IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CHARLYN WALDO and PATRICK WALDO, Plaintiffs	:	NO. 11 – 00,385
	:	CIVIL ACTION - LAW
vs.	:	
	:	
SUSQUEHANNA HEALTH SYSTEM, Defendant	:	Motion in Limine
	:	Motion for Summary Judgment

OPINION AND ORDER

Before the Court is Plaintiffs' Motion in Limine, filed February 28, 2012, and Defendant's Motion for Summary Judgment, filed March 6, 2012. Argument on both motions was heard April 9, 2012.

Plaintiffs' action is based on an alleged trip and fall in the parking lot of Divine Providence Hospital. Plaintiff contends she tripped over a speed bump which was painted yellow, asserting that she failed to see it because the yellow paint was similar to the paint on the parking stall lines and "presented an optical illusion of looking flat". In response to interrogatories, Defendant provided Plaintiffs with information about three previous accidents involving slipping, tripping or falling in the same parking lot. In their motion in limine, Plaintiffs now seek to introduce evidence of those accidents.

Evidence of a prior similar accident may be admissible to prove constructive notice of a dangerous condition if the accident took place at "substantially the same place and under the same or similar circumstances." Whitman v. Riddel, 471 A.2d 521, 523 (Pa. Super. 1984), *quoting* Stormer v. Alberts Construction Co., 165 A.2d 87, 89 (Pa. 1960). This holding was clarified in DiFrancesco v. Excam, Inc., 642 A.2d 529, 536 (Pa. Super. 1994): other accidents occurring at the same location from different causes do not constitute "the same or similar circumstances."

In the instant case, Plaintiffs are able to present the court with the circumstances of only one of the accidents; there is no evidence respecting the details of the other two. Moreover, in that one case, the individual stated that she was hurrying and not paying attention to where she was walking, and that she did not trip over a speed bump but instead simply fell in

the parking lot. Therefore, the court cannot find the circumstances of the three prior accidents to be "the same or similar" and thus, evidence thereof is not admissible.

In the motion for summary judgment, Defendant contends it is entitled to judgment as a matter of law on the basis that a property owner has no duty to protect invitees from "known or obvious conditions avoidable by the exercise of ordinary care," citing Restatement (Second) of Torts, Section 343A. Defendant points to Mrs. Waldo's deposition testimony that her path of travel was clear, the speed bump was painted yellow, she had an unobstructed view of it and she could have avoided it had she realized it was raised. What Defendant fails to consider, however, is that none of that addresses Mrs. Waldo's contention that she did not realize it was raised because the paint created an optical illusion, and such is *not* an "obvious condition". The court believes that if the jury credits Mrs. Waldo's testimony, it could reasonably find that the illusion of being flat created a dangerous condition, for which Defendant might be held liable. Therefore, summary judgment on this issue is not appropriate.

ORDER

AND NOW, this 11th day of April 2012, for the foregoing reasons, both Plaintiffs' motion in limine and Defendant's motion for summary judgment are hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: David Shipman, Esq.
Brian Bluth, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson