

[Cite as *Muller v. Wright State Univ.*, 2003-Ohio-1680.]

IN THE COURT OF CLAIMS OF OHIO

MEGAN MULLER :
22 Bay Hill Circle :
Brownsburg, Indiana 46112-8251: Case No. 2002-10224-AD

Plaintiff : MEMORANDUM DECISION

v. :

WRIGHT STATE UNIVERSITY :

Defendant :

: : : : : : : : : : : : : : :

For Defendant: Gwen Mattison, General Counsel
Wright State University
3640 Colonel Glenn Highway
Dayton, Ohio 45435

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{¶1} On May 8, 2002, plaintiff, Megan Muller, a student attending defendant, Wright State University, suffered personal injury while rehearsing the musical play "Carousel" inside the Festival Playhouse located on defendant's campus. Specifically, plaintiff sustained physical trauma when she was struck on the head by some heavy scenery which was manually being lowered from above onto the stage floor of defendant's playhouse. Immediately preceding the incident, plaintiff had been involved with other performers in a technical rehearsal on the main stage. Plaintiff explained she and the other performers were supposed to leave the stage area during a designed blackout, but before the stage had been cleared of people the command to lower the overhanging set was given by the stage manager, identified by plaintiff as Christine Hanover. Plaintiff related she was struck in the head by a piece of descending scenery as she was attempting to get off the stage.

{¶2} Upon being struck by the scenery piece plaintiff experienced pain, dizziness, and difficulty in standing. Plaintiff was transported by ambulance to the Miami Valley Hospital for medical treatment. Plaintiff was treated and released from care. Subsequently, she filed this complaint seeking to recover \$1,245.74, the cost of medical expenses she incurred related to her May 8, 2002 head injury. Plaintiff also filed to recover the \$25.00 filing fee. Plaintiff has indicated her injury and resulting damages were proximately caused by negligence on the part of defendant university in conducting the May 8, 2002 technical rehearsal for the musical play "Carousel." Plaintiff's head injury occurred while she was on defendant's premises. Additionally, it has been implied the May 8, 2002 rehearsal was conducted under the direction and supervision of defendant's employees and/or agents.

{¶3} Defendant has denied plaintiff's injuries were caused by any negligent act on the part of the university. Defendant maintained the piece of scenery which struck plaintiff was being operated by Tim Casper, a Wright State University student. The claim file is devoid of any statement from Tim Casper. Defendant did submit a cursory statement regarding the May 8, 2002 incident from Thomas G. Hellems, an Assistant Professor of Theater employed by defendant university. Hellems was described as a witness to plaintiff's injury and he related the following: "[w]hile in dress rehearsal, Megan stood up and a piece of scenery struck her on the top of her head."

{¶4} On February 6, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff again asserted she was injured while she was attempting to leave the stage as directed and someone lowered overhead scenery striking her on the head. Plaintiff denied she was injured in the manner described by defendant's employee, Hellems. Plaintiff contended her injury was the proximate result of negligence on the part of defendant's personnel in directing scenery be lowered with disregard to the

safety of actors exiting the stage.

{¶5} In order to prevail upon her claim of negligence, plaintiff must prove by a preponderance of the evidence that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282. There is no dispute that plaintiff was on university property as an invitee. *Baldauf v. Kent State University* (1988), 49 Ohio App. 3d 46. Therefore, defendant owed plaintiff a duty to exercise ordinary and reasonable care to protect her from unreasonable risk of physical harm of which the university knew or had reason to know. *Perry v. Eastgreen Realty Co.* (1978), 53 Ohio St. 2d 51, 372 N.E. 2d 335. Reasonable care is that which would be used by an ordinarily prudent person under similar circumstances. *Smith v. United Properties, Inc.* (1965), 2 Ohio St. 2d 310, 209 N.E. 2d 142.

{¶6} In the instant claim, it has been shown plaintiff was participating in an activity on defendant's premises under the supervision and control of defendant's personnel. Defendant was charged with a duty to exercise reasonable care for plaintiff's safety. Evidence has established defendant breached this duty of care which proximately caused plaintiff's injury. Consequently, defendant is liable to plaintiff for all damages claimed.

{¶7} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶8} IT IS ORDERED THAT:

{¶9} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶10} 2) Defendant (Wright State University) pay plaintiff (Megan Muller) \$1,270.74 and such interest as is allowed by law;

{¶11} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

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