IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DORIS HOFFMAN,	**:**	
Plaintiff/Appellant	**:**	
	:	
v.	**:**	**No. 05-00,824**
	:	**CIVIL ACTION**
DIVINE PROVIDENCE HOSPITAL,	**:**	
Defendant/Appellee	**:**	**APPEAL**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

The Plaintiff appeals this Court's May 21, 2007 grant of the Defendant's March 13, 2007 Motion for Summary Judgment and dismissal of her complaint. In her June 29, 2007 Statement of Matters Complained of on Appeal, the Plaintiff raises eight challenges to this Court's grant of the Defendant's March 13, 2007 Motion for Summary Judgment all of which challenge this Court's rationale for its May 21, 2007 decision.

Background

The instant action is a premises liability action arising from the Plaintiff's fall, and the subsequent injuries she claims to have sustained as a result of that fall, on May 5, 2003 while she was walking across a parking lot, en route to a doctor's appointment, on the Defendant's campus. On that date, the Plaintiff parked in the Wenner Building parking lot on the Defendant's campus, exited her car, and continued to the entrance of the Wenner Building. The Plaintiff bypassed the clearly marked crosswalk and several other paths opting to head towards the entrance along an aisle of parked vehicles. Before reaching the building, the Plaintiff tripped and fell on the macadam surrounding a drainage grate in the parking lot. The Plaintiff claims to have sustained injuries as a result of this fall.

The Plaintiff commenced the instant action alleging the Defendant was negligent and therefore liable for her injuries, on May 4, 2005, by way of a Writ of Summons; she then proceeded to file her complaint on June 7, 2005. By way of stipulation, the Plaintiff discontinued her action as to all Defendants less the current Defendant and, on January 25, 2006, filed her Amended Complaint to that effect. On March 13, 2007, the Defendant filed its Motion for Summary Judgment and, after reviewing the parties' briefs and considering the arguments made at the May 21, 2007 argument on said Motion, we, on that same date, granted the Defendant's Motion and dismissed the Plaintiff's complaint stating "[t]he Court finds that, the condition alleged to have caused the Plaintiff's fall was, as admitted by the Plaintiff, a known and obvious condition and therefore, the Defendant did not have a duty to protect her, as a business invitee, from said condition, which, because of its nature, the Plaintiff could have reasonably avoided," *Court Order of May 21, 2007*.

On May 31, 2007, the Plaintiff filed a Motion for this Court to Reconsider its May 21, 2007 Order. The Court, due to time constraints, summarily denied that Motion on June 1, 2007. The Plaintiff then filed a timely Notice of Appeal on June 13, 2007 and, pursuant to this Court's Order of June 18, 2007, filed her timely Concise Statement of Matters Complained of on Appeal on June 29, 2007.

Discussion

Summary judgment is appropriate, after the close of the relevant pleadings, "where after the completion of discovery relevant to the motion . . . an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury." Pa.R.C.P. No. 1035.2. In other words, "if the non-moving party has failed, in the first instance, to allege facts sufficient

to make out a *prima facie* case, then summary judgment may be granted properly, even if the moving party has only set forth the pleadings and depositions of his witnesses in support thereof", *Winwood v. Bregman,* 2001 PA. Super. 329, P9, 788 A.2d. 983, 985 (2001 P. Super. Ct.) citations omitted. In reviewing the motion for summary judgment, the Court must review the record in a light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Fine v. Checcio,* 582 Pa. 253, 264, 870 A.2d 850, 857 (Pa. 2005) citing *Jones v. SEPTA,* 565 Pa. 211, 772 A.2d 435 (Pa. 2001). Finally, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt. *Fine,* at 264, 857 citing *Marks v. Tasman,* 527 Pa. 132, 589 A.2d 205 (Pa. 1991).

In a premises liability action, like the case *sub judice*, once the status of the injured party is determined (here, the parties stipulate that the Plaintiff was a business invitee of the Defendant), the Court's focus then turns to the applicable duty of care the premises owner owes the injured party.

Here, the Plaintiff claims that the Defendant

> owed a duty to protect the Plaintiff from foreseeable harm [i.e. the grate, and the surrounding immediate area, in its parking lot]. Restatement (Second) of Torts §§ 341A, 343, and 343A. With respect to conditions on the land which are known to or discoverable by the Defendant, the Plaintiff argues the Defendant is subject to liability only if it knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to the Plaintiff, and should expect that the Plaintiff will not discover or realize the danger, or will fail to protect herself against it, and fails to exercise reasonable care to protect the Plaintiff against the danger. Restatement (Second) of Torts § 343.

Carrender v. Pitterer, 503 Pa. 178, 185, 469 A.2d 120, 123 (Pa. 1983). The Defendant agrees that the Plaintiff has identified the proper duty the Defendant owed the Plaintiff; however, the

Defendant counters that because the condition alleged to have caused the Plaintiff's injuries was "obvious and avoidable through the exercise of ordinary care", Restatement (Second) of Torts § 343A and *Campisi v. Acme Markets, Inc.,* 2006 Pa. Super. 368, 915 A.2d 117 (Pa. Super. Ct. 2006), they are not liable for her alleged injuries. The Court agrees with the Defendant.

Here, the Plaintiff, who is physically limited (she suffers from Reflex Sympathetic Dystrophy in both legs and needs the assistance of a cane when walking) bypassed a clearly marked crosswalk in the Defendant's parking lot, and several other alternate clear paths to the entrance of the building, opting for another path which took her over the grate that she alleges was in disrepair thereby causing her fall and subsequent injuries. The Plaintiff admits[1] that had she been looking ahead of her or down at the pavement she was walking upon, she would have seen the grate prior to encountering it, but that because her physical limitations reduce her reactions, she was instead looking for cars in the parking lot. The Court does not disbelieve the Plaintiff's contention that she did not see the grate which allegedly led to her fall and subsequent injuries; however, the issue is not whether the Plaintiff actually saw the condition which she contends caused her to fall but instead the issue is whether the "Defendant may have reasonably assumed that the Plaintiff would not be harmed by known or obvious dangers which are not extreme, and which any reasonable person exercising ordinary attention, perception, and intelligence could be expected to avoid. This is particularly true where a reasonable alternative way, if open to the visitor, known or obvious to him, and safe." *Carrender,* 503 Pa. at 186, 469 A.2d at 124 (Pa. 1983) and Restatement (Second) of Torts § 343A, Illustration 9. As stated

[1] In her Motion for Reconsideration and Statement of Matters Complained of on Appeal, the Plaintiff argues that this Court's granting of the Defendant's Motion for Summary Judgment violated the *Nanty-Glo* Rule; we respectfully disagree. The *Nanty-Glo* Rule prohibits the court from granting summary judgment based upon oral testimony; however, "if the Plaintiff fails to establish a prima facie case, the mere fact that his proof is oral does not provide a basis for placing the issue before the jury," *Thompson Coal Co. v. Pike Coal Co.,* 488 Pa. 198, 214, 412 A.2d 466, 474 (Pa. 1979).

above, the Plaintiff knew there were several alternative clear paths from her vehicle to the entrance of the building, including a clearly marked crosswalk. The Plaintiff admitted that she was not looking where she was walking and that had she been looking in front of and/or down at her path of travel, she would have seen the grate at issue. Similar to the disposition in *Campisi* where the Court stated, "just as drivers are not relieved of responsibility for accidents if they are distracted by billboards, customers are not relieved of the responsibility of watching for obstacles while they walk, even if they are distracted by sales displays", *Campisi*, 2006 PA. Super. at P10, 915 A.2d at 121 (Pa. Super. Ct. 2006), this Court will not permit the Plaintiff to pursue a cause of action for alleged negligence and subsequent damages in lieu of carrying out her own duty to remain attentive of where she is walking paying attention to obvious conditions in her path, which could impede her course of travel.

Conclusion

For the foregoing reasons, this Court respectfully suggests that its May 21, 2007 Order granting the Defendant's Motion for Summary Judgment and dismissing the Plaintiff's complaint be affirmed.

DATE: _____ By the Court,

_____
Nancy L. Butts, Judge

xc: Douglas N. Engelman, Esq.
David R.Bahl, Esq. / Brian J. Bluth, Esq.
Hon. Nancy L. Butts
Judges
Laura R. Burd, Esq. (Law Clerk)
Gary L. Weber, Esq. (Lycoming Reporter)