

**IN THE DISTRICT COURT OF THE CHOCTAW NATION**

WARREN ENDICK )  
 Plaintiff, )  
 v. )  
 THE CHOCTAW NATION d/b/a )  
 THE CHOCTAW CASINO, )  
 Defendant. )

Case No. CJ-19-12

FILED  
 CHOCTAW NATION OF OKLAHOMA  
 DISTRICT COURT CLERK

NOV 15 2022

SUSAN LOZANO  
 COURT CLERK  
 BY *Chubey Phillips* DEPUTY

**JOURNAL ENTRY**

On this 15<sup>th</sup> day of November 2022 there came before this Court Defendant The Choctaw Nation d/b/a The Choctaw Casino's ("Defendant") Motion for Summary Judgment ("Motion") filed on August 23, 2022. The Court has reviewed the Motion, Defendant's Supplement to the Motion, Plaintiff Warren Endick's ("Endick") Response and Defendant's Reply thereto. Additionally, on November 10, 2022, the Court conducted a hearing on this matter and heard arguments of counsel. For the reasons set forth herein, the Court **GRANTS** Defendant's Motion for Summary Judgment.

In his Response to Defendant's Motion, Plaintiff admitted all Defendant's undisputed facts, except Fact No. 44 regarding Plaintiff's report to a physician. Therefore, pursuant to District Court Rule 13 (B), Choctaw Nation Code of Civil Procedure, the following facts are undisputed:

1. Plaintiff filed a Complaint in this Court alleging that on November 16, 2018, he fell at Defendant's premises after his wheelchair was moved by a casino employee. *See* Defendant's Motion, Undisputed Material No. 1 (hereinafter referred to as "UMF No. 1").
2. Plaintiff was in a wheelchair due to a prior surgery on his foot and had been using the wheelchair since March, 2017. *See* UMF Nos. 3-4.

*cc/ J. Reynolds  
 B. Prosky  
 M. Eagon*

3. Plaintiff's common practice was not to apply the brakes on his wheelchair, but instead to turn the wheels perpendicular rather than engaging the brakes. *See* UMF No. 8.
4. On the day of the alleged incident, the Plaintiff was playing at a craps table when he saw an attendant of Defendant roll his wheelchair away to clear the area for a stool. *See* UMF No. 9. Plaintiff admits that he did not witness the attendant put the brakes on his wheelchair at that time. *See* UMF No. 10.
5. Plaintiff hopped over to his wheelchair and moved to a video game. *See* UMF Nos. 11-12.
6. Upon arriving at a video game, Plaintiff did not lock the brakes but put the wheels perpendicular. *See* UMF Nos. 12-13.
7. While he was playing the video game, Plaintiff again saw an employee move his wheelchair by lifting the handles and return it to where it was so that a cart could pass through the aisle. *See* UMF No. 14-18.
8. Plaintiff admits he watched as the wheelchair was moved so the cart could pass behind him. *See* UMF No. 19.
9. Plaintiff admits that he once again did not see the Defendant's employee put on the brakes and indeed admits he had no reason to assume that the employee would have put the brakes on his wheelchair. *See* UMF Nos. 20-21, 23.
10. Plaintiff admits he also did not check to see if his wheels were perpendicular or if the brakes were on before he transferred from the chair to the wheelchair. *See* UMF Nos. 23.
11. Plaintiff asserts that when he transferred back to his wheelchair, the wheelchair went out from underneath him and he hit his head and back. *See* UMF No. 21.

12. However, the video of the incident (attached as Exhibit 2 to the Motion) does not show Plaintiff hitting his head and Plaintiff has now admitted in response to the Motion that he did not hit his head. *See* UMF No. 22.
13. Pursuant to District Court Rule 13, Choctaw Nation Code of Civil Procedure: “a party may move for either summary judgment or summary disposition of any issue on the merits on the ground that the evidentiary material filed with the motion or subsequently filed with leave of court show that there is “*no substantial controversy as to any material fact*” and where it appears to the Court that there is no substantial controversy as to material facts, the Court may render judgment for the movant. *Id.* at (A) and (E).
14. Plaintiff does not dispute the Defendant’s contention that he was an invitee to the premises, and that Defendant therefore only owed a duty to keep its premises in a reasonably safe condition and to disclose to him the existence of dangerous defects known to the owner, but unlikely to be discovered by the licensee. *See* Defendant’s Motion, p. 7; Response, p. 5; *Pickens v. Tulsa Metro. Ministry*, 1997 OK 152, ¶ 10, 951 P.2d 1079. This duty to keep the premises reasonably 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. *Id.* at ¶ 10. There is no obligation to warn an invitee who knew the condition of a property against patent and obvious dangers and there is no actionable negligence in the absence of a duty neglected or violated. *Id.* at ¶ 20 and

*see also Dover v. W.H. Braum, Inc.* 2005 OK 22, 111 P.3d 243; *Turner v. Rector*, 1975 P.2d 507, 544 P.2d 507, 509.<sup>1</sup>

15. In the instant matter, summary judgment in favor of Defendant is appropriate. Plaintiff has admitted that he did not lock his wheelchair and instead merely turned the wheels perpendicular. He further admitted that on not one but *two separate occasions* he saw an employee of Defendant move his wheelchair and was aware both times that the employee had not locked the wheels. Defendant further admitted he would have no reason to assume the employee would have locked his brakes and did not check to see if the wheels were turned perpendicular before he ambulated to the wheelchair from his seat at the video game.

16. This case is similar to *Pickens v. Tulsa Metropolitan Ministry*, 1997 OK 152, 951 P.2d 1079, in which the plaintiff sued the owner and architect of a homeless shelter for injuries he sustained when he fell from a tall retaining wall where he was sleeping. Plaintiff complained the wall was unsafe because of its height and lack of a rail and because defendant was aware the homeless persons like to congregate on the wall. The trial court granted summary judgment to the defendant, finding that defendant breached no duty to the plaintiff where the evidentiary materials tendered in the case showed that the retaining wall was not a hidden danger, trap or snare and that plaintiff was aware of its existence and knew there were no barriers to prevent a fall from the wall. *Id.* at ¶¶ 11-13.

---

<sup>1</sup> Oklahoma law on premises liability is not binding in this Court, but is instructive on the matters raised herein.

17. In this case, there is undisputed proof of the open and obvious character of the wheelchair and there was no “hidden dangers, traps, snares, pitfalls.” Plaintiff was aware the wheelchair was moved on two separate occasions and was aware the brakes were not applied. He failed to check to see if wheels were perpendicular and Defendant would have no way to know that Plaintiff generally kept the wheelchair wheels perpendicular, rather than applying the brakes. Defendant even admits he would have no reason to even assume the Defendant’s employee would put the brakes on his wheelchair. Even considering all inferences from the probative materials in favor of the plaintiff, the evidence is consistent with Defendant’s nonliability, and Defendant is entitled to summary judgment.

WHEREFORE Defendant’s Motion for Summary Judgment is GRANTED for the reasons set forth herein.

IT IS SO ORDERED THIS 15<sup>th</sup> DAY OF NOVEMBER, 2022.

  
\_\_\_\_\_  
Amy J. Pierce  
CHOCTAW NATION DISTRICT  
COURT JUDGE