

# 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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FRANK J. KRAGH

Plaintiff

v.

OHIO STATE HIGHWAY PATROL

Defendant

Case No. 2007-03242-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

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{¶1} On December 21, 2006, at approximately 1:10 p.m., plaintiff, Frank J. Kragh, suffered personal injury when he tripped over a rug located at the entrance of the Bucyrus Highway Patrol Post, a building owned by defendant, Ohio State Highway Patrol (“OSHP”). Plaintiff stated he tripped over a rug at the entrance of defendant’s building, lost his balance, and caught himself on the hand rails positioned on the steps near the entrance of the building. Plaintiff recalled that when he lost his balance and tried to right himself, he contorted his neck and upper body and experienced pain in his knees. After the tripping incident, plaintiff sought and received medical treatment for an injury diagnosed as a sprained and strained neck.

{¶2} Plaintiff filed this complaint seeking to recover medical treatment costs related to his December 21, 2006, personal injury event. Plaintiff implied his neck injury was proximately caused by negligence on the part of defendant in maintaining a hazardous condition at the entrance of the Bucyrus Highway Patrol Post. The filing fee was paid.

{¶3} Defendant contended plaintiff failed to produce any evidence to establish his neck injury was caused by a dangerous condition maintained on OSHP premises. Defendant pointed out plaintiff merely explained, “that he tripped and caught himself,” and did not assert his tripping incident was attributable to any defect on the premises. Defendant submitted photographs of the building entrance where plaintiff’s tripping incident occurred. The photographs depict a concrete raised landing and abutting concrete step

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from the landing with the entrance door resting atop this step. Minor chipping imperfections were observed at the top outside edge of the landing. Also, photographs depict a rubber mat laid on the concrete landing abutting the building entrance. The rubber mat appears intact and in good condition. Furthermore, photographs depict a large carpet mat laid immediately inside the building entrance floor abutting the entrance door frame. This carpet mat at the entrance door frame appears slightly raised, no more than 1/8" above the base of the door frame. More photographs show a stair case leading from the inside entrance floor where the carpet mat had been placed. These photographs do not depict any imperfections with the stairs, staircase, carpet mat, and floor area. From a review of all the photographs, the trier of fact does not observe any particular defect in the premises or any condition that could be considered dangerous to any person entering the building.

{¶14} To establish a cause of action for negligence, a plaintiff must show the existence of a duty, breach of that duty, and an injury proximately caused by the breach. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.* (1998), 81 Ohio St. 3d 677, 690. Generally, in the area of the premises liability, the status of a person who enters upon the land of another determines the scope of the duty the premises owner owes the entrant. *Shump v. First Continental-Robinwood Assoc.* (1994), 71 Ohio St. 3d 414, 417. Under the facts of the instant claim, and as defendant has acknowledged, plaintiff's status was that of an invitee. See *Baldauf v. Kent State Univ.* (1988), 49 Ohio App. 3d 46; *Shimer v. Bowling Green State Univ.* (1999), 96 Ohio Misc. 2d 12, 16.

{¶15} "[T]he possessor of premises owes a duty to an invitee to exercise ordinary and reasonable care for his or her safety and protection. This duty includes maintaining the premises in a reasonably safe condition and warning an invitee of latent or concealed defects of which the possessor has or should have knowledge." *Baldauf*, supra, at 47-48 citing *Scheibel v. Lipton* (1951), 156 Ohio St. 308. "However, it is also well-established that balanced against this duty, the owner of premises is not to be held as an insurer against all

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forms of risk.” *Id* at 48, citing *S.S. Kresge Co. v. Fader* (1927), 116 Ohio St. 718. Although the owner of premises generally owes a duty of ordinary care, “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.

{¶16} However, negligence cannot be established by the mere fact that a person slipped and fell. *Hess v. One Americana Ltd. Partnership*, Franklin App. No. 01AP–1200, 2002-Ohio-1076. “[State entities] [and] owners or occupiers of private premises are not insurers of the safety of pedestrians traversing those premises, and minor or trivial imperfections therein, which are not unreasonably dangerous and which are commonly encountered and to be expected, as a matter of law do not create a liability on the part of such owners or occupiers toward a pedestrian who, on account of such minor imperfection, falls and is injured.” *Helms v. American Legion, Inc.* (1966), 5 Ohio St. 2d 60, syllabus. See, also *Kimball v. City of Cincinnati* (1953), 160 Ohio St. 370.

{¶17} The trier of fact must consider all of the attendant circumstances in making its determination of whether the defect is substantial enough to support a finding of liability. *Cash v. Cincinnati* (1981), 66 Ohio St. 2d 319. Plaintiff, in the instant claim, failed to produce any evidence to show his injuries were caused by any breach of a duty of care owed by defendant for his protection. Plaintiff did not offer any set of fact establishing any act or omission on the part of defendant proximately caused his injuries. Plaintiff failed to prove his fall and resulting injuries were caused by any hidden defect or unreasonably dangerous condition. See *Koenig v. Bowling Green State Univ.*, 2002-09919-AD, 2003-Ohio-6603.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Frank J. Kragh  
1668 Fairview Road  
Galion, Ohio 44833

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Ohio State Highway Patrol  
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RDK/laa  
7/17  
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