

[Cite as *Ludwick v. Deer Creek State Park Marina*, 2003-Ohio-4291.]

IN THE COURT OF CLAIMS OF OHIO

TAMI LUDWICK :  
Plaintiff :  
v. : CASE NO. 2003-04112-AD  
DEER CREEK STATE PARK-MARINA : MEMORANDUM DECISION  
Defendant :

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{¶1} Plaintiff, Tami Ludwick, has alleged she suffered personal injury on August 18, 2001, when she slipped and fell on a wooden boat dock located on the premises of defendant, Deer Creek State Park. Specifically, plaintiff asserted she suffered a spinal disc injury as a result of her slip and fall. Consequently, plaintiff has filed this complaint seeking to recover \$537.65 for unreimbursed medical expenses associated with the August 18, 2001 incident. Plaintiff contended her back injury was proximately caused by negligence on the part of defendant in maintaining a concealed defective condition on its premises.

{¶2} Plaintiff explained she parked a boat owned by her father, Dean Tarbill, at the B-14 dock on defendant's premises. After securing the boat to the dock, plaintiff stepped from the boat onto a wooden dock section. Plaintiff related she then retrieved her purse and a towel and proceeded toward the main dock walking on a dock section characterized as a "dock leg." Plaintiff further related, as she walked the "dock leg" became unstable due to an anchoring pin falling out of a holding brace. According to

plaintiff, the failure of the anchoring pin caused the dock to severely list to the right. Plaintiff asserted this listing action propelled her onto a docked pontoon boat. Plaintiff professed she caught herself on the railing of the pontoon boat and immediately began to experience back pain. Plaintiff stated she was able to walk from the dock to her car, which she drove to defendant's marina to report the incident. Subsequently, plaintiff was transported to a medical facility for examination and treatment.

{¶3} Defendant asserted plaintiff did not pay a fee to use the boat dock at Deer Creek State Park and would be classified under statute as a recreational user.<sup>1</sup> Therefore, defendant has contended no duty was owed to plaintiff to maintain the boat dock in a safe condition free of hidden defects.

{¶4} Evidence in the instant claim has shown a fee was paid to rent dock space for the boat plaintiff docked on August 18, 2001. Considering plaintiff was injured at the proximate rental location site, the immunity granted by the recreational user statute has no application to the present claim before the court. Considering a fee was paid to use the docking facilities and plaintiff's incident occurred during the course of using the dock facilities the recreational user statute has no bearing on this action.

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<sup>1</sup> "(A) 'Premises' means all privately owned lands, ways, waters and any buildings and structures thereon, and all State-owned lands, ways, and waters leased to a private person, firm, organization or corporation, including any buildings and structures thereon.

"(B) 'Recreational User' means a person to whom permission has been granted without the payment of a fee or consideration to the owner, lessee or occupant of premises, other than a fee or consideration paid to the State or any agency thereof, to enter upon premises to hunt, fish, trap, camp, hike, swim or engage in other recreational pursuits.

"(A) No owner, lessee or occupant of premises:

"(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

"(2) Extends any assurance to a recreational user; through the act of giving permission, that the premises are safe for entry or use;

"(3) Assumes responsibility for or incurs liability for any injury to any person or property caused by an act of a recreational user."

Plaintiff's claim shall therefore be determined on straight negligence principles.

{¶5} Defendant has denied plaintiff's injuries were proximately caused by any negligent act or omission on the part of Deer Creek State Park personnel. Defendant's employee, Park Officer Van Horn conducted an investigation of plaintiff's personal injury event and compiled a written report of the August 18, 2001 occurrence forming the basis of this claim. Defendant submitted a copy of this report which included a summary of an interview with plaintiff. Van Horn wrote that plaintiff related she was walking on the B-14 boat dock when the dock suddenly listed causing her to fall upon the dock surface. Plaintiff was observed sitting in her car appearing alert and oriented after she lost her balance and fell. However, plaintiff did complaint to Van Horn she was experiencing lower back pain. Plaintiff advised Van Horn she had previously injured her back in an industrial accident and was currently receiving treatment for a lower back condition described as a "strain." Van Horn reported plaintiff informed him she was aware the anchoring pin which secured the dock section where her accident occurred was missing. Plaintiff further declared to Van Horn that she had discovered the anchoring pin was missing from the dock brace approximately two weeks before the August 18, 2001 incident. Van Horn also noted plaintiff acknowledged to Park Manager Boone that she had known about the missing dock securing device prior to August 18, 2001. Because evidence has been presented to show plaintiff had prior knowledge regarding the condition of the dock section, defendant has contended it cannot be held liable for plaintiff's injuries caused by the dock condition. Defendant argued plaintiff's awareness of an open and obvious hazard nullifies any duty which may have been owed to plaintiff for her protection. Defendant asserted plaintiff's own negligence in

assuming the risk of walking on an obvious unstable dock section was the major cause of her injury. Defendant professed plaintiff has failed to produce sufficient evidence to establish actionable negligence.

{¶6} Defendant forwarded a response to the investigation report drafted by plaintiff's mother. This response, received by the court on June 20, 2003, contains information which neither adds to nor detracts from the issue addressing plaintiff's prior knowledge of the dock condition.

{¶7} In a negligence action, plaintiff must present some evidence of probative value to establish all the following: (1) that the defendant owed the plaintiff a duty of care; (2) that the defendant breached the duty of care; and (3) that as a direct and proximate result of the defendant's breach, the plaintiff suffered injury. *Texler v. D.O. Summers Cleaners & Shirt Laundry Co.* (1998), 81 Ohio St. 3d 677 at 680; *Jeffers v. Olexo* (1989), 43 Ohio St. 3d 140, 142; *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75. The issue of whether a duty is owed by a defendant to a plaintiff is fundamental to establishing actionable negligence. *Jeffers, supra.* As the court stated in *Jeffers*: " \* \* \* If there is no duty, then no legal liability can arise on account of negligence. When there is no obligation of care or caution, there can be no actionable negligence." (Footnotes omitted.) 70 Ohio Jurisprudence 3d (1986) 53-54, Negligence, Section 13. Only when one fails to discharge an existing duty can there be liability for negligence." *Id.*, 43 Ohio St. 3d 140, at 142; see, also, *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282. The existence of a duty on the part of a particular defendant is a question of law for the court to decide. See *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318.

{¶8} Evidence presented in the instant claim tends to show

plaintiff was aware of the condition of the boat dock in reference to the missing anchoring pin. Because of this knowledge, the dock condition, although defective, constituted an open and obvious danger to invitees such as plaintiff. When a danger is open and obvious, a landowner owes no duty of care to individuals lawfully on the premises. *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45; *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St. 3d 79, 2003-Ohio-2573.

The rationale underlying this doctrine is "that the open and obvious nature of the hazard itself serves as a warning. Thus the owner or occupier may reasonably expect persons entering the premises will discover those dangers and take appropriate measures to protect themselves." *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642, 644. Notwithstanding the issue of comparative negligence the "open and obvious" doctrine remains viable as a complete bar to recovery. *Simmers*, *id.* at 644. Based on the evidence presented in the present claim regarding the known danger associated with the missing pin at the dock site, there is no real issue of fact that the danger presented by the missing pin was any more foreseeable to defendant as it was to plaintiff. Defendant was not charged with a duty to protect plaintiff from this open known condition and consequently plaintiff's claim is denied.

{¶9} 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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Tami Ludwick  
11 Crestview Court  
New Holland, Ohio 43145

Plaintiff, Pro se

Charles G. Rowan  
Deputy Chief Counsel  
Department of Natural Resources  
1930 Belcher Drive  
Building D-3  
Columbus, Ohio 43224-1387

For Defendant

RDK/laa  
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