oglesbee now appeals, asserting two assignments of error:

I. It is a question of fact, not law, as to whether or not defendant/appellee's agent (Donald A. Pfeil) who was escorting plaintiff/appellant from its business premises should have warned plaintiff/appellant (an older person) of an eight-inch unmarked step down at the public sidewalk.

II. The trial court applied the wrong standard to the fact situation. Plaintiff/appellant should have been warned by defendant/appellee's agent (Donald A. Pfeil) of a substantial step down as she was being talked to and escorted from the business premises, not expecting the hazard.

II. Analysis

{¶ 5} Oglesbee's assignments of error are interrelated and will be addressed together.

{¶ 6} We first note that we review summary judgment decisions de novo, applying the same standard as the trial court. *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989). Applying Civ.R. 56(C), summary judgment is appropriate where (1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and viewing the evidence in the light most favorable to the non-moving party, that conclusion is adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

{¶ 7} In a negligence claim, the plaintiff must show "the existence of a duty, a breach of that duty and injury resulting proximately therefrom." *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989). As it relates to duty, the parties agree that Oglesbee was on Pfeil's premises as a business-invitee. To business-invitees, a property owner owes "a duty of ordinary care in maintaining the premises in a reasonably safe condition and [a] duty to warn its invitees of latent or hidden dangers." *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 5. However, a property owner owes no duty to a business-invitee to warn him or her of dangers that are open and obvious. *Id.* The underlying rationale behind this rule 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." *Id.* Therefore, the open-and-obvious doctrine "acts as a complete bar to any negligence claims." *Id.*

{¶ 8} Here, the trial court found that, as a matter of law, the eight-inch drop constituted an open and obvious danger. Therefore, because Pfeil had no duty to warn Oglesbee of the open and obvious danger, the trial court granted summary judgment in favor of Pfeil on Oglesbee's negligence claim. On appeal, Oglesbee argues that the issue of whether the drop was an open and obvious danger is a question of fact that is not appropriate for summary judgment. We disagree.

{¶ 9} "A hazard is considered to be open and obvious when it is in plain view and readily discoverable upon ordinary inspection." *Rengel v. Meijer Stores Ltd.*

Partnership, 6th Dist. Erie No. E-12-050, 2013-Ohio-1088, ¶ 13. "Whether a hazard is open and obvious must be determined based on the facts in each case." *Id.* "If the facts are undisputed, the question of whether a danger is open and obvious can be determined as a matter of law." *Id.*; *see also Armstrong* at ¶ 16 (as a matter of law, hazard was open and obvious where it was visible to all persons entering and exiting the store).

{¶ 10} Here, the facts are undisputed that Oglesbee was walking ahead of the funeral home official, that there was nothing obstructing her view, and that the walkway ended in an eight-inch drop to the public sidewalk. Because the drop was in plain view, and was readily discoverable upon ordinary inspection, we hold that the trial court did not err when it determined that the drop was an open and obvious hazard as a matter of law. *See Holt v. Holmes*, 6th Dist. Lucas No. L-10-1363, 2011-Ohio-5904, ¶ 24-25 (four-inch drop in sidewalk was an open and obvious hazard as a matter of law).

{¶ 11} Accordingly, Oglesbee's assignments of error are not well-taken.

III. Conclusion

{¶ 12} For the foregoing reasons, the judgment of the Erie County Court of Common Pleas is affirmed. Oglesbee 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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
CONCUR.
JUDGE