[Cite as *Ross v. Car Parts Warehouse, Inc.*, 2024-Ohio-4911.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

ANTONARDO ROSS, :

Plaintiff-Appellant, :

No. 113691

v. :

CAR PARTS WAREHOUSE INC., ET AL. :

Defendants-Appellees. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 10, 2024

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-22-967624

Appearances:

Wesley Alton Johnston, *for appellant*.

Gallagher Sharp LLP, Joseph Monroe II, and Kailey J. Leary, *for appellee* Car Parts Warehouse, Inc.

MARY J. BOYLE, J.:

{¶ 1} Plaintiff-appellant, Antonardo Ross ("Ross"), slipped and fell in the parking lot of defendant-appellee, Car Parts Warehouse, Inc. ("Car Parts Warehouse"), in Warrensville, Ohio. The trial court granted summary judgment in

favor of Car Parts Warehouse finding that the alleged hazard was open and obvious. Ross appeals this ruling. For the reasons that follow, we affirm.

I. Facts and Procedural History

{¶ 2} In May 2020, Ross and his girlfriend, LaToyia Short ("Short"), were in the parking lot of Car Parts Warehouse, waiting in a single line of vehicles to place an order with a store employee.[1] As Short's vehicle approached the front of the line, a Car Parts Warehouse employee took her order and returned to the store to obtain the part. While waiting for the part to be delivered, Ross, who was the passenger, exited the vehicle to make room in the trunk. When Ross stepped out of the vehicle and onto the parking lot surface, he slipped and fell to the ground.

{¶ 3} Ross testified at his deposition that after he was helped up by Short, he observed that he had been "laying in a rainbow" of fluid "that [was] oil." (Ross Depo. at 37.) According to Ross, the size of the puddle was "the size of my body," and the puddle was in line with where other vehicles had been traveling. (Ross Depo. at 38.) Ross testified that nothing concealed the puddle and that Car Parts Warehouse did not do anything to distract him as he was stepping out of the vehicle.

{¶ 4} Short testified at her deposition that she almost slipped herself when she went to help Ross. She looked down and observed a green oily substance all around the front apron where all the cars were traveling. (Short Depo. at 25.) Short thought it was transmission fluid.

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[1] At the time, Covid-19 protocols required Car Parts Warehouse to provide service to its customers outside, rather than inside, its store.

{¶ 5} Neither Ross nor Short knew where the fluid originated, how long the oily substance was present on the parking lot surface, or whether Car Parts Warehouse created the oily substance. Both testified that they are aware cars sometimes leak fluids and those fluids can be found on parking lot surfaces.

{¶ 6} After Ross fell, the two remained on scene to discuss the incident with a Car Parts Warehouse manager. Ross returned home after the fall. Two days later Ross went to a hospital with complaints of pain in his lower back, elbow, neck, and leg.

{¶ 7} In March 2021, Ross filed a complaint against Car Parts Warehouse and the individual manager for claims related to the slip and fall. The case was voluntarily dismissed in September 2021. Ross refiled the complaint on August 18, 2022, alleging the following causes of action: (1) negligence against Car Parts Warehouse; (2) negligence against the manager; and (3) spoliation against both parties. On October 17, 2022, the court granted Car Parts Warehouse's unopposed motion for partial judgment on the pleadings, dismissing the negligence claim against the manager and the spoliation claim in its entirety. On February 1, 2024, the court granted Car Parts Warehouse's motion for summary judgment as to the remaining negligence claim finding that the hazard was open and obvious thereby alleviating Car Parts Warehouse's duty to warn, barring recovery of any alleged damages. It is from this order that Ross appeals, raising one assignment of error for our review:

> The Trial Court Improperly granted [Car Parts Warehouse's] motion for summary judgment.

II. Law and Analysis

Standard of Review

{¶ 8} We review an appeal from summary judgment under a de novo standard. *Cleveland Elec. Illum. Co. v. Cleveland*, 2020-Ohio-4469, ¶ 13-15 (8th Dist.), citing *Baiko v. Mays*, 140 Ohio App.3d 1, 10 (8th Dist. 2000). Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate. *Id.*, citing *N.E. Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.*, 121 Ohio App.3d 188, 192 (8th Dist. 1997). Civ.R. 56(C) provides that before summary judgment may be granted, a court must determine

> (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion and viewing the evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the nonmoving party.

{¶ 9} Civ.R. 56(C) also provides an exclusive list of materials that parties may use to support a motion for summary judgment:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule.

{¶ 10} The moving party carries the initial burden of setting forth specific facts that demonstrate his or her entitlement to summary judgment. *Dresher v.*

Burt, 75 Ohio St.3d 280, 292-293 (1996). If the movant meets this burden, the burden then shifts to the nonmoving party to provide evidence showing a genuine issue of material fact exists. *Id.* at 293. The nonmoving party cannot simply rest on its pleadings. *Id.*

The Hazard Was Open and Obvious

{¶ 11} Ross alleged in his complaint that Car Parts Warehouse was negligent when it did not maintain the parking lot in a reasonably safe condition and failed to warn of the puddle of oil, claiming it was a hidden danger. In his sole assignment of error, Ross argues that a genuine issue of material fact exists as to whether the hazard was open and obvious and, thus, the trial court erred when it granted summary judgment in favor of Car Parts Warehouse. We disagree.

{¶ 12} In a cause of action for negligence, the appellant must show (1) the existence of a duty; (2) a breach of that duty; and (3) an injury proximately resulting therefrom. *Hopkins v. Greater Cleveland Regional Transit Auth.*, 2019-Ohio-2440, ¶ 12 (8th Dist.), citing *Armstrong v. Best Buy Co., Inc.*, 2003-Ohio-2573, ¶ 8. When there is no duty, there is no legal liability. *Naso v. Victorian Tudor Inn, L.L.C.*, 2022-Ohio-1065, ¶ 8 (8th Dist.), citing *Jeffers v. Olexo*, 43 Ohio St.3d 140, 142, (1989).

{¶ 13} The first question to determine is what duty of care the owner of Car Parts Warehouse owed Ross. The status of a person who enters another's property defines the scope of the duty owed to that person. *Naso* at ¶ 9, citing *Gladon v. Greater Cleveland Regional Transit Auth.*, 75 Ohio St.3d 312, 315, (1996). Invitees

are persons who rightfully come upon the premises of another by invitation, express or implied, for some purpose that is beneficial to the owner. *Gladon*, citing *Light v. Ohio Univ.*, 28 Ohio St.3d 66 (1986). Here, it is undisputed that Ross was a business invitee of Car Parts Warehouse. Property owners, like Car Parts Warehouse, owe business invitees a duty of ordinary care in maintaining the premises in a reasonably safe condition, including warning them of latent or hidden dangers to avoid unnecessarily and unreasonably exposing them to risk of harm. *Naso* at ¶ 9, citing *Perry v. Eastgreen Realty Co.*, 53 Ohio St.2d 51, 52 (1978).

{¶ 14} Nevertheless, it is well settled that a property owner is under no duty to protect a business invitee against dangers that are known to the invitee or are so open and obvious to the invitee that he may reasonably be expected to discover them and protect himself against them. *Id.* at ¶ 10, citing *Sidle v. Humphrey*, 13 Ohio St.2d 45 (1968), paragraph one of the syllabus. "The rationale underlying the doctrine is that an open-and-obvious danger serves as its own warning." *Id.,* quoting *Early v. Damon's Restaurant*, 2006-Ohio-3311, ¶ 7 (10th Dist.).

{¶ 15} The question of whether a danger is open and obvious is an objective one. *Hopkins v. Greater Cleveland Regional Transit Auth.*, 2019-Ohio-2440, ¶ 15-16 (8th Dist.), citing *Goode v. Mt. Gillion Baptist Church*, 2006-Ohio-6936, ¶ 25 (8th Dist.). Open-and-obvious dangers are defined as those that are not hidden, concealed from view, or undiscoverable upon ordinary inspection. *Lydic v. Lowe's Cos., Inc.*, 2002-Ohio-5001, ¶ 10 (10th Dist.).

{¶ 16} The open-and-obvious doctrine focuses on the nature of the dangerous condition itself, rather than the plaintiff's conduct when encountering it. *Armstrong v. Best Buy Co.*, 2003-Ohio-2573, ¶ 13. "A person does not need to observe the dangerous condition for it to be an open and obvious condition under the law; rather, the determinative issue is whether the condition is observable." *Early* at ¶ 8, citing *Lydic* at *id.* Even in cases where the plaintiff did not actually notice the condition until after he fell, courts have found no duty where the plaintiff could have seen the condition had he looked. *Id.*; *Haymond v. BP Am.*, 2006-Ohio-2732, ¶ 16 (8th Dist.) (even where invitee does not see the danger until after she falls, there is no duty if the invitee could have seen the danger if she had looked).

{¶ 17} In this case, Ross relies on this court's decisions in *Canidate v. Cuyahoga Metro. Hous. Auth.*, 2015-Ohio-880 (8th Dist.), and *Johnson v. MetroHealth Med. Ctr.*, 2007-Ohio-392 (8th Dist.), arguing that it is an issue of fact whether the puddle of fluid in this case was an open-and-obvious condition. In *Canidate* and *Johnson*, the condition was a recent accumulation of clear water on tile floors, which is distinguishable from the facts in this case. Here, the condition complained of involved a large green or rainbow-colored oily fluid on the parking lot surface of Car Parts Warehouse, where one would not be surprised to find a puddle of this nature. Further, Ross and Short testified that they observed the oily substance after Ross fell, so the condition was observable had either of them looked. Hence, the hazard was open and obvious.

{¶ 18} Finally, attendant circumstances may negate the application of the open-and-obvious doctrine; however, those circumstances must be present and create a "greater than normal, and hence substantial, risk of injury." *Stockhauser v. Archdiocese of Cincinnati*, 97 Ohio App.3d 29, 33 (2d Dist. 1994). That is not the case here. Ross testified that Car Parts Warehouse did nothing to distract him from observing the puddle. Consequently, there were no attendant circumstances creating an issue of fact as to whether a danger was open and obvious. *See Naso*, 2022-Ohio-1065, at ¶ 24-28.

{¶ 19} Based on the foregoing, we find that the large green or rainbow-colored oily puddle was an open-and-obvious condition eliminating Car Parts Warehouse's duty to warn Ross or other invitees. Thus, we find that no genuine issue of material fact remains, and Car Parts Warehouse was entitled to summary judgment as a matter of law.

{¶ 20} Ross's sole assignment of error is overruled.

{¶ 21} Accordingly, the judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY J. BOYLE, JUDGE

MICHELLE J. SHEEHAN, P.J., and
LISA B. FORBES, J., CONCUR