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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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CLERK OF COURTS
CUYAHOGA COUNTY

GERALD WAYNE YOAK
Plaintiff

Case No: CV-20-935769

Judge: CASSANDRA COLLIER-WILLIAMS

UNIVERSITY HOPSITALS HEALTH SYSTEM, INC., ET AL
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

DEFENDANTS UNIVERSITY HOSPITALS HEALTH SYSTEM, INC. AND UNIVERSITY HOSPITALS GEAUGA MEDICAL CENTER'S MOTION FOR SUMMARY JUDGMENT, FILED 09/10/2021, IS GRANTED. ORDER ATTACHED AND ORDERED RECORDED. OSJ.
COURT COST ASSESSED TO THE PLAINTIFF(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

OSJ

Judge Signature Date

- 96
01/14/2022

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

GERALD WAYNE YOAK,	)	Case No. CV-20-935769
	)	
Plaintiff,	)	JUDGE CASSANDRA COLLIER-WILLIAMS
	)	
	)	
v.	)	
	)	
UNIVERSITY HOSPITALS HEALTH SYSTEM, INC., et al.	)	
	)	
	)	**FINAL OPINION AND ORDER**
Defendants.	)	
	)	

JUDGE C. COLLIER-WILLIAMS:

This cause came for consideration upon Defendants University Hospitals Health System, Inc. and University Hospitals Geauga Medical Center's Motion for Summary Judgment. For the reasons set forth more fully below, this Court GRANTS Defendants' Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 13, 2018, Plaintiff Gerald Wayne Yoak ("Plaintiff") visited the YMCA facility located in Chardon, Ohio in order to workout. The building is owned by the YMCA. Located within the building is a physical therapy and rehabilitation center operated by University Hospitals Health System, Inc. ("UH"). The portion of the building where the UH rehabilitation center is located was leased by the YMCA to UH Geauga Medical Center.

As part of his workout, Plaintiff wanted to use the seated chest press machine. He saw that the machine was occupied, so he sat down at the curling machine to do curls. Before he could begin doing curls, he noticed that the seated chest press machine became available. He stood up from the curling machine and headed toward the seated chest press machine, which was approximately 20 feet away from him. As he was heading to the chest press, he tripped over a board that was propping open a double door separating the YMCA from the UH therapy center. The board was propping open the left side of the double door while the right door remained closed. Plaintiff fell forward and caught himself on a nearby machine. Plaintiff alleges that he suffered injuries to his knee as a result of tripping over the board.

On August 10, 2020, Plaintiff filed a Complaint against University Hospitals Health System, Inc., University Hospitals Geauga Medical Center, YMCA of Greater Cleveland, and Geauga Family YMCA. In the Complaint, Plaintiff alleges that he was a business invitee at the Geauga Family YMCA. He further alleges that an employee or agent of Defendant UH placed the board between the glass doors that separated the UH facility from the YMCA exercise facilities. Plaintiff's Complaint states, in pertinent part:

> 4. At all times pertinent hereto, [the UH Defendants] owned, managed and or operated a physical therapy/rehabilitation unit at the premises of the Geauga YMCA located [sic] 12460 Bass Lake Road, in the City of Chardon, County of Geauga and State of Ohio.
>
> . . .
>
> 8. At the time and place noted above the University physical therapy/rehabilitation unit was located within the YMCA building and separated by a set of glass doors from the exercise facilities used by YMCA invitees.
>
> . . .
>
> 11. Defendants negligently maintained the facility, failed to warn the Plaintiff and others of the dangerous condition and permitted a nuisance to remain on the premises.

12. Defendants violated their duty to '[k]eep all common areas of the premises in a safe and sanitary condition,' in violation of Ohio Revised Code Section 5321.04(A)(3), and was negligent *per se*.

Accordingly, Plaintiff's Complaint contains the following three claims against Defendants: (1) a premises liability claim, (2) a nuisance claim, and (3) a negligence *per se* claim.

On August 27, 2021, Plaintiff filed a Notice of Voluntary Dismissal of Defendants YMCA of Greater Cleveland and Geauga Family YMCA, leaving the UH Defendants as the sole remaining Defendants.

On September 10, 2021, the UH Defendants filed a Motion for Summary Judgment. The UH Defendants argue that Plaintiff's claims fail against them because Plaintiff has not alleged any actionable duty owed to him by the UH Defendants and because the board on which he fell was an open and obvious condition.

II. APPLICABLE LAW AND ANALYSIS

A. Summary Judgment Standard of Review

Pursuant to Civ.R. 56(C), summary judgment is only appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) after viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion and that conclusion is adverse to the nonmoving party. *Hollins v. Shaffer*, 182 Ohio App.3d 282, 2009-Ohio-2136, 912 N.E.2d 637 (8th Dist.); *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996). The Court analyzes factual evidence in the light most favorable to the non-moving party and draws all reasonable inferences in the non-moving party's favor. *See Henderson v. Walled Lake Consol. Sch.*, 469 F.3d 479 (6th

Cir. Mich. 2006). Summary judgment is inappropriate if the evidence would permit a reasonable jury to return a verdict in favor of the non-moving party.

B. Negligence and Premises Liability

"It is rudimentary that in order to establish actionable negligence, one must show the existence of a duty, a breach of the duty, and an injury resulting proximately therefrom." *Menifee v. Ohio Welding Prods., Inc.,* 15 Ohio St.3d 75, 77, 472 N.E.2d 707 (1984). The plaintiff carries the burden of identifying a duty owed by the defendant. "In Ohio, the status of the person who enters upon the land of another * * * continues to define the scope of the legal duty that the landowner owes the entrant." *Gladon v. Greater Cleveland Regional Transit Auth.,* 75 Ohio St.3d 312, 315, 662 N.E.2d 287 (1996). Traditionally, common law recognized three classifications of entrants: 1) trespasser; 2) licensee; and 3) invitee. *Id.*

The parties do not dispute that Plaintiff was a business invitee of Defendant YMCA when he visited the fitness center for the purpose of exercising on August 13, 2018. *See* Plaintiff's Brief in Opposition, pg. 7; Defendants' Motion for Summary Judgment, pg. 5. However, Plaintiff voluntarily dismissed Defendant YMCA from this action on September 2, 2021.

Plaintiff further concedes that Plaintiff was **not** a business invitee of the UH Defendants at the time of the incident. Plaintiff's Brief in Opposition, pg. 7. And, because he was not an invitee of the UH Defendants, the Defendants assert that they owed no duty to the Plaintiff. In an attempt to counter the Defendants' position, Plaintiff argues that the UH Defendants owed Plaintiff the duty to exercise reasonable care under common law negligence principles. *Id.* ("While Plaintiff was not a business invitee of UH at the time he tripped on the wooden board and UH did not owe

the duty of care which a premises owner owes to business invitees, UH did owe Mr. Yoak the duty to exercise reasonable care under common law negligence.").

However, a review of Plaintiff's Complaint shows that it is devoid of any allegations that the UH Defendants owed Plaintiff a duty of reasonable care or of any allegations in regard to common law negligence against the UH Defendants. A plaintiff cannot assert a claim on summary judgment that was not contained within the complaint. *See, e.g., Goldman v. Nationwide Life Ins. Co.,* 8th Dist. Cuyahoga No. 97871, 2012-Ohio-3574, ¶ 14 ("[A] plaintiff cannot include claims beyond those raised in the complaint for the first time in the summary judgment stage of the litigation without amending the complaint."); *see also Greene v. Whiteside*, 181 Ohio App.3d 253, 2009-Ohio-741, 908 N.E.2d 975, ¶ 28 (1st Dist.) ("The plaintiff cannot fulfill his burden to show a triable issue of fact by asserting new claims in response to a properly supported motion for summary judgment."); *Wolk v. Paino,* 8th Dist. Cuyahoga No. 94850, 2011-Ohio-1065, ¶ 36- 38 (plaintiff limited to allegations of complaint and may not enlarge those claims in defense to summary judgment motion). Therefore, the Plaintiff is confined to arguing only those claims that he asserted in his Complaint.

Because Plaintiff cannot alter the nature of his claims contained in his Complaint, this Court rejects Plaintiff's argument that the UH Defendants owed him a duty of reasonable care under the principles of common law negligence. Accordingly, since Plaintiff was a business invitee of former Defendant YMCA at the time of the incident and not a business invitee of the UH Defendants, Plaintiff cannot establish that the UH Defendants owed him any actionable duty. Therefore, Defendants' Motion for Summary Judgment is granted.

The Defendants also raised the issue of "open and obvious" in their Motion for Summary Judgment. Regardless of the classification of the entrant, "a premises-owner owes no duty to

persons entering those premises regarding dangers that are open and obvious." *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 5. "When applicable, * * * the open-and-obvious doctrine obviates the duty to warn and acts as a complete bar to any negligence claims." *Id.* "The rationale behind the doctrine is that the open and obvious nature of the hazard itself serves as a warning." *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 644, 597 N.E.2d 504 (1992).

This Court finds that an analysis of the open and obvious doctrine is unnecessary because the fact that Plaintiff was not an invitee of the UH Defendants, is dispositive of this matter.

C. R.C. 5321.01(A)(3)

In paragraph 12 of Plaintiff's complaint, Plaintiff states that "Defendants violated their duty to keep all common areas of the premises in a safe and sanitary condition in violation of Ohio Revised Code Section 5321.04(A)(3), and was negligent per se." Plaintiff now concedes that R.C. 5321.01(A)(3) is not applicable to the UH Defendants in this matter because Defendant YMCA, not UH Defendants, was the property owner. Plaintiff's Brief in Opposition, pg. 10. Therefore, Defendants' Motion for Summary Judgment as to this claim is granted.

D. Nuisance

A nuisance claim premised on negligence "involves a lawful act that is so negligently or carelessly done as to create a potential and unreasonable risk of harm, which in due course results in injury to another." *Jenkins v. Tower City Ave., LLC,* 8th Dist. Cuyahoga No. 101759, 2015-Ohio-2154, ¶ 18 citing *Temple v. Fence One, Inc.*, 8th Dist. Cuyahoga No. 85703, 2005-Ohio-6628, ¶1 41. Accordingly, in order to establish his nuisance claim against UH, Plaintiff must first

demonstrate a duty owed to him by UH Defendants. Then he must demonstrate that the breach of that duty was the proximate cause of his claimed injuries. *Id.*

As set forth above, the allegations of the Complaint do not set forth an actionable duty owed by the UH Defendants to Plaintiff. Accordingly, his nuisance claim fails as a matter of law, and Defendants' Motion for Summary Judgment is granted.

III. CONCLUSION

Based on the foregoing, this Court GRANTS Defendants University Hospitals Health System, Inc. and University Hospitals Geauga Medical Center's Motion for Summary Judgment against Plaintiff on all counts. FINAL.

IT IS SO ORDERED.

JUDGE CASSANDRA COLLIER-WILLIAMS