[Cite as *Hartman v. Meijer Stores Ltd. Partnership*, 2010-Ohio-5311.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

CAROL HARTMAN, et al.,	:	
Plaintiffs-Appellants,	:	CASE NO. CA2010-03-065
	:	O P I N I O N
- vs -		11/1/2010
	:	
MEIJER STORES LIMITED PARTNERSHIP,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-08-3479

Timothy R. Evans, 29 North "D" Street, P.O. Box 687, Hamilton, Ohio 45013, for plaintiffs-appellants, Carol and James Hartman

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RINGLAND, J.

{¶1} Plaintiff-appellant, Carol Hartman, appeals the decision of the Butler County Court of Common Pleas, granting summary judgment in favor of defendant-appellee, Meijer Stores Limited Partnership (Meijer). We affirm the decision of the trial court.

{¶2} On the evening of April 22, 2004, Hartman and her husband entered Meijer in order to purchase paint and a picture frame. Hartman left her husband in the paint department, and began shopping for the picture frame. Hartman located the aisle containing

picture frames, and walked about two-thirds of the way down the aisle before stopping to peruse the frames.

{¶3} Each side of the aisle contained four to five shelves of picture frames, and the top shelf measured approximately eight feet in height. The top shelf contained 36-inch frames that where displayed in an orderly fashion but not otherwise bracketed or secured.

{¶4} Hartman began selecting frames from the second shelf, and placed them on the bottom shelf so that she could measure them with a tape measure she brought from home for the occasion. While in the process of measuring, Hartman was struck in the head, neck, and shoulder when picture frames fell from the top shelf and landed on her. After the accident, two Meijer employees arrived and attended to Hartman.

{¶5} According to Hartman's deposition, she was the only customer in the aisle from the time that she entered the aisle to the time of the accident. Hartman stated that she remembers hearing voices in a neighboring aisle, but remains uncertain as to whether the voices belonged to Meijer employees or other customers. Hartman also stated that after the accident, she saw broken picture frames laying in the aisle and a four-to-five-foot empty space on the top shelf from where the frames had fallen.

{¶6} During their depositions, Hartman and her husband were unable to state when the last time Meijer employees were in the picture frame aisle, and neither recalled any restocking or other general maintenance occurring near the frame aisle.

{¶7} Adam Ebbing, a Meijer employee, stated that he witnessed the accident during a routine patrol of the store, and saw Hartman struck by the falling picture frames. Ebbing was unable to testify to whether there were any Meijer employees near the frame aisle at the time of the accident, and could not state when the last time a Meijer employee had been in the aisle.

{¶8} Kelly Drabczyk, an employee in Meijer's risk management division in Grand

Rapids, Michigan, contacted Hartman to resolve her medical claims that resulted from the injuries. Drabczyk was not deposed, but Hartman asserted during her deposition that during the phone call, Drabczyk stated that Meijer knew "better than to put those 36-inch frames on the top shelf."

{¶9} Hartman brought suit, claiming that Meijer breached its duty to maintain its premises in a reasonably safe condition. At some point, Hartman voluntarily dismissed her claim, and re-filed it at a later date, espousing the same claims raised in her first complaint. Meijer moved for summary judgment and argued that Hartman's claims were barred by the open and obvious doctrine and because Meijer had no notice of the instability of the frames on the top shelf.

{¶10} The trial court granted Meijer's motion for summary judgment, finding that Meijer had not breached its duty. Hartman now appeals the trial court's decision, raising the following assignment of error.

{¶11} "THE COURT ERRED IN GRANTING SUMMARY JUDGMENT."

{¶12} In her assignment of error, Hartman claims that the trial court erred in granting summary judgment in Meijer's favor. This argument lacks merit.

{¶13} This court's review of a trial court's ruling on a summary judgment motion is de novo. *Broadnax v. Greene Credit Serv.* (1997), 118 Ohio App.3d 881, 887. Civ.R.56 sets forth the summary judgment standard and requires that there be no genuine issues of material fact to be litigated, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to only one conclusion being adverse to the nonmoving party. *Slowey v. Midland Acres, Inc.*, Fayette App. No. CA2007-08-030, 2008-Ohio-3077, ¶8. The moving party has the burden of demonstrating that there is no genuine issue of material fact. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64.

{¶14} "The law in Ohio is that the owner of premises owes a duty to exercise

reasonable care to protect customers from an unreasonable risk of physical harm." *Goodin v. Kroger* (1993), Butler App. No. CA93-01-009, 3. Meijer had a duty to maintain its premises in a reasonably safe condition and was required to either remove or warn its guests of latent or concealed defects of which it was aware. *Kessler v. Office Max*, Franklin App. No. 01AP-543, 2002 WL 378081, 2002-Ohio-1039. A business owner, however, is not an insurer of its customer's safety and owes no duty to protect customers from all conceivable dangers they may face while on the owner's premises. *Goodin* at 4.

{¶15} Once Meijer moved for summary judgment, Hartman was then required to demonstrate a question of fact regarding the following factors: "(1) that the defendant was responsible for the creation of the hazard which caused the plaintiff's injury, and failed to either remove or warn the plaintiff of that hazard; (2) that the defendant was not responsible for its creation, but had actual knowledge of its existence and failed to remove or warn the plaintiff; or (3) that the hazard had been present for a sufficient length of time such that the defendant should have known about it and either removed or warned of its presence." *Kessler* at *2 citing *Johnson v. Wagner Provision* (1943), 141 Ohio St. 584.

{¶16} According to the record, Hartman is unable to demonstrate that a question of fact remains regarding whether Meijer breached its duty. Hartman failed to provide any evidence to suggest that Meijer had actual notice of the possibility that the frames could fall from the top shelf. Hartman and her husband stated that they were unaware of any Meijer employees being in or near the aisle where the picture frames were located. Hartman was also unable to state when a Meijer employee was last near the picture frame aisle.

{¶17} Hartman now contends that a question of fact remains based on the statement made by Kelly Drabczyk, an employee in Meijer's risk management division. Hartman argues that Drabczyk's comment that Meijer knew "better than to put those 36-inch frames on the top shelf," creates a material fact regarding Meijer's knowledge of the risk of frames falling

from the top shelf.

{¶18} The trial court dismissed Hartman's argument, finding instead, that Drabczyk's comment was not made in the scope of her employment as a risk management employee because there was no evidence to suggest that Drabczyk was required to know Meijer's policies and practices regarding displaying merchandise. While we reach the same conclusion as the trial court, we do so for different reasons.

{¶19} Instead of focusing on the scope of Drabczyk's employment, there is no genuine issue of material fact created by the statement because there was no evidence produced to suggest that Drabczyk had any personal knowledge of the events that occurred the evening Hartman was injured. The statement was raised in the course of Hartman's own deposition, and no other evidence was offered regarding what Drabczyk, who was located in Grand Rapids, Michigan, knew about the circumstances of the incident.

{¶20} Hartman failed to produce any evidence that would otherwise suggest that Drabczyk knew when Meijer employees had been in or near the picture frame aisle, or whether Meijer was responsible for the creation of the hazard which caused Hartman's injury. Similarly, Hartman did not provide proof that Drabczyk had knowledge that Meijer employees knew of the danger posed by the picture frames and failed to remove or warn Hartman, or that the hazard had been present for a sufficient length of time such that Meijer should have known about it and either removed or warned of its presence. Because nothing in the record indicates that Meijer had actual notice that the picture frames created a hazard, or that the hazard was in existence for a sufficient length of time to support the inference that Meijer should have discovered and removed the hazard in the exercise of reasonable care, the trial court correctly granted summary judgment in favor of Meijer. Hartman's sole assignment of error is therefore overruled.

{¶21} Judgment affirmed.

YOUNG, P.J., and HENDRICKSON, J., concur.

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