Not Reported in N.E.2d, 1993 WL 473270 (Ohio App. 10 Dist.)
(Cite as: 1993 WL 473270 (Ohio App. 10 Dist.))

Court of Appeals of Ohio, Tenth District, Franklin County.
Kathleen COMBS, Plaintiff-Appellant,
v.
APCOA PARKING APCOA, INC. et al., Defendants-Appellees.

No. 93AP-734.
Nov. 12, 1993.

Appeal from the Franklin County Court of Common Pleas.
Inscore, Rinehardt, Whitney and Enderle, and John K. Rinehardt, Mansfield, for appellant.

Isaac, Brant, Ledman & Becker, and David G. Jennings, Columbus, for appellee APCOA/APCOA Parking, Inc.

Ross & Harrington, Thomas J. Kanyock and Kenneth D. Ross, Washington, DC, for appellee city of Columbus.

JOHN C. YOUNG, Judge.

***1** This matter is before this court upon the appeal of Kathleen Combs, appellant, from the April 23, 1993 entry of the Franklin County Court of Common Pleas which granted summary judgment in favor of appellees, APCOA Parking/APCOA, Inc., and the city of Columbus. Appellant asserts the following assignments of error:

"Assignment of Error No. 1

"The trial court erred in granting summary judgment against plaintiff on the ground that the condition of defendants' premises was not unreasonably dangerous as a matter of law.

"Assignment of Error No. 2

"The trial court erred in granting summary judgment against plaintiff on the ground that the unreasonably dangerous condition of the defendants' premises was not the proximate cause of plaintiff's injuries as a matter of law.

"Assignment of Error No. 3

"The trial court erred in granting summary judgment against plaintiff on the ground that plaintiff was comparatively negligent to the point that she was barred from recovery as a matter of law."

Appellant's claim arises out of an incident occurring on October 7, 1990, in the parking garage at Columbus International Airport, owned by appellee, the city of Columbus and operated by appellee, APCOA Parking, Inc. After leaving her son in the airport terminal, appellant decided to walk to the top section of the parking garage where she could observe the departure of her son's airplane. While simultaneously walking and observing the aircraft, appellant fell and sustained injury. Appellant alleges that appellees owed her a duty to maintain the parking garage free from unreasonably dangerous conditions and that they breached their duties to her by failing to properly maintain the step on which she fell. According to appellant, the step had originally been painted yellow on top and on its face in order to alert pedestrians to its presence and, inasmuch as the paint on the top of the

step had worn off, the step was now unreasonably dangerous and proximately caused her injuries.

Both appellees moved the trial court for summary judgment in their favor. By entry dated April 23, 1991, the trial court granted the motions for summary judgment. It is from this entry that appellant has appealed.

Summary judgment, Civ.R. 56, is a procedural device designed to terminate litigation and avoid a formal trial where there is nothing to try. It must be awarded with caution, resolving all doubts and construing evidence against the moving party, and granted only when it appears from the evidentiary material that reasonable minds can reach only an adverse conclusion as to the party opposing the motion. See *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1.

Pursuant to Civ.R. 56(C), summary judgment may be rendered where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Summary judgment may not be rendered unless it appears that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom this motion is made.

***2** Appellant's three assignments of error are interrelated and will be addressed together. Appellant argues that the trial court erred in determining that the condition of the sidewalk and step in question was not unreasonably dangerous as a matter of law.

Appellant asserted in her complaint, and it is undisputed, that appellant was a business invitee at the time she sustained her injuries. The possessor of premises owes a duty to an invitee to exercise ordinary or reasonable care for her safety and protection. See *Scheibel v. Lipton* (1951), 156 Ohio St. 308. 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. *Id.* However, the owner of premises is not to be held as an insurer against all forms of risk. *S.S. Kresge Co. v. Fader* (1927), 116 Ohio St. 718.

The trial court concluded that appellant had presented no evidence that the sidewalk and step in question were unreasonably dangerous. After reviewing the deposition testimony of appellant and David Becker, currently the operations manager of APCOA, and after reviewing the filings and the photographs presented by the parties, this court concludes that the trial court correctly determined that the step had not been maintained in an unreasonably dangerous condition. Although appellant asserts that the question as to whether the condition of premises complained of is an unreasonably dangerous condition is usually a question of fact for determination by the jury or other trier of the facts, when reasonable minds cannot determine that such condition was unreasonably dangerous, the trial court should not permit a jury to determine that it was. See *Smith v. United Properties, Inc.* (1965), 2 Ohio St.2d 310, 317.

According to appellant's deposition testimony, she was looking up into the sky for her son's aircraft when she fell. She stated that, if she had looked down just before she fell, she would not have fallen and she further indicated that she would not have fallen if she would have seen paint on the step because paint is an indication to be cautious. This court has had the opportunity to examine the photographs submitted by appellant and appellees and this court notes that, although the yellow paint had worn off the top surface of the step, immediately to the right, perpendicular to the step and parallel with the adjacent parking lot surface, was yellow striping. Furthermore, immediately to the right of where appellant fell, the parking lot surface is striped to indicate that no parking is permitted in this area because this area is immediately in front of access to a stairwell. The parking lot striping indicates the possibility of a situation where the sidewalk meets the parking lot to facilitate the moving of people or

packages. Furthermore, the yellow striping perpendicular to the step would be visible to a person exercising reasonable caution and should have been obvious to appellant.

***3** Furthermore, in his deposition testimony, David Becker indicated that, although he knew that some painting was needed in the garage area, he had never identified this particular situation as a problem. Approximately thirty-five thousand customers utilize the garage every day and Mr. Becker had no knowledge of any falls which had happened previously. Therefore, appellees cannot be said to have had notice that the lack of paint in this area was unreasonably dangerous.

Inasmuch as reasonable minds could come to but one conclusion and that conclusion was adverse to appellant, the trial court properly granted summary judgment in favor of both appellees. As such, appellant's first, second and third assignments of error are not well-taken and are overruled.

Based on the foregoing, appellant's first, second and third assignments of error are overruled and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

PETREE and HARSHA, JJ, concur.
HARSHA, J., of the Fourth Appellate District, sitting by assignment in the Tenth Appellate District.

Ohio App. 10 Dist.,1993.
Combs v. APCOA Parking APCOA, Inc.
Not Reported in N.E.2d, 1993 WL 473270 (Ohio App. 10 Dist.)

END OF DOCUMENT