[Cite as *Sweeny v. Bowling Green State Univ.*, 2007-Ohio-5290.]

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

BLAKE C. SWEENY

Plaintiff

v.

BOWLING GREEN STATE UNIVERSITY

Defendant

Case No. 2006-06922-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} On August 27, 2006, at approximately 12:15 p.m., plaintiff, Blake C. Sweeny, suffered personal injury when he slipped and fell as he, "entered the commons near Rodgers student dorm," a facility located on the campus of defendant, Bowling Green State University ("BGSU"). Specifically, plaintiff related he was injured when he, "slipped and fell on a wet spot on the floor inside the door," of defendant's building. Plaintiff further related the floor area where he tripped and fell, "usually has a rubber pad on it, but the pad had been removed." Additionally, plaintiff recalled there were no signs posted to warn him of the wet floor condition. When plaintiff fell he suffered a dislocated shoulder. Plaintiff immediately sought and received medical treatment for his injury at the Wood County Hospital. Plaintiff asserted his slip and fall and resulting shoulder injury were proximately caused by negligence on the part of defendant in maintaining a hazardous condition on BGSU premises. Furthermore, plaintiff suggested defendant was negligent in failing to adequately warn him of the wet floor condition. Therefore, plaintiff filed this complaint seeking to recover $1,141.00, the total cost of medical care he received to treat his shoulder injury. Plaintiff acknowledged he has medical insurance coverage with a $300.00/$600.00 deductible provision. The filing fee was paid.

{¶2} Defendant acknowledged plaintiff suffered personal injury when he slipped and fell on a wet spot on the floor immediately inside the entrance of a BGSU facility, the

Commons Dining Center ("Commons"). Defendant explained rain fell in the area during the morning hours of August 27, 2006, the day of plaintiff's injury incident. Furthermore, according to a BGSU Police Officer, Patrolman Daniel J. Hillis, who investigated the injury scene, " large amount of standing water approximately 2" deep," was observed outside the southeast entrance doors to the Commons. Also, Hillis recorded, "[a] small amount of water entered the doorway and a small puddle was on the tile." Hillis noted rainwater had been tracked by pedestrian traffic further inside the building from the entrance. Additionally, Hillis observed the floor, "tile was extremely slippery and difficult to walk on." Defendant maintained plaintiff's slip and fall was solely caused by tracked-in rain water.

{¶3} Therefore, defendant denied any liability in this matter. Defendant presented the position that, "[i]t is well settled in Ohio law that tracked-in water from inclement weather does not give rise to liability to an occupier of a premises." *Eble v. The Ohio State University Board of Trustees* (Aug. 10, 1994), Court of Claims Case No. 92-08445, unreported at p. 3 citing *S.S. Kregge v. Fader* (1927), 116 Ohio St. 718, 158 N.E. 174; *Rayburn v. J.C. Penney Outlet Store* (1982), 3 Ohio App. 3d 463, 445 N.E. 2d 1167, and *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St. 3d 203, 480 N.E. 2d 474. Defendant asserted plaintiff's slip and fall injury was caused solely by tracked-in rain water and consequently, no liability can attach for such injury. Furthermore, defendant contended the absence of a floor mat at the entrance to the Commons is insufficient to constitute negligence and resulting liability. Defendant cited *Wagner v. Equitable Life Assurance Society of the United States, et al.* (Sept. 4, 1997), Franklin App. 97APE05-609, 1997 Ohio App. LEXIS 4040, and *Locher v. K-Mart Corp.* (June 5, 1991), Scioto App. 90CA1886, 1991 Ohio App. LEXIS 2656, to support this position. In both of these cases which involved slip and fall injuries probably caused by tracked-in moisture on premises floors where no water absorbing mat was present, judgment was granted in favor of defendant. Essentially, defendant has argued BGSU owed no duty to protect plaintiff from the known potential hazards caused by tracked-in rainwater on a tile floor. Therefore,

negligence cannot be established in the absence of a duty.

{¶4} Additionally, defendant has asserted plaintiff failed to show he incurred compensable damages for his medical treatment. Defendant related plaintiff's "father has been paid $2,251.91 by an insurer for medical expenses incurred which exceeds the expenses (plaintiff) seeks in his [c]omplaint." Defendant produced a document from plaintiff's insurer indicating the insurer paid $2,251.19 of plaintiff's medical expenses. Total expenses charged amount of $2,602.34. It appears plaintiff incurred unreimbursed expenses of $351.15. Defendant explained all reimbursed medical expenses from collateral sources are not subject to recovery in a claim of this type. See R.C. 3345.40(B)(2).[1] Plaintiff may only recover damages not reimbursed from a collateral source.

{¶5} Plaintiff filed a response noting the building entrance where his slip and fall occurred, "was constructed with a one half inch deep sunken rectangle three feet by eight feet." Plaintiff observed the "sunken rectangle" at the building entrance, "is designed to catch tracked in water [and] a rubber grid work and/or a non-skid carpet is supposed to be placed in this recessed area to provide safe passage." Plaintiff recalled no carpet or mat was in place at the Commons entrance on the date of his injury incident. Also, plaintiff recalled no warning signs were in place to notify him of wet floor conditions. Plaintiff maintained defendant should have warned him and protected him from the hazards associated with tracked-in rain water.

{¶6} Plaintiff was present on defendant's premises for such purposes which would classify him under law as an invitee. *Scheibel v. Lipton* (1985), 156 Ohio St. 308, 102 N.E. 2d 453. Consequently, defendant was under a duty to exercise ordinary care for the safety

[1] R.C. 3345.40(B)(2) states in pertinent part:

"If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of an insurance or any other source, the benefits shall be disclosed to the court, and the amount of benefits shall be deducted from any award against the state university or college recovered by plaintiff."

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, 303 N.E. 2d 81. The duty to exercise ordinary care for the safety and protection of invitees such as plaintiff includes having the premises in a reasonably safe condition and warning of latent or concealed defects or perils which the possessor has or should have knowledge. *Durst v. VanGundy* (1982), 8 Ohio App. 3d 72, 455 N.E. 2d 1319; *Wells v. University Hospital* (1985), 85-01392-AD. As a result of plaintiff's status, defendant was also under a duty to exercise ordinary care in providing for plaintiff's safety and warning him of any condition on the premises known by defendant to be potentially dangerous. *Crabtree v. Shultz* (1977), 57 Ohio App. 2d 33, 384 N.E. 2d 1294.

{¶7} However, an owner of a premises has no duty to warn or protect an invitee of a hazardous condition, where the condition is so obvious and apparent that the invitee should reasonably be expected to discover the danger and protect himself from it. *Parsons v. Lawson Co.* (1989), 57 Ohio App. 3d 49, 566 N.E. 2d 698; *Blair v. Ohio Department of Rehabilitation and Correction* (1989), 61 Ohio Misc. 2d 649, 582 N.E. 2d 673. This rationale is based on principles that an open and obvious danger is itself a warning and the premises owner may expect persons entering the premises to notice the danger and take precautions to protect themselves from such dangers. *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642, 597 N.E. 2d 504. Rain water accumulating immediately inside the entrance to a building is generally considered an open and obvious danger. Therefore, no duty exists to protect an invitee from the hazards of tracked-in rain water which is considered a natural accumulation. Furthermore, liability of a premises owner for tracked-in water or snow is governed by the principle there is no duty to keep a battery of moppers on the premises to remove a risk which should be equally appreciated and avoided by everyone. *Paschal v. RiteAid Pharmacy, Inc.*, supra; *Lawson v. Columbia Gas of Ohio, Inc.* (1984), 20 Ohio App. 3d 208, 485 N.E. 2d 837; *Boles v. Montgomery Ward & Co.* (1950), 153 Ohio St. 381, 92 N.E. 2d 9. In the instant action plaintiff has failed to prove

defendant owed a duty to protect him from a natural accumulation of rain water that presented an open and obvious condition presented by the tracked-in water despite the fact no mat was placed at the building entrance. Defendant has no duty to protect persons such as plaintiff from any hazard presented by a natural accumulation of rain water. See *Underwood v. University of Akron*, 2003-01814-AD, 2003-Ohio-3594; *Seith v. Kent State Univ.* (2004), 2004-01036-AD.

[Cite as *Sweeny v. Bowling Green State Univ.*, 2007-Ohio-5290.]

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

BLAKE C. SWEENY

Plaintiff

v.

BOWLING GREEN STATE UNIVERSITY

Defendant

Case No. 2007-06922-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Blake C. Sweeny
390 Grove Avenue
Galion, Ohio 44833

Larry Y. Chan
Associate General Counsel
Bowling Green State University
Office of General Counsel
308 McFall Center
Bowling Green, Ohio 43403-0012

RDK/laa
7/10
Filed 8/8/07
Sent to S.C. reporter 10/2/07