

[Cite as *Byrd v. Miami Univ.*, 2008-Ohio-4794.]

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

KAREN BYRD

Plaintiff

v.

MIAMI UNIVERSITY

Defendant

Case No. 2005-10951

Judge Joseph T. Clark

DECISION

{¶ 1} Plaintiff brought this action against defendant alleging negligence. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} On February 18, 2002, plaintiff attended a banquet that was sponsored by the Oxford, Ohio chapter of the NAACP and held at the Shriver Center on defendant's campus. After the event concluded, plaintiff was injured when she fell from the stage while attempting to take a photograph. Plaintiff alleges that defendant's employees negligently constructed the stage such that a curtain concealed an open window located near the edge of the stage and that such negligence was the proximate cause of her injuries. Defendant contends that the edge of the stage was not concealed and that it owed no duty to warn plaintiff of an open and obvious condition.

{¶ 3} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77.

{¶ 4} There is no dispute that plaintiff was on defendant's property as an invitee. Therefore, defendant owed plaintiff a duty to exercise reasonable care in keeping the premises in a safe condition and to warn her of any latent or concealed dangers of which defendant had knowledge. See *Baldauf v. Kent State University* (1988), 49 Ohio App.3d 46; *Perry v. Eastgreen Realty Co.* (1978), 53 Ohio St. 2d 51, 52-53; *Presley v.*

Norwood (1973), 36 Ohio St.2d 29, 31. In order to recover from the occupier of a premises for personal injuries claimed to have been caused by the condition of those premises, an invitee must allege and prove that the fall was proximately caused by some unreasonably dangerous condition on the premises. *Baldauf*, supra. The trier of fact must consider all of the attendant circumstances in making its determination of whether the defect is substantial enough to support a finding of liability. *Cash v. Cincinnati* (1981), 66 Ohio St.2d 319.

{¶ 5} Plaintiff testified that she operated an event-planning business and that she had previously worked on events that had been held in the room where the incident occurred. Plaintiff however, had volunteered to decorate the tables that had been set up for the banquet, including the head table that was located on the stage. Plaintiff had placed decorations on the stage a few hours before the banquet began and she recalled walking up three steps that led from the floor to the stage.

{¶ 6} According to plaintiff, she was seated on the floor below the stage during the banquet and she returned to the stage after the event had concluded so that she could take photographs to include in a portfolio documenting her decorations. Plaintiff testified that when someone stepped in front of her and blocked her view, she took a step backward, fell off the edge of the stage through a curtain, and landed on the floor. Plaintiff explained that she had not been aware that the curtain covered a window that was recessed into the wall.

{¶ 7} James Baker, the associate director for facilities at the Shriver Center, testified that he supervised the employees who were responsible for constructing the stage; that the stage was positioned in a manner that was most commonly used for the room; and that required safety checks had been conducted without detecting any defects. Baker testified that the stage was constructed 24 inches above the floor and in such a manner that the rear edge ended approximately two inches from the south wall to accommodate electrical and audio receptacles. According to Baker's measurements, the curtains that covered the windows were approximately 9 or 10 inches from the edge

of the stage. Baker testified that both the edge of the stage and the gap between the stage and the window curtains were clearly visible to patrons using the stage. Baker stated that he had no knowledge of any prior incidents involving a fall from the stage.

{¶ 8} Plaintiff argues that defendant “created a latent defect by placing the stage in the area where it did, allowing the ceiling to floor curtains to conceal the recessed window wells.” (Plaintiff’s Proposed Conclusions of Law, ¶7.) However, plaintiff failed to establish that the configuration of the stage created an unreasonably dangerous condition on defendant’s premises.

{¶ 9} Furthermore, the testimony and evidence established that the danger presented by the gap between the edge of the stage and the curtain was neither hidden nor concealed from view. “[T]he dangerous condition at issue does not actually have to be observed by the plaintiff in order for it to be an ‘open and obvious’ condition under the law. Rather, the determinative issue is whether the condition is observable.” *Ruz-Zurita v. Wu's Dynasty, Inc.*, Franklin App. No. 07AP-616, 2008-Ohio-300, ¶7, quoting *Lydic v. Lowe's Cos., Inc.*, Franklin App. No. 01AP-1432, 2002-Ohio-5001, ¶10. “Put another way, the crucial inquiry is whether an invitee exercising ordinary care under the circumstances would have seen and been able to guard himself against the condition. Thus, this court has found no duty in cases where the plaintiff could have seen the condition if he or she had looked even where the plaintiff did not actually notice the condition before falling.” *Id.* (Citations omitted.)

{¶ 10} Plaintiff testified that she did not observe the edge when she walked backwards and stepped off the stage. However, Vanessa Cummings, defendant’s assistant director of parking and transportation, testified that she was standing next to plaintiff when plaintiff fell and that there was nothing to prevent plaintiff from seeing the edge of the stage. Based upon the testimony of both plaintiff and Cummings, the court finds that plaintiff had complete appreciation of the presence of the edge of the stage and that it was in plain view and discernible by ordinary inspection.

{¶ 11} In short, the court concludes that the sole proximate cause of plaintiff's injury was her own failure to be cognizant of a condition that was observable as she stepped backwards while taking a photograph. As such, plaintiff has failed to prove her negligence claim by a preponderance of the evidence. Judgment shall be entered in favor of defendant.



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- 6 -

DECISION

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JUDGMENT ENTRY

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This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

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