

[Cite as *Hill v. Ohio Dept. of Rehab. & Corr.*, 2012-Ohio-5304.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Renee Hill,	:	
Plaintiff-Appellant,	:	
Carolyn Brock et al.,	:	
Plaintiffs-Appellees,	:	No. 12AP-265 (Ct. of Cl. No. 2011-02107)
v.	:	(REGULAR CALENDAR)
Ohio Department of Rehabilitation and Correction,	:	
Defendant-Appellee.	:	

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D E C I S I O N

Rendered on November 15, 2012

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*Renee Hill, pro se.*

*Michael DeWine, Attorney General, Eric A. Walker, and  
Kristin Boggs, for defendant-appellee.*

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APPEAL from the Court of Claims of Ohio.

FRENCH, J.

{¶ 1} Plaintiff-appellant, Renee Hill ("appellant"), appeals the judgment of the Court of Claims of Ohio, which denied appellant's claim for negligence against the Ohio Department of Rehabilitation and Correction ("ODRC"). For the following reasons, we affirm the trial court's judgment.

## **I. BACKGROUND**

{¶ 2} Appellant filed a complaint in the Court of Claims of Ohio against ODRC on February 7, 2011, and the trial court heard the matter on December 12, 2011.

{¶ 3} On May 28, 2010, around 1:30 p.m., appellant was visiting her husband at the Pickaway Correctional Institution when she used the women's restroom in the visiting area. Appellant testified that she did not see anyone enter or exit the women's restroom before her, and no warnings were posted restricting any use of the restroom at the time. After washing her hands, appellant was reaching for paper towels sitting on top of an electrical box that was missing its cover when she heard a loud noise and experienced a shock in her left arm. Appellant had no knowledge of how long the electrical box's cover was missing or when the restroom had last been inspected. Upon her return to the visiting area, appellant experienced dizziness and was treated by a nurse at the scene before paramedics took her to a hospital. Appellant was treated for her injuries and released that same evening.

{¶ 4} Lieutenant Don Cooper, the third shift assistant shift commander at the time, testified that the women's restroom was inspected and cleaned during his shift, which ran from 10:00 p.m. to 6:00 a.m. the following day. Each night, the women's restroom in the visiting area was inspected for safety, cleanliness, and hidden contraband to prepare for the following day's visitation. The electrical box was specifically included in the inspection, as the electrical box covers had been removed in the past to hide contraband. Any issues with the electrical box would have been discovered during the inspection and reported to Cooper. No report had been filed with respect to a missing electrical box cover the night before appellant's visit. The first shift officers inspected the area again before visitation began.

{¶ 5} Timothy Shriner, the corrections officer responsible for supervising the cleaning of the visitor's area, testified that each night he would inspect the restrooms for any contraband that may have been hidden inside. As a part of his inspection, Shriner would check the electrical boxes, and after ensuring that there was no contraband and that the screws securing the electrical box cover were tightened, he would send the inmates in to clean the area. After the inmates finished cleaning, Shriner would again

inspect the area. Shriner stated that if there had been an issue with the electrical box, "[t]here would have been an incident report written, then there would have been a work order written, and then [they] would have secured the area somehow with taping the plastic around it and put caution tape, or something of that nature \* \* \* until maintenance got in there to fix it." (Tr. 59.) When asked whether it is possible for someone to remove the electrical box cover, Shriner replied that it was possible to remove the cover using small metal objects.

{¶ 6} Alan Oyer, who is responsible for all of the maintenance and building construction at the facility, testified that he did not receive any maintenance requests regarding the electrical box cover in the women's restroom prior to May 28, 2010. Additionally, Oyer testified that the screws securing the electrical box could be removed by anything small enough to fit into the slots. The facility did have special security screws that it could use, but the screws required a special tool that not all maintenance workers carried; that, according to Oyer, is why the security screws were not used in the visiting area.

{¶ 7} On February 23, 2012, the trial court entered judgment in favor of ODRC. The court found that, although the exposed wiring "constituted a hazard, the totality of the evidence does not establish that [ODRC] created the hazard, that [ODRC] had actual notice of the hazard, or that the hazard had existed for a sufficient length of time as to confer [ODRC] with constructive notice of the hazard." Accordingly, the plaintiffs (appellant and a fellow visitor, Carolyn Brock) had failed to prove their claims of negligence against ODRC.

## **II. ASSIGNMENT OF ERROR**

{¶ 8} Appellant timely filed a notice of appeal and now states the following assignment of error:

The trial court erred in finding that the plaintiff-appellant failed to prove their claims of negligence by a preponderance of the evidence presented at trial. Where the Affidavits and trial testimony of the Department of Rehabilitation and Corrections employees supports Plaintiff-Appellant's claims that defendants created the hazardous conditions, the hazard existed for a sufficient length of time as to confer defendant

with actual or constructive notice of the hazard, and the failure to warn against it or remove it was attributable to a lack of ordinary care owed plaintiff.

### III. DISCUSSION

{¶ 9} By her assignment, appellant contends that the trial court erred by concluding that ODRC was not negligent. We will not reverse a judgment that is supported by competent, credible evidence satisfying the essential elements. *Macklin v. Ohio Dept. of Rehab. & Corr.*, 10th Dist No. 01AP-293, 2002-Ohio-5069, ¶ 20. "In addressing a judgment of the trial court on the basis that the verdict is against the manifest weight of the evidence, an appellate court conducts the same manifest weight analysis in both criminal and civil cases." *Ensmann v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 06AP-592, 2006-Ohio-6788, ¶ 4. When determining whether a verdict is against the manifest weight of the evidence, we review the entire record, "weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence," the trial court "clearly lost its way and created such a manifest miscarriage of justice" that we must reverse the judgment and order a new trial. *Id.*, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

{¶ 10} To make a successful claim for negligence, appellant must show the existence of a duty, breach of that duty, and an injury resulting from that breach. *Strother v. Hutchinson*, 67 Ohio St.2d 282 (1981). A landowner's liability usually depends upon the injured person's status as an invitee, licensee or a trespasser under Ohio law. *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 315 (1996). An invitee is someone who was invited to the premises for a purpose that is beneficial to the owner. *Id.*, citing *Light v. Ohio Univ.*, 28 Ohio St.3d 66, 68 (1986). In this case, the parties agree that appellant was an invitee during her visit to the facility.

{¶ 11} ODRC owed appellant, as an invitee, the duty of ordinary care for her safety and protection. *Gladon* at 317. For appellant to show a breach of this duty, she had to prove that ODRC or its agents created the hazard or had actual or constructive notice of the hazard and failed to remedy it. *See Pressley v. Norwood*, 36 Ohio St.2d 29,

31 (1973); *Price v. United Dairy Farmers*, 10th Dist. No. 04AP-83, 2004-Ohio-3392, ¶ 7.

{¶ 12} The evidence presented during the trial does not prove that ODRC had actual notice that the electrical box's cover had been removed. ODRC employees inspected the bathrooms for cleanliness and safety at least twice between visiting hours. According to their testimony, during these inspections, missing electrical box covers would have been discovered and reported, and then the area would be secured until the cover could be replaced. No report for a missing electrical box cover had been filed the night before appellant's visit. There was also no evidence that a report had been filed at any other time on the day in question prior to appellant's use of the restroom. Based on the evidence presented, we agree with the trial court's finding that ODRC did not have actual notice that the cover was missing.

{¶ 13} "Constructive notice is that notice which the law regards as sufficient to give notice and is regarded as a substitute for actual notice." *Hughes v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-1052, 2010-Ohio-4736, ¶ 14. To support an inference of constructive notice, a plaintiff may submit evidence that the condition existed for such a length of time that the owner or its agents' failure to warn against it or remove it resulted from their failure to exercise ordinary care. *Pressley* at 32. Here, there is no evidence in the record to show how long the cover had been missing. Therefore, there is no basis for a finding that the condition existed for such a long time as to impart constructive notice to ODRC.

{¶ 14} Appellant also argues that ODRC had general notice based on *Knickel v. Dept. of Transp.*, 49 Ohio App.2d 335 (10th Dist.1976). *Knickel* is not applicable here. No evidence was presented at trial that anyone had ever been physically injured at the institution due to a missing electrical box cover or that such an injury was foreseeable.

{¶ 15} For the foregoing reasons, we conclude that competent, credible evidence supports the trial court's finding that ODRC did not have any notice of the missing electrical box cover and, therefore, cannot be found to have breached its duty to appellant.

**IV. CONCLUSION**

{¶ 16} In summary, we overrule appellant's assignment of error. Accordingly, we affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

**BRYANT and TYACK, JJ., concur.**

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