

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83789

MYRNA LOPEZ,	:	:
	:	JOURNAL ENTRY
Plaintiff-Appellant	:	and
vs.	:	OPINION
	:	
DAVE'S SUPERMARKET, INC.,	:	
	:	
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT OF DECISION	:	OCTOBER 7, 2004
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CHARACTER OF PROCEEDING	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. 445054

JUDGMENT	:	AFFIRMED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For plaintiff-appellant:	Anthony A. Gedos, Esq. 815 Superior Avenue, N.E. No. 2010 Cleveland, Ohio 44114
For defendant-appellee:	John V. Rasmussen, Esq. 14650 Detroit avenue Suite 450 Lakewood, Ohio 44107-9946

MICHAEL J. CORRIGAN, A.J.:

[Cite as *Lopez v. Dave's Supermarket*, 2004-Ohio-5385.]

{¶ 1} Plaintiff Myrna Lopez brought this action against defendant Dave's Supermarket, Inc., alleging that Dave's negligently placed a box in a vacant cashier's stall, causing her to trip and fall. A jury returned a verdict in Dave's favor. The sole assignment of error in this appeal is that the trial judge committed reversible error by engaging in conduct which called into question her impartiality.

{¶ 2} The record on appeal does not demonstrate the acts that Lopez complains about - hostility, anger, impatience, and gesturing. Lopez has appended to her merit brief three affidavits which detail these alleged incidents, but we cannot consider them since they were not a part of the record below. *State v. Ishmail* (1978), 54 Ohio St.2d 402, paragraph one of the syllabus; *State ex rel. Brantley v. Ghee* (1997), 80 Ohio St.3d 287, 288. The record shows that Lopez filed a motion for relief from judgment in which she presumably raised these issues (the motion for relief from judgment is not a part of the record on appeal), but she filed her notice of appeal before the court could rule on the motion for relief from judgment; consequently, any issues raised in that motion would not be a part of this appeal.

{¶ 3} Contrary to Dave's assertions, we can review questions of conduct which might demonstrably call into question the court's impartiality and thus deprive a party of a fair trial. See, e.g., *State v. Laing* (Dec. 2, 1999), Cuyahoga App. No. 73927. This, however, is not a case where the alleged conduct by the court is demonstrable. We are left with no choice but to find that Lopez has failed to exemplify her claimed error. See App.R. 12(A)(2).

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

[Cite as *Lopez v. Dave's Supermarket*, 2004-Ohio-5385.]

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN
ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., CONCURS.

PATRICIA A. BLACKMON, J., CONCURS
IN JUDGMENT ONLY.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).