

[Cite as *Snyder v. Eagle*, 2016-Ohio-708.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103176

ROSE SNYDER, ET AL.

PLAINTIFFS-APPELLANTS

vs.

GIANT EAGLE, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-836653

BEFORE: Celebrezze, J., Jones, A.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: February 25, 2016

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FRANK D. CELEBREZZE, JR., J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶2} Appellant, Rose Snyder, appeals from the grant of summary judgment in favor of appellee, Developers Diversified Realty Corp. (“DDR”), in her personal injury suit. Snyder claims the trial court erred in granting summary judgment in favor of DDR. After a thorough review of the record and pertinent law, this court affirms.

I. Factual and Procedural History

{¶3} On July 14, 2013, Snyder, a long-time employee of Giant Eagle, Inc. (“Giant Eagle”), was leaving a Giant Eagle grocery store in Willoughby Hills, Ohio. She exited and walked across the traffic lane that ran in front of the store. She was in or near a marked pedestrian crosswalk pushing a shopping cart to her car.

{¶4} Moments before, Aleksandra Mlynowski also left the same Giant Eagle store using the same crosswalk to get to her car parked in the parking lot. Mlynowski got into her car and drove down the parking isle toward the store. She made a left-hand turn out of the parking isle and into the lane of travel that ran in front of the store. As she drove by the pedestrian crossing at the exit to the store, she heard a metal scraping sound and stopped her car. She exited her vehicle and discovered that she had hit Snyder. Snyder was taken to the hospital and treated for serious injuries. Mlynowski received a citation as a result of the accident.

{¶5} Snyder filed suit against Mlynowski, Giant Eagle, and DDR — the company that maintained the parking lot. Snyder eventually settled her suit against Mlynowski. Snyder refiled a complaint on December 1, 2014, naming Giant Eagle and DDR as defendants.¹ She alleged negligence, spoliation of evidence, and failure to warn as causes of action. DDR responded by filing an answer followed shortly by a motion for summary judgment. It attached the depositions of Mlynowski, DDR representative John Blackinton, and Snyder. Snyder filed her opposition to the motion on February 25, 2015. In addition to other depositions, Snyder attached the affidavit of witness Vincent Brookins. He averred that he was in his car in the parking lot when he witnessed the accident. He further averred that the driver of the car that hit Snyder did not stop at the crosswalk.

{¶6} On May 27, 2015, the trial court granted DDR’s motion for summary judgment in a four-page opinion. The trial court found there were no genuine issues of material fact regarding DDR’s duty to Snyder. Snyder then filed a timely notice of appeal assigning one error for review:

I. The trial court erred in granting [DDR’s] motion for summary judgment; DDR is not entitled to judgment as a matter of law.

II. Law and Analysis

A. Standard of Review

¹ Giant Eagle did not maintain, own, or control the parking lot involved in this case. As a result, Snyder voluntarily dismissed her claims against it on April 27, 2015. It did not participate in this appeal.

{¶7} The trial court granted DDR’s motion for summary judgment. This court reviews that decision de novo. *Rababy v. Metter*, 2015-Ohio-1449, 30 N.E.3d 1018, ¶ 7 (8th Dist.). Civ.R. 56(C) requires that before summary judgment may be granted, it must be determined that no genuine issue as to any material fact remains to be litigated and the moving party is entitled to judgment as a matter of law. When, viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion in favor of the moving party, then the moving party is entitled to judgment. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Once a moving party satisfies its burden of entitlement to judgment, Civ.R. 56(E) provides that the nonmoving party may not rest upon the mere allegations or denials of the party’s pleadings, but has a reciprocal burden of setting forth specific facts demonstrating that a “genuine triable issue” exists to be litigated for trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449, 663 N.E.2d 639 (1996).

B. Premises Liability Negligence

{¶8} Snyder’s claim against DDR is essentially that inadequate signage led to or contributed to the accident that resulted in her injuries. She asserts that DDR negligently maintained the parking lot by failing to warn drivers in the isle lanes of the parking lot of the pedestrian crossing that ran across the lane of traffic at the front of the store. Snyder alleges this created a dangerous condition and DDR allowed the condition to exist.

{¶9} To establish her claim of negligence, Snyder must show that DDR had a duty of care, breached that duty of care, and that breach proximately caused injury to her. *Mussivand v. David*, 45 Ohio St.3d 314, 318, 544 N.E.2d 265 (1989).

{¶10} The duty DDR owed to Snyder is dependant on how she is classified. The parties do not dispute that Snyder was a business invitee; defined as “one who is ‘upon the premises of another, by invitation, express or implied, for some purpose which is beneficial to the owner.’” *Sweet v. Clare-Mar Camp, Inc.*, 38 Ohio App.3d 6, 9, 526 N.E.2d 74 (8th Dist.1987), quoting *Light v. Ohio Univ.*, 28 Ohio St.3d 66, 68, 502 N.E.2d 611 (1986). Therefore, DDR owed Snyder a duty of ordinary care: “It is the duty of the owner of the premises to exercise ordinary care and to protect the invitee by maintaining the premises in a safe condition.” *Light* at 68, citing *Presley v. Norwood*, 36 Ohio St.2d 29, 31, 303 N.E.2d 81 (1973).

In order for an invitee to show the premises owner breached this duty of care, the invitee must show either that (1) the defendants created the hazard, or (2) the defendants had actual knowledge of the hazard, or (3) the danger existed for a sufficient length of time to justify the inference that the failure to warn against it or remove it was attributable to a want of ordinary care.

Byers v. Riser Foods, 8th Dist. Cuyahoga No. 73613, 1998 Ohio App. LEXIS 1876, *3-4 (Apr. 30, 1998), citing *Johnson v. Wagner Provision Co.*, 141 Ohio St. 584, 589, 49 N.E.2d 925 (1943); *Baudo v. Cleveland Clinic Found.*, 113 Ohio App. 3d 245, 680 N.E.2d 733 (8th Dist.1996); *Combs v. First Natl. Supermarkets, Inc.*, 105 Ohio App.3d 27, 663 N.E.2d 669 (8th Dist.1995).

{¶11} Snyder's negligence claim against DDR was that it had inadequate signs or other warning devices for the pedestrian crossing from the store to the parking lot. The crux of Snyder's argument is that DDR created or maintained a dangerous condition that it should have remedied by placing signs facing the parking isles adjacent to the pedestrian crossing to warn drivers of pedestrians.

{¶12} Snyder does not offer any evidence in the form of an expert report to support her contention that the parking lot constituted a hazardous condition or that DDR breached a standard of care for the operation of a parking lot by failing to erect additional signage beyond that already employed. Further, her contention that the lack of additional signs contributed or caused her injuries is incorrect as explained below.

{¶13} In a case with differing facts, Snyder's argument may create a genuine issue of material fact as to negligence were she to introduce evidence that the parking lot should have additional warning signs. However, in the present case, the facts that are not in dispute lead to the conclusion that any such breach by DDR did not result in Snyder's injuries.

{¶14} The deposition testimony established that the crosswalk was clearly marked with stripes painted on the ground that were visible on the day of the accident. Snyder claims Mlynowski had inadequate warning of the crosswalk due to a lack of signage. However, Mlynowski testified she was aware of the location of the crosswalk. In fact, she used the crosswalk to leave the store and travel to her car just moments before the

accident. Additional warning signs would not have provided notice of the crosswalk beyond that which already existed in this case.

{¶15} Snyder attempts to create a genuine issue of material fact by highlighting the difference in testimony between Mlynowski and Brookins. Mlynowski testified she stopped before going through the crosswalk, while Brookins averred that Mlynowski did not stop until after she struck Snyder. Whether Mlynowski stopped before proceeding through the crosswalk is not material as to any alleged negligence of DDR.

{¶16} Snyder focuses much of her argument of the foreseeability of the risk of injury from the layout of the parking area and the lack of signs. Assuming that Snyder presented sufficient operative facts to establish one or more of the three situations outlined above to establish negligence in a premises liability case, that breach was still not the proximate cause of Snyder's injuries.

{¶17} Issues of proximate cause are normally questions for a trier of fact. *Clinger v. Duncan*, 166 Ohio St. 216, 223, 141 N.E.2d 156 (1957). However, "where no facts are alleged justifying any reasonable inference that the acts or failure of the defendant constitute the proximate cause of the injury there is nothing for the jury, and, as a matter of law, judgment must be given for the defendant." *Case v. Miami Chevrolet Co.*, 38 Ohio App. 41, 45-46, 175 N.E. 224 (12th Dist.1930). Proximate cause has been defined as follows:

The proximate cause of a result is that which in a natural and continued sequence contributes to produce the result, without which it would not have happened. The fact that some other cause concurred with the negligence of a defendant in producing an injury, does not relieve him from liability

unless it is shown such other cause would have produced the injury independently of defendant's negligence.

Piqua v. Morris, 98 Ohio St. 42, 120 N.E. 300 (1918), paragraph one of the syllabus.

{¶18} Mlynowski testified in her deposition that she knew the location of the crosswalk, that she used the crosswalk to exit the store and walked to the parking area of the parking lot, and that the crosswalk was clearly demarcated by striped lines on the surface of the road. Additional signs facing the parking isles would have done nothing to ameliorate the risk of injury to Snyder in this case because Mlynowski was well aware of the location of the crosswalk and that pedestrians were using the crosswalk to leave the store. Based on the facts of this case, additional signs informing Mlynowski of these facts would have no impact on the events that led to Snyder's injuries. As a result, the lack of additional signage was not a proximate cause of Snyder's injuries and she cannot sustain her burden of demonstrating a successful negligence action against DDR.

III. Conclusion

{¶19} The trial court properly granted summary judgment in favor of DDR where additional signs warning a motorist of a pedestrian crossing would not have altered the course of events where the motorist had actual knowledge of the pedestrian crossing, having just used it moments before. Snyder's injuries would have resulted independently of DDR's purported negligence in failing to have additional signs warning of a pedestrian crossing.

{¶20} Judgment affirmed.

It is ordered that appellees recover of appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

FRANK D. CELEBREZZE, JR., JUDGE

LARRY A. JONES, SR., A.J., and
SEAN C. GALLAGHER, J., CONCUR