[Cite as *George v. Miami Univ.*, 2025-Ohio-2512.]

IN THE COURT OF CLAIMS OF OHIO

NANCY GEORGE Plaintiff v. MIAMI UNIVERSITY Defendant	Case No. 2021-00187JD Judge David E. Cain JUDGMENT ENTRY

{¶1} On November 6, 2024, the Tenth District Court of Appeals (court of appeals) remanded this matter, in part, for the Court of Claims "to determine what, *if any,* impact [its] decision has on the comparative negligence calculation" after finding that "the trial court erred as a matter of law by concluding that the open door was not an open and obvious hazard." *George v. Miami Univ.*, 2024-Ohio-5281, ¶ 45 (10th Dist.) (emphasis in original). The parties agreed to file written briefs based upon the record of the trial held on July 25, 2022, concerning how the court of appeals' decision "impacts the allocation of fault and Ms. George's damages." *See* February 10, 2025 Entry, quoting *id.* The issue is now fully briefed and before the court for decision.

{¶2} After careful review of the court of appeals' decision and revisiting the evidence, the court is not persuaded that the open rink door being "open and obvious" diminishes defendant's liability. From the outset, defendant's liability for plaintiff's injuries stems from its negligent operation of the Zamboni. Importantly, the court of appeals held that "the trial court did not err by finding that the Zamboni was not an open and obvious hazard *and was the cause of* Ms. George's injuries." *George* at ¶ 45 (emphasis added). Though the trial court may have erred when failing to find the open rink door an "open and obvious" static condition in defendant's premises, there is no question that "the injuries suffered from the Zamboni arise from the active negligence of Miami University not a latent defect on the property." *Id.* at ¶ 42.

{¶3} To this end, the court rejects defendant's argument that a percentage of its liability for plaintiff's injuries was apportioned specifically for the presence of the open rink door. On the contrary, the court neither held that the open door caused plaintiff's injuries nor allocated fault based upon a breach of duty with respect to the danger posed by the open rink door. Instead, the court adopted the magistrate's conclusion "that plaintiff's fall from the step and defendant's failure to ensure the rink door was closed *while the Zamboni was operating* constitute concurrent proximate causes, which combined to produce plaintiff's injuries." December 21, 2022 Decision of the Magistrate, p. 16 (emphasis added). Based on this conclusion,

> [t]he magistrate allocate[d] the tortious conduct attributable to each party as follows: 30% to plaintiff and 70% to defendant. While plaintiff failed to establish that anything beyond her own negligence caused her to fall, the video and plaintiff's testimony both establish that plaintiff would not have fallen into the Zamboni's path if the door were closed. Only defendant could maintain a policy that the door should remain shut *while the Zamboni is operating* or direct employees to shut the door. Plaintiff had no ability to maintain the premises herself *and had nothing to do with how the Zamboni operated and under what conditions*. Plaintiff fell quickly, which was her fault, but played no part in the open door which led to her sliding *directly into the Zamboni's path and being struck by it*.

Id. at 16-17 (emphasis added).

{¶4} Although the court acknowledges that the combination of three simultaneously occurring factors brought about the event that caused plaintiff's injuries, the legal duty that defendant owed to plaintiff with respect to each factor has never been equal. *See George* at ¶ 37 ("There is an important legal distinction between static and dynamic forms of negligence *because they correspond to two separate and distinct duties* a premises occupier owes a business invitee." Emphasis added). There is no question that defendant owed no duty to plaintiff concerning the condition of the 18-inch step or the open rink door. However, defendant certainly owed plaintiff the duty not to injure her by negligent operation of a Zamboni. *See id.* ("active negligence relates to the owner's

duty not to injure its invitees by negligent activities conducted on the premises." Cleaned up.). In this respect, defendant breached its duty.

{¶5} Notably, "a Zamboni moves about the rink, *under the direction of the driver*, in any number of ways" and "[a]s an individual may cut their lawn in a unique pattern, so too could a Zamboni driver approach the resurfacing of an ice rink." *Id.* at ¶ 42 (emphasis added). Although the heightened risks posed by the "open and obvious" conditions at Miami University's Goggin Ice Center may relieve defendant of its obligation to warn its invitees of the foreseeable danger of falling onto the ice, the court renews its conclusion that justice would not be served if defendant is absolved from taking further action to ensure its invitees are not injured by the negligent operation of a Zamboni. Indeed, "a reasonable observer could not discern the danger of the Zamboni." *George* at ¶ 44.

{¶6} Despite this, defendant insists that it should incur no liability whatsoever from the door being left open simply because plaintiff could perceive the danger of falling through the door. This court disagrees. There could have been no door at all and plaintiff's ability to perceive the danger of the Zamboni would be unchanged under the unique circumstances of this case.

{¶7} Plaintiff did not sustain her injuries by merely slipping on reasonably maintained stairs, through an "open and obvious" opening, and onto the ice. If this were the case, then the court could understandably conclude that plaintiff failed to meet her burden of proof establishing defendant owed her a duty concerning the step and then been barred from recovery concerning the rink door being open for plaintiff to fall further onto the ice as opposed to experiencing a shorter fall into a closed rink door. However, the court previously rejected similar hypothetical speculations because those are neither the circumstances of this case nor the cause of plaintiff's injuries. *See* May 10, 2023 Judgment Entry, p. 6.

{¶8} Instead, the court reiterates that "the evidence overwhelmingly established that the Zamboni, *as opposed to plaintiff's initial fall*, caused plaintiff's injuries." *See* December 21, 2022 Decision of the Magistrate, p. 17 (emphasis added). When open access to an ice rink is available, it is reasonably foreseeable that invitees could enter the ice. It naturally follows that if a university fails to take reasonable measures to prevent such ingress onto its ice rink while its employees are operating a Zamboni, then it is a

probable consequence that an invitee may land in the path of the Zamboni and get injured. Based on the evidence presented at trial, neither the defendant nor its Zamboni driver exercised the degree of care reasonable under those circumstances and, as a result, plaintiff was injured.

{¶9} Therefore, judgment shall be rendered in favor of plaintiff in the amount of $35,025.00. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DAVID E. CAIN
Judge

Filed June 11, 2025
Sent to S.C. Reporter 7/17/25