OWENS V. GANGA HOSPITALITY, LLC: ALABAMA SUPREME COURT AFFIRMS THAT AN INJURED PLAINTIFF'S VISUAL IMPAIRMENTS DOES NOT AFFECT A PREMISES OWNER'S DUTY REGARDING OPEN AND OBVIOUS HAZARDS

JAMES ERNEST CORY*

In *Owens v. Ganga Hospitality, LLC*, the Alabama Supreme Court addressed a negligence claim brought by a blind plaintiff, Janene Owens ("Owens"), who tripped over a curb at a hotel owned by the defendant, Ganga Hospitality, LLC ("Ganga").[1] The Montgomery Circuit Court granted summary judgment in favor of Ganga on Owens's initial claims of negligence and wantonness.[2] On appeal, the Alabama Supreme Court only addressed Owens's negligence claim, and affirmed the lower court's grant of summary judgment concluding that "Ganga owed Owens no duty because [the curb] was open and obvious."[3] The court also rejected the argument that Ganga violated the Americans with Disabilities Act ("ADA")[4] finding "no relevant ADA standard [of care] or violation in the present case" that would help support a finding of negligence.[5]

Owens suffers from extreme visual impairments and identified herself as blind.[6] She claims her left eye "is completely blind" and her right eye has "20/200 vision."[7] Owens also had a stroke that affected her cognitive skills.[8] Due to her vision and cognitive impairments, she "had trouble walking and typically used a cane for mobility."[9]

On the night of January 4, 2017, Owens arrived outside of a hotel owned by Ganga with her husband, daughter, and son-in-law.[10] Upon arrival, Owens's son-in-law pulled their car under a covered area "where hotel guests park temporarily while loading or unloading luggage."[11] Owens opened her car door and stepped out of the vehicle—without her cane or assistance from her family—with her back to the curb.[12] Owens began to move backward

---

* Junior Editor, *Cumberland Law Review*; Candidate for Juris Doctor, May 2023, Cumberland School of Law; B.A., Finance, December 2019, University of Alabama.

[1] Owens v. Ganga Hosp., LLC, No. 1200449, 2021 WL 5024454 (Ala. Oct. 29, 2021).

[2] *Id.* at *1.

[3] *Id.* at *5.

[4] *See* 42 U.S.C. § 12112 *et. seq.*

[5] *Owens*, 2021 WL 5024454, at *5.

[6] *Id.* at *1.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.* at *1.

[11] *Owens*, 2021 WL 5024454, at *1.

[12] *Id.*

away from the car when her right foot made contact with the curb, causing her to fall "into a very hard object."[13]

Owens filed suit in the Montgomery Circuit Court alleging that the presence of the curb was "unreasonably dangerous and that Ganga acted negligently and wantonly in failing to remove it and in failing to provide adequate lighting in the area."[14] Owens additionally alleged "that Ganga negligently and wantonly failed to warn [her] of the alleged hazard."[15] In response, Ganga moved for summary judgment arguing that "[1] the allegedly dangerous condition was open and obvious, [2] that Owens was contributorily negligent, and [3] that there [was] no evidence indicating that Ganga acted wantonly."[16] The trial court granted summary judgment in favor of Ganga.[17] Owens appealed the trial court's decision with respect to her negligence claim, but abandoned her wantonness claim.[18]

Reviewing the circuit court's decision *de novo*, the Alabama Supreme Court addressed "whether Owens's visual impairment affects the rule that a premises owner has no duty to eliminate, or to warn about, dangers that are open and obvious."[19] The court began its analysis by establishing the relevant scope of duty Ganga owed to Owens:

> The owner of premises owes a duty to business invitees to use reasonable care and diligence to keep the premises in a safe condition, or, if the premises are in a dangerous condition, to give sufficient warning so that, by the use of ordinary care, the danger can be avoided.[20]

This duty to keep premises safe is as follows:

> The duty to keep premises safe for invitees applies only to defects or conditions which are in the nature of hidden dangers, traps, snares, pitfalls, and the like, in that they are not known to the invitee, and *would not be observed by him in the exercise of ordinary care*. The invitee assumes all normal or ordinary risks attendant upon the use of the premises, and the owner or occupant is under no duty to reconstruct or alter the premises so as to obviate known and obvious dangers, *nor is he liable for injury to an invitee resulting from a danger which*

---

[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Owens*, 2021 WL 5024454, at *1.
[18] *Id.*
[19] *Id.* at *3.
[20] *Id.* at *2.

> *was obvious or should have been observed in the exercise of reasonable care*.[21]

In other words, Ganga has "no duty to remedy, or to warn about, open and obvious hazards."[22] Whether a hazard is open and obvious is an objective determination based on whether "it would be apparent to, and recognized by, a reasonable person in the position of the invitee."[23] It is the court's role to determine whether a duty exists.[24]

Turning to the evidence, the Alabama Supreme Court found it was clear that the curb "was open and obvious to people without significant visual impairment."[25] The evidence contained no testimony that any of Owens's family members who are not visually impaired did not see the curb "or that they [had] tripped on it."[26] Further, photographic evidence showed that the area was well lit at night, the curb was painted red and contrasted the other surroundings, and the elevation difference between the ground to the top of the curb was obvious.[27] Although Owens argued that the "area was not adequately illuminated," the only evidence that supported this assertion was her own testimony that the area was "dark."[28] The court also scrutinized this argument by noting that this testimony came from someone who claimed to be blind, which cannot sufficiently evidence whether the curb "was not properly illuminated" and thus was not open and obvious.[29]

The court then addressed Owens's argument that the open and obvious standard "should be evaluated from the point of view of a person with Owens's level of visual impairment and not from the point of view of a typical person with typical vision."[30] However, Owens did not cite any precedent that discussed the effect of a plaintiff's impaired vision on the open and obvious inquiry.[31] Rather, the court cited cases from other jurisdictions suggesting that a plaintiff's impaired vision has no affect as to whether an alleged hazard is open and obvious.[32] Thus, the court rejected Owens's claim

---

[21] *Id*. (emphasis added) (citations omitted).
[22] *Id*. (citing Dolgencorp, Inc. v. Taylor, 28 So. 3d 737, 742 (Ala. 2009)).
[23] *Owens*, 2021 WL 5024454, at *2 (citing Hines v. Hardy, 567 So. 2d 1283, 1284 (Ala. 1990)).
[24] *Id.* (citing Unger v. Wal-Mart Stores E., L.P., 279 So. 3d 546, 550 (Ala. 2018)).
[25] *Id.*
[26] *Id*.
[27] *Id*.
[28] *Id.* at *3.
[29] *Owens*, 2021 WL 5024454, at *3.
[30] *Id.*
[31] *Id.*
[32] *Id.* (first citing Prostran v. City of Chicago, 811 N.E.2d 364, 368 (Ill. App. Ct. 2004); then citing Lauff v. Wal-Mart Stores, Inc., No. 1:01-CV-777, 2002 WL 32129976, Oct. 2, 2002 (W.D. Mich. 2002); and then citing Sidorowicz v. Chicken Shack, Inc., 673 N.W.2d 106 (Mich. 2003)).

that a subjective inquiry should be adopted, reasoning that this could "transform premises owners into insurers against all injuries suffered by people with significant visual impairment, no matter how harmless the condition is to people without that impairment."[33] Also, the court noted that basing the duty of care on a specific disability "would impose to great a duty on premises owners by requiring specific accommodations to alleviate conditions that are not inherently hazardous or dangerous."[34]

Furthermore, the court also reasoned that "even considering [Owens's] particular disability, the alleged danger was open and obvious" because the inquiry is "whether a reasonable person *exercising reasonable care should have discovered the dangerous condition*."[35] Given Owens's visual disability, "what is an open and obvious condition to a blind person depends upon what, if any, tools or aids the blind person utilizes to discover the condition, and the degree to which such aids are used."[36] The court reasoned that because Owens usually uses a cane, the fact that she was not using her cane at the time of the accident indicated that she failed to use reasonable care to "discover obstructions that might have been in her path."[37] Therefore, the court concluded that even considering Owens' visual impairment, the curb was open and obvious.[38]

Lastly, the court rejected Owens's argument that the ADA is "relevant to establishing the standard of care applicable in a state-law premises-liability action."[39] Expert testimony offered by Owens opined that the bench sitting on the raised platform of the curb constituted an ADA violation, but the court determined that this would only support a discrimination violation that was not at issue in this case.[40] Rather, the court concluded that the ADA was not applicable since Owens did not show how the lack of equal access to the bench "was the proximate cause of her fall."[41]

In *Owens*, the Alabama Supreme Court determined that the trial court did not err in granting summary judgment in favor of Ganga, reasoning that Ganga did not owe a duty to Owens where the alleged hazard of the curb was open and obvious.[42] *Owens* is significant because it limits the ability of injured visually impaired persons to bring premises liability claims against

---

[33] *Id.* at *4 (citing Ex parte Mountain Top Indoor Flea Mkt., Inc., 699 So. 2d 158, 161 (Ala. 1997)) (noting that premises owners are not insurers of the safety of invitees).
[34] *Id.*
[35] *Owens*, 2021 WL 5024454, at *4 (emphasis added).
[36] *Id.* (quoting Coker v. McDonald's Corp., 537 A.2d 549, 551 (Del. Super. Ct. 1987)).
[37] *Id.*
[38] *Id*.
[39] *Id.* at *5.
[40] *Id.*
[41] *Owens*, 2021 WL 5024454, at *5.
[42] *Id.*

premises owners. Although potential dangers may not be as open and obvious to those with visual limitations, a visually impaired injured plaintiff must still prove that the premises owner violated a duty of care based on an objective reasonable person standard rather than a reasonable person with a similar visual impairment. However, as Chief Justice Parker reasoned in his concurrence, the majority's analysis of Owens's failure to use her cane "seems to stray from the objective test for obviousness."[43] Chief Justice Parker also expressed doubts as to the majority's assertion that a premises owner's duty "would never require a premises owner to account for an invitee's impairment, visual or otherwise[,]" using a school for the blind as an example.[44] Regardless, *Owens* represents another high standard that Alabama tort victims must overcome to recover negligence damages.

[43] *Id.* (Parker, C.J., concurring in part).
[44] *Id.* at *6 (Parker, C.J., concurring in part).