[Cite as *Turner v. Cathedral Ministries*, 2015-Ohio-633.]

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

Tonya Turner, et al.

Appellant

v.

Cathedral Ministries

Appellee

Court of Appeals No. S-14-020

Trial Court No. 13 CV 617

DECISION AND JUDGMENT

Decided: February 20, 2015

* * * * *

James L. Murray, for appellant.

W. Charles Curley, for appellee.

* * * * *

JENSEN, J.

{¶ 1} Plaintiff-appellant, Tonya Turner, appeals the judgment of the Sandusky County Court of Common Pleas, journalized on May 5, 2014, which granted summary judgment in favor of defendant-appellee, Cathedral Ministries. For the reasons that follow, we reverse and remand for further proceedings.

I. Background

{¶ 2} On July 7, 2011, Turner was at The Church on 53, an entity associated with Cathedral Ministries, for a free religious education course offered by the church. After dropping her six-year-old daughter off at the church's child care room, located on the north side of the building, she got a cup of coffee and headed to the south side of the building where the class was being held. As she approached the classroom, she tripped on a two-by-four that was stacked along a wall among other two-by-fours of varying lengths and was protruding into the walkway. She caught her left foot on it and fell, fracturing her right foot. Since injuring her foot she has undergone multiple surgeries and hospitalizations to treat both the fracture and resulting complications, including a staph infection and MRSA. She alleges that she suffers from chronic pain which has prevented her from working and performing other daily activities.

{¶ 3} The two-by-fours, which Turner said were difficult to discern from the tile floor because of their color, had been placed against the wall by Pastor Matthew Coutcher.[1] The classroom where the class was being held was under construction, and Coutcher needed to move the building materials quickly in preparation for using the room. He stacked the plywood against the wall along with some drywall. He was aware when he placed the two-by-fours against the wall that one or two of the boards exceeded the length of the wall and would protrude into the walkway. He said that there was a trash can next to the wall and that the plywood stuck out a little bit further than the trash

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[1] Coutcher disagrees that the color of the tile made the plywood difficult to discern.

can.[2] He conceded that he had concerns when he did this because "if somebody cut that corner close enough, they could fall, they could have fell. It could have been a potential trip hazard had somebody gotten super close to that trash can." He reasoned, however, that it was "so far out of the normal traffic pattern that I, I disregarded it as not really going to be an issue."

{¶ 4} Turner filed this negligence action against Cathedral Ministries and several John Doe defendants on July 5, 2013. She alleged that defendants were negligent in placing the board in the entrance way to the classroom and "in failing to warn business invitees of the hazard they created."

{¶ 5} After exchanging written discovery and conducting several depositions, Cathedral Ministries moved the trial court for summary judgment, arguing (1) that Turner was a licensee—not a business invitee—of the church, thus it is liable for only willful or wanton conduct, which had not been alleged or established; and (2) that the protruding two-by-four was an open and obvious hazard that it had no duty to protect against.

{¶ 6} The trial court granted summary judgment in favor of Cathedral Ministries. On the authority of the Ohio Supreme Court's decision in *Provencher v. Ohio Dept. of Transp*., 49 Ohio St.3d 265, 551 N.E.2d 1257 (1990), and our decision in *Madison v. Woodlawn Cemetery*, 6th Dist. Lucas No. L-10-1131, 2010-Ohio-5650, it held that Turner was a licensee—not a business invitee—thus Cathedral Ministries owed Turner a

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[2] Turner testified that there was no trash can along the wall at the time she fell. For purposes of this decision, this disputed fact is not particularly pertinent.

duty only to refrain from willful and wanton misconduct. Because Turner did not allege willful or wanton misconduct, it concluded that her claim must fail. Given this conclusion, the trial court did not consider the issue of whether the protruding plywood was an open and obvious hazard.

{¶ 7} Turner timely appealed and she assigns the following errors for our review:

> A. The Trial Court Erred In Granting Summary Judgment In Favor Of The Defendant-Appellee Church On The Basis That Plaintiff/Appellant Was A Licensee, Not An Invitee, And Consequently Not Owed A Duty Of Ordinary Care.
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> B. The Trial Court Erred In Granting Summary Judgment In Favor Of The Defendant-Appellee Church. The Church Owed Plaintiff Member A Duty To Exercise Ordinary Care. A Member Of A Church And/Or Attendee Of A Religious Study Class Is Owed A Duty To Exercise Ordinary Care By The Church Whether An Invitee Or A Guest.
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> C. The Trial Court Erred In Granting Summary Judgment In Favor Of The Defendant-Appellee Church With Respect To Its Employee's (Pastor Matthew Coutcher) Negligence In His Conduct In Performing And/Or Supervising Construction Related Activities On Behalf Of The Church.
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> D. The Trial Court Erred In Granting Summary Judgment In Favor Of The Defendant-Appellee Church Because A Question Of Fact Existed

As To Whether The Church, Through The Conduct Of Its Pastor, Failed To Exercise Reasonable Care In The Clean-Up And/Or Supervision Of The Construction Activities Being Performed By Him.

II. Standard of Review

{¶ 8} Appellate review of a summary judgment is de novo, *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996), employing the same standard as trial courts. *Lorain Natl. Bank v. Saratoga Apts.,* 61 Ohio App.3d 127, 129, 572 N.E.2d 198 (9th Dist.1989). The motion may be granted only when it is demonstrated:

> (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor. *Harless v. Willis Day Warehousing Co.,* 54 Ohio St.2d 64, 67, 375 N.E.2d 46 (1978), Civ.R. 56(C).

{¶ 9} When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought, *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 526 N.E.2d 798 (1988), syllabus, and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996). When a properly supported motion for summary judgment is

made, an adverse party may not rest on mere allegations or denials in the pleadings, but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery*, 11 Ohio St.3d 75, 79, 463 N.E.2d 1246 (1984). A "material" fact is one which would affect the outcome of the suit under the applicable substantive law. *Russell v. Interim Personnel, Inc.*, 135 Ohio App.3d 301, 304, 733 N.E.2d 1186 (6th Dist.1999); *Needham v. Provident Bank*, 110 Ohio App.3d 817, 826, 675 N.E.2d 514 (8th Dist.1996), citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 201 (1986).

III. Analysis

{¶ 10} In a premises liability negligence action, the relationship between the owner or occupier of the premises and the injured party determines the scope of the duty owed. *Mostyn v. CKE Restaurants, Inc.*, 6th Dist. Williams No. WM-08-018, 2009-Ohio-2934, ¶ 13, citing *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 315, 662 N.E.2d 287 (1996). That relationship will fall into one of three categories: invitee, licensee, or trespasser. *Id.*

{¶ 11} Turner's first assignment of error requires us to determine the duty of care owed to her by Cathedral Ministries. Cathedral Ministries argues—and the trial court held—that Turner was a licensee, thus Cathedral Ministries owed no duty to Turner except to refrain from willfully or wantonly causing injury. Turner argues that she was a business invitee, thereby obligating Cathedral Ministries to exercise ordinary care to

maintain the premises in a safe condition, and to warn of latent or hidden dangers of which it had, or reasonably should have had, knowledge.

{¶ 12} "Business invitees are persons who come upon the premises of another, by invitation, express or implied, for some purpose which is beneficial to the owner." *Light v. Ohio Univ.,* 28 Ohio St.3d 66, 68, 502 N.E.2d 611 (1986), citing *Scheibel v. Lipton*, 156 Ohio St. 308, 102 N.E.2d 453 (1951). A property owner must exercise ordinary care and protect the invitee by maintaining the premises in a safe condition. *Id.,* citing *Presley v. Norwood*, 36 Ohio St.2d 29, 31, 303 N.E.2d 81 (1973). A plaintiff must prove his or her status as a business invitee by submitting evidentiary material showing that the defendant received a benefit or encouraged or invited the plaintiff to use the premises. *Roesch v. Warren Distrib./Fleet Eng. Research,* 146 Ohio App.3d 648, 652, 767 N.E.2d 1187 (8th Dist.2000).

{¶ 13} "Conversely, a person who enters the premises of another by permission or acquiescence, for his *own* pleasure or benefit, and not by invitation, is a licensee." *Light* at 68. "The duty of a property owner to a licensee is not to injure him or her by willful or wanton misconduct or any affirmative act of negligence." *Scheurer v. Trustees of Open Bible Church*, 175 Ohio St. 163, 192 N.E.2d 38 (1963). Willful and wanton acts are those that demonstrate intent or reckless disregard of the safety of others. *France v. Lambert*, 5th Dist. Stark No. CA-8197, 1990 WL 187081, *2 (Nov. 26, 1990). A licensee must show that the defendant knew that injury was likely to occur. *Id.*

{¶ 14} In determining that Turner was a licensee, the trial court relied on *Provencher*, 28 Ohio St.3d 66, 551 N.E.2d 1257, and *Madison*, 6th Dist. Lucas No. L-10-1131, 2010-Ohio-5650.

{¶ 15} In *Provencher,* the Ohio Supreme Court considered the status to assign a plaintiff who was injured at a public roadside rest area facility. Plaintiff claimed that she was a business invitee.[3] She argued that the benefit conferred to the defendant by her use of the roadside rest area was increased safety on the highway. The court rejected this argument. It observed that "the economic (or tangible) benefit test has long been recognized in this court in order to distinguish the status of an invitee from that of a licensee." *Id.* at 266. It clarified that "[i]ncreased safety on the highways is not the type of benefit intended" and that any such benefit to highway safety was "intangible and not easily calculated." *Id.*

{¶ 16} In *Madison*, 6th Dist. Lucas No. L-10-1131, 2010-Ohio-5650, we applied *Provencher* in determining the status of a plaintiff who was injured while visiting the grave of her deceased uncle. In the trial court, the parties had stipulated that the plaintiff was a business invitee. The trial court rejected this stipulation and conducted its own analysis, concluding that plaintiff was merely a licensee. On appeal, we affirmed. We agreed that the trial court was not required to accept the parties' stipulation as to an

[3] The plaintiff also urged the court to adopt a "public invitee" status, set forth in 2 Restatement of the Law 2d, Torts, Section 332(2) (1965), "which imposes a duty, upon the owner or occupier, of ordinary care in maintaining his or her premises in a safe condition where persons are merely invited to enter." *Id.* at 265. The court specifically declined to do so.

incorrect conclusion of law, and under *Provencher* and *Light,* 28 Ohio St.3d 66, 502 N.E.2d 611, we also agreed that the plaintiff was not a business invitee. We reasoned:

> [The plaintiff] offered no evidence that Woodlawn received any tangible benefit from her visit to the cemetery. She did not pay an entrance fee, purchase flowers, or anything of tangible value. She did not receive a bill from Woodlawn or pay Woodlawn for any services associated with her visit to the cemetery. *Madison,* 6th Dist. Lucas No. L-10-1131, 2010-Ohio-5650, at ¶ 23.

{¶ 17} We are aware of only one Ohio case—*Freshwater v. Piqua Baptist Church,* 2d Dist. Miami No. 88-CA-30, 1989 WL 33106 (Apr. 7, 1989), cited by Turner—analyzing the specific question of the status held by a person injured on church property while attending a church-sponsored activity.[4] In that case, the court determined that the plaintiff, a teen who was attending a church-sponsored youth retreat at the invitation of a

[4] There are several cases, however, in which the parties conceded the plaintiff's status as a business invitee or where the court applied a business invitee standard, apparently without considering whether licensee status was more appropriate. *See, e.g., Bailey v. St. Vincent DePaul Church,* 8th Dist. Cuyahoga No. 71629, 1997 WL 232685 (May 8, 1997); *Tom v. Catholic Diocese of Columbus,* 10th Dist. Franklin No. 06AP-193, 2006-Ohio-4715; *Bender v. First Church of Nazarene,* 59 Ohio App.3d 68, 571 N.E.2d 475 (5th Dist.1989) (conceded for purposes of summary judgment); *Lewis v. Second Calvary Baptist Church,* 8th Dist. No. 45850, 1983 WL 5497 (June 23, 1983). Other cases involving premises liability cases against churches describe the plaintiff as an invitee, but the courts' opinions provide no detail about the plaintiffs or their purposes for being on church property. *Kamkutis v. Greek Orthodox Community,* 8th Dist. Cuyahoga No. 62594, 1992 WL 74238 (Apr. 9, 1992); *Specht v. Holy Trinity Church,* 8th Dist. Cuyahoga No. 65526, 1993 WL 453668 (Nov. 4, 1993); *Hiser v. St. Mary Magdalene's,* 10th Dist. Franklin No. 86AP-103, 1986 WL 7482 (July 3, 1986).

youth group leader, was an invitee while she participated in the program. The court recognized that she had been invited to the overnighter "in furtherance of the youth group's general purpose to promote Christian fellowship." In *Freshwater*, however, the plaintiff had ventured out of the designated room into a darkened hallway where she was injured by another teenaged attendee. At that point, the court held, she became a licensee because she exceeded the scope of her invitation.

{¶ 18} Cathedral Ministries argues that because *Freshwater* was decided before the Ohio Supreme Court's ruling in *Provencher,* it is no longer good law. We agree that *Provencher* now requires a more detailed analysis and we cannot simply rely on *Freshwater* to establish the duty of care owed to Turner. Nevertheless, we reach the same conclusion.

{¶ 19} Turner testified at her deposition that she attended a series of classes offered to people interested in becoming members and learning more about the church. The church secretary testified at deposition that she considered Turner to be a member of the church. Turner approximated that she had been to the church 20 times before her fall, attending services, classes, or other church-sponsored functions. Turner's younger children went to the child care center. Her oldest daughter was involved with the church youth group. Turner would put money in the weekly collection when she could afford to do so. Although the class she was attending on the evening of her fall was offered at no charge to participants, registration for the class was required and those who signed up were expected to attend. The class was offered to members and non-members alike.

{¶ 20} Cathedral Ministries submitted the affidavit of Coutcher in support of its motion for summary judgment. Coutcher averred that the mission of the church is to develop devoted followers of Jesus Christ. To that end, he identified that the purpose of offering the free religious course that Turner was attending was "to provide an understanding of how the Holy Spirit operates in the lives of Christian believers" and "to engage and attract individuals to the life of the church with the hope that they will become devoted followers of Jesus." He enumerated the "indirect benefits" inuring to the church through participation in the class:

> (a) the satisfaction of knowing that the church is offering and providing valuable services to individuals in need; (b) the opportunity to engage individuals in the life of the church; (c) the possibility of attracting new church attendees or members; (d) the possibility of further engaging current members of the church; (e) the possibility of developing devoted followers of Jesus Christ; and (f) the possibility of strengthening the devotion of those who currently follow Jesus Christ.

{¶ 21} The evidence makes clear that Cathedral Ministries did not merely permit or acquiesce in allowing Turner into its building. It *invited* participants, required them to sign up for the class, and expected them to attend once they committed to it. In this way, the situation differs from one in which a family member is allowed to visit a gravesite or a traveler is permitted to use a public rest stop.

{¶ 22} Also, while the church may not be engaged in economic transactions in the sense that church attendees pay money and walk away with a product, the church sought to increase participation and expand its congregation and it used these free religious courses as one means of accomplishing this goal. Coutcher testified that in his seven years at the church, it grew from just 40 members to approximately 600 in attendance on weekends. In fact, it was the growth experienced by Cathedral Ministries which prompted it to perform the construction project that was in progress at the time of Turner's fall. We think it unjust to allow the church to invite and encourage participation in its classes and services, yet avoid responsibility for exercising ordinary care and maintaining the premises in a safe condition to protect those that accept its invitation.

{¶ 23} We, therefore, find Turner's first assignment of error well-taken. In light of this conclusion, we need not reach her remaining assignments of error.

IV. Conclusion

{¶ 24} Because we conclude that Turner was a business invitee, not a licensee, we reverse the May 5, 2014 judgment of the Sandusky County Court of Common Pleas granting summary judgment in favor of Cathedral Ministries. We remand this matter to the trial court for proceedings consistent with this decision. The costs of this appeal are assessed to Cathedral Ministries pursuant to App.R. 24.

Judgment reversed.

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

Arlene Singer, J. _______________________________
JUDGE

Stephen A. Yarbrough, P.J. _______________________________
JUDGE

James D. Jensen, J. _______________________________
CONCUR.
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.