IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

DANIEL LOUDER,	:	APPEAL NO. C-190052 TRIAL NO. A-1704936
and	:	*JUDGMENT ENTRY.*
BARBARA M. LOUDER,	:	
Plaintiffs-Appellants,	:	
vs.	:	
SHARON WOODS PARK,	:	
GREAT PARKS OF HAMILTON COUNTY,	:	
and	:	
BOARD OF PARK COMMISSIONERS OF HAMILTON COUNTY, OHIO,	:	
Defendants-Appellees,	:	
and	:	
GREAT PARKS OF HAMILTON COUNTY RANGERS, et al.,	:	
Defendants.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellants Daniel and Barbara M. Louder filed a negligence complaint against defendants-appellees Sharon Woods Park, Great Parks of Hamilton County,

and Board of Park Commissioners of Hamilton County (collectively "Great Parks"). Daniel Louder attended a steak fry at Lakeside Lodge in Sharon Woods Park. He was injured after he tripped over a large block of stone referred to as a "hearth" as he exited from a restroom. The trial court granted summary judgment in favor of Great Parks based on the doctrines of governmental and recreational-use immunity. The Louders filed a timely appeal from the trial court's judgment.

In their sole assignment of error, the Louders contend that the trial court erred in granting summary judgment in favor of Great Parks. They argue that issues of fact exist as to whether appellees are entitled to governmental immunity under R.C. Chapter 2744 and recreational-use immunity under R.C. 1533.18.

We review a trial court's decision to grant summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 67 N.E.2d 241 (1996); *Whitley v. Progressive Preferred Ins. Co.*, 1st Dist. Hamilton No. C-090240, 2010-Ohio-356, ¶ 7. We need not reach the immunity issues, because we hold that the Louders failed to show negligence because the alleged defect was open and obvious.

Where a danger is open and obvious, a landowner owes no duty of care to individuals lawfully on the premises. *Lang v. Holly Hill Motel, Inc.*, 122 Ohio St.3d 120, 2009-Ohio-2495, 909 N.E.2d 120, ¶ 11; *McLaughlin v. Andy's Coin Laundries, LLC*, 2018-Ohio-1798, 112 N.E.3d 57, ¶ 14 (1st Dist.). "[T]he open and obvious nature of the hazard itself serves as a warning." *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶ 5. Thus, the owner or occupier of the property may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves. *Id.*; *McLaughlin* at ¶ 14. An open-and-obvious danger is one "that is not hidden, concealed from view, or undiscoverable upon ordinary inspection." *Milatz v.*

Cincinnati, 2019-Ohio-3938, ___N.E.3d __, ¶ 8 (1st Dist.), quoting *Esterman v. Speedway LLC*, 1st Dist. Hamilton No. C-140287, 2015-Ohio-659, ¶ 7.

Daniel Louder estimated that the hearth was eight to ten inches high. Photographs in the record confirm that estimate and also show that it was several feet long. The hearth was clearly visible and discoverable upon ordinary inspection. Daniel stated that he did not see it as he entered the restroom, but that is not dispositive.

Typically, whether a danger is open and obvious is a question of law. *Ligon v. Winton Woods Park*, 1st Dist. Hamilton No. C-180073, 2019-Ohio-1217, ¶ 10; *McLaughlin* at ¶ 15. A court uses an objective standard to determine whether a danger is open and obvious. A party's subjective awareness of a hazard's existence is not determinative of whether the danger is open and obvious. *Milatz* at ¶ 8; *Ligon* at ¶ 9.

In their complaint, the Louders set forth a claim for ordinary negligence. But since the hazard was open and obvious, appellee owed no duty of care to Daniel Louder, and therefore, there can be no negligence. *See Armstrong*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, at ¶ 5; *Ligon* at ¶ 8. The open-and-obvious doctrine "acts as a complete bar to any negligence claims." *Armstrong* at ¶ 5.

The Louders also set forth a claim for negligence per se based on the failure to comply with the Ohio Building Code. But the Ohio Supreme Court has stated that the violation of building code provisions do not prevent the assertion of the open-and-obvious defense. *See Lang*, 122 Ohio St.3d 120, 2009-Ohio-2495, 909 N.E.2d 120, syllabus; *Vaughn v. Firehouse Grill, LLC*, 1st Dist. Hamilton No. C-160502, 2017-Ohio-6967, ¶ 15. Further, no attendant circumstances existed that would have distracted Daniel's attention and reduced the degree of care that an ordinary person

would have exercised. *See Ligon* at ¶ 10; *McLaughlin*, 2018-Ohio-1798, 112 N.E.3d 57, at ¶ 15.

"Where the hazardous condition is not hidden from view or concealed and is discoverable by ordinary inspection, the court may properly sustain a summary judgment motion against the claimant." *Martin v. Christ Hosp.*, 1st Dist. Hamilton No. C-060639, 2007-Ohio-2795, ¶ 19. We find no issues of material fact. Construing the evidence most strongly in the Louders' favor, reasonable minds could come to but one conclusion—that the defect was open and obvious, and therefore, appellees owed no duty of care to the Louders. Great Parks was entitled to judgment as a matter of law, and the trial court did not err in granting summary judgment in its favor. *See Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977); *Whitley*, 1st Dist. Hamilton No. C-090240, 2010-Ohio-356, at ¶ 7. Therefore, we overrule the Louders' assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

BERGERON, P.J., CROUSE and **WINKLER, JJ.**

To the clerk:

Enter upon the journal of the court on December 6, 2019
per order of the court _____.
Presiding Judge