

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.

Court of Appeals: Eighth Appellate District

Case Name: Monastero v. Novak, et al., 2008-Ohio-1947.

Decided: April 24, 2008

Issue(s): A trial court's refusal to grant summary judgment on the open and obvious doctrine.

Summary of Opinion: *Author's Note: This case appears to deviate from well-settled caselaw in Ohio regarding the open and obvious doctrine. It is expected that the plaintiff's bar will cite this case with some frequency.*

Plaintiff was injured in a trip-and-fall that she incurred while jogging on the sidewalk in front of Defendants' house. A car belonging to Defendants was parked on the apron of the driveway, with a portion of the car extending over the edge of the sidewalk. In front of the car, parked in the driveway was a boat trailer. While jogging on the sidewalk, Plaintiff ran into the parked car, fell, and struck a portion of the boat trailer. Plaintiff maintained that the car prevented the clear and unobstructed passage of pedestrians in violation of R.C. §4511.68.

Plaintiff testified she had been jogging the same route for four years, and she was aware of the parking situation at the Novak's house. She also admitted that she was aware the car was blocking her path from at least four or five houses away. She further testified that it was light outside and nothing distracted or diverted her attention while she was jogging.

The Novaks filed for summary judgment, but the trial court denied the motion. The Eighth District Court of Appeals held that it was a question of fact whether the car bumper was open and obvious. The court affirmed the denial of summary judgment

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and held that reasonable minds could differ as to whether the car blocking the sidewalk was open and obvious. Despite the court's noting that the bumper was approximately 60 inches wide, extended onto the sidewalk 6 to 8 inches, *and was actually attached to a car*, it still found that reasonable minds could differ as to whether the condition was open and obvious.

This decision by the Eighth District seemingly contradicts well established Ohio precedent on open and obvious doctrine. The majority of courts have found that, where a condition is readily *observable*, it is open and obvious as a matter of law.

Court of Appeals: Third Appellate District

Case Name: Marsha Smith, et al. v. House of Hunan, et al., 2008-Ohio-1783.

Decided: April 14, 2008

Issue(s): Application of the "two-inch" rule and attendant circumstances

Summary of Opinion: Plaintiff was injured while entering the House of Hunan restaurant in Marion, Ohio. As she was approaching the door, Plaintiff stepped to the side of the sidewalk to allow other customers to leave the restaurant, but this area of sidewalk had a deviation of approximately one inch. Smith tripped and suffered injury.

Citing the "two-inch" rule, the Third District reiterated that when the difference in elevation between adjoining portions of a sidewalk or walkway is less than two inches in height, it is considered insubstantial as a matter of law. In this case, it was undisputed that the difference in height of the sidewalk was approximately one inch. Plaintiff argued, however, that the attendant circumstances surrounding the injury were sufficient to render the minor defect a substantial one. The court held that such attendant circumstances must divert the attention of the pedestrian, significantly enhance the danger of the defect, contribute to the fall, and for the purpose of rebutting the two-inch rule, the traffic must be unusual or unreasonably increase the chance of harm.

The court found that the attendant circumstances surrounding Plaintiff's injury were not enough to rebut the "two-inch" rule. Plaintiff was not speaking to anyone while walking into the restaurant, her view was not obstructed by existing customers, and her stated excuse for not observing the sidewalk was that she was looking inside the building. The Court held that, given these facts, no reasonable person would conclude that customers exiting a restaurant is an unusual occurrence or unreasonably dangerous circumstance.

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Court of Appeals: Ninth Appellate District

Case Name: Susan Butler v. Scott R. Bove, et al., 2008-Ohio-1773.

Decided: April 14, 2008

Issue(s): Slip and falls on natural accumulations of ice

Summary of Opinion: Plaintiff slipped and fell on ice in front of Defendants' condominium. She alleged that she fell on "an unnatural accumulation of ice" and alleged that the condominium complex was responsible for the care and maintenance of the area and had notice of the unsafe condition. Defendants argued that Plaintiff fell on a natural accumulation of ice, thereby negating any duty they may have owed. Plaintiff eventually conceded that the ice was, in fact, a natural accumulation, but she argued that the parties' notice of the natural accumulation created a condition substantially more dangerous than an invitee should have anticipated.

The Ninth District Court of Appeals held that, under Ohio law, "an owner of property is not liable for injuries to business invitees who slip and fall on natural accumulations of ice and snow."¹ The Court was unable to find any evidence to support Plaintiff's argument. The Court noted her admission that it was a very cold, icy day in Northeast Ohio and that Plaintiff was sufficiently familiar with Ohio winters and the accumulation of ice when the temperature falls below freezing. Nor was there evidence that Defendants had a superior knowledge of a substantially more dangerous condition than she should have anticipated.

¹Ohio Supreme Court language, the Court held that "the dangers from natural accumulations of ice and snow are ordinarily so obvious and apparent that an occupier of premises may reasonably expect that a business invitee on his premise will discover those dangers and protect himself against them."

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