

# 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  
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DENNIS WARD

Case No. 2005-09545

Plaintiff

Judge Joseph T. Clark

v.

DECISION

SALT FORK STATE PARK, et al.

Defendants

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{¶1} Plaintiff brought this action alleging negligence on behalf of defendants, Salt Fork State Park and the Ohio Department of Natural Resources (ODNR). The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Plaintiff alleges that on July 10, 2002, he was injured when he fell from a wheelchair while showering at a facility designated for use by handicapped persons and maintained by defendants for registered campers. Plaintiff asserts that defendants were negligent in failing to install grab bars in the shower. Defendants deny liability and contend that plaintiff was a recreational user of defendants' premises at the time of the injury and that therefore, defendants owed no duty to plaintiff. In addition, defendants assert that plaintiff's own negligence was the sole proximate cause of his injury.

{¶3} R.C. 1533.181 states:

{¶4} "(A) No owner, lessee, or occupant of premises:

{¶5} "(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

{¶6} "(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use; \* \* \*."

{¶7} "Premises" and "recreational user" are defined in R.C. 1533.18, as follows:

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{¶8} “(A) ‘Premises’ means all privately owned lands, ways, and waters and any buildings and structures thereon, and all privately owned and *state-owned lands*, ways and waters leased to a private person, firm, or organization, including any buildings and structures thereon.

{¶9} “(B) ‘Recreational user’ means a person to whom permission has been granted, *without the payment of a fee or consideration* to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, or swim, or to operate a snowmobile, all-purpose vehicle, or four-wheel drive motor vehicles, or to engage in other recreational pursuits.” (Emphasis added.)

{¶10} Defendants maintain that plaintiff failed to prove that he paid a fee for use of the premises. Plaintiff testified that he was a guest of another person who paid a fee to camp at the premises. Plaintiff recalled that his friend had stopped to register at the park office and had returned with a credit card receipt. Upon review, the court finds that plaintiff’s testimony was credible. In addition, defendants failed to produce any evidence or testimony that would rebut plaintiff’s statements. Thus, the court finds that plaintiff has provided sufficient evidence to substantiate his claim that his traveling companions paid a fee to use the campgrounds, that the fee was paid on plaintiff’s behalf, and that payment of the fee permitted plaintiff to have access to the park’s campground area. See *Meinking v. East Fork State Park*, Ct. Cl. No. 2005-10071-AD, 2006-Ohio-1015.

{¶11} It is undisputed that defendants were the owners of the “premises” as the term is defined in R.C. 1533.18 and that plaintiff’s injuries occurred on state-owned property. Pursuant to R.C. 1533.18 and 1533.181, the court finds that the recreational user statute does not apply to the facts of the present claim and that defendants owed plaintiff a duty of care to keep the premises reasonably safe for use by plaintiff.

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{¶12} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendants owed him a duty, that defendants' acts or omissions resulted in a breach of that duty, and that the breach proximately caused his 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.

{¶13} Plaintiff was present on defendants' premises for such purposes which would classify him under law as an invitee. *Scheibel v. Lipton* (1951), 156 Ohio St. 308. Consequently, defendants were under a duty to exercise ordinary care for the safety of invitees such as plaintiff and to keep the premises in a reasonably safe condition for normal use. *Presley v. City of Norwood* (1973), 36 Ohio St.2d 29.

{¶14} Additionally, it has been held that "the liability of an owner or occupant to an invitee for negligence in failing to render the premises reasonably safe for the invitee, or in failing to warn him of dangers thereon, must be predicated upon a superior knowledge concerning the dangers of the premises to persons going thereon." 38 American Jurisprudence, 757, Negligence, Section 97, as cited in *Debie v. Cochran Pharmacy Berwick, Inc.* (1967), 11 Ohio St. 2d 38, 40. "In short, if the condition or circumstances are such that the invitee has knowledge of the condition in advance, there is no negligence." *Debie*, at 11 Ohio St.2d 38, 41.

{¶15} Plaintiff explained that he had suffered for years from advanced kidney disease and that, as a result, he developed a neuropathy such that he experienced decreased sensation in his extremities. Plaintiff recalled that in 2002 he suffered from an ulcer on one of his heels and that he was using a wheelchair to keep weight off the foot and to facilitate wound healing. Plaintiff explained that while he was camping with friends, he attempted to use the shower facilities provided for handicapped persons. He described the shower stall as being a large, square area that he could wheel himself into with a curtain that he was able to close behind him. According to plaintiff, after he had started to bathe, he dropped either the soap or the washcloth, and that when he bent over to retrieve

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the item he tilted forward, hit his head on the wall, and lost his balance in the chair. Plaintiff testified that the wheels of the chair then rolled backwards and he fell, landing on the shower floor. Plaintiff contends that defendants should have installed grab bars in the shower area and that had the bars been in place, he would not have been injured.

{¶16} Defendants argue that they owed no duty to install grab bars in the shower area and that plaintiff's own negligence was the cause of his injuries. Plaintiff admitted that he had borrowed the wheelchair from a family member and that he was unfamiliar with the chair's mechanisms and safety features. Specifically, plaintiff conveyed to the court that he did not know how to lock the wheels to prevent the wheelchair from rolling out from underneath him. In addition, plaintiff testified that on the date in question, he had removed the armrests from the wheelchair to facilitate easier access to the wheels. Plaintiff further acknowledged that due to his pre-existing medical condition he had a limited ability to grasp objects. Thus, defendants argue that plaintiff did not possess sufficient grip strength in his hands and that even assuming the grab bars had been installed, he would not have been able to grab on and steady himself.

{¶17} Upon review of the evidence presented, the court finds that plaintiff failed to prove that defendants had a duty to install grab bars in the shower. Plaintiff failed to provide any evidence of the standard of care for safety measures or other applicable guidelines for safety devices required in handicapped-accessible bathing facilities. Furthermore, plaintiff failed to prove that the lack of grab bars proximately caused his injury. The court finds that plaintiff's unfamiliarity with the wheelchair and his failure to lock the wheels was the sole proximate cause of his injuries. In addition, based upon plaintiff's own admission the court finds it unlikely that plaintiff could have utilized grab bars had they been available.

{¶18} For the foregoing reasons, plaintiff's claim shall be denied and judgment shall be rendered in favor of defendants.

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Judge Joseph T. Clark

JUDGMENT ENTRY

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 defendants. 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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