

OHIO COURT OF APPEALS, NINTH JUDICIAL DISTRICT

Johnson v. Smith

2026-Ohio-1944 · No. 31598 · Decided May 27, 2026

SUMMARY

The Ninth District Court of Appeals of Ohio reviewed a summary judgment ruling in a sidewalk-injury negligence and negligence per se action. The court held that genuine issues of material fact existed regarding causation and that the injured plaintiff's statement to a neighbor was admissible as an excited utterance. It affirmed the ruling in part, reversed it in part, and remanded for further analysis of the negligence per se claim; a dissent would have affirmed based on the absence of a duty.

CASE DETAILS

COURT	Ohio Court of Appeals, Ninth Judicial District
WRITING FOR THE COURT	Carr, Presiding Judge; Sutton, Judge; Flagg Lanzinger, Judge
JURISDICTION	Ohio Court of Appeals, Ninth Appellate District
DECIDED	May 27, 2026
DOCKET	31598
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed from the Summit County Court of Common Pleas's grant of summary judgment to the defendant on negligence, negligence per se, and loss-of-consortium claims.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under Civ.R. 56(C), with the evidence construed most strongly in favor of the nonmoving party. The admission or exclusion of expert testimony is reviewed for abuse of discretion, and an error warrants relief only if it prejudiced the complaining party.
PRECEDENTIAL VALUE	Published
PARTIES	Clarence Johnson, Marcia Johnson v. Nic Smith

TOPICS

- negligence
- summary judgment
- hearsay
- expert testimony
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether summary judgment was proper on the Johnsons' negligence per se claim based on an alleged violation of Macedonia Codified Ordinance 521.06(a), particularly where evidence created a genuine issue of material fact regarding causation.
2. Whether the trial court improperly excluded or failed to consider the neighbor's affidavit statement identifying the uneven sidewalk as the cause of Johnson's fall.
3. Whether the trial court abused its discretion or otherwise prejudiced the Johnsons by failing to consider their expert affidavit and report.

HOLDINGS

1. Summary judgment could not be sustained on the ground that the Johnsons failed to establish causation because the record contained evidence from which a reasonable factfinder could conclude that the uneven sidewalk caused Johnson's fall. The matter had to be remanded for the trial court to fully analyze the negligence per se claim.
2. At a minimum, Johnson's statement to the neighbor that he tripped on the uneven sidewalk was admissible as an excited utterance because he remained under the stress of excitement caused by the fall and his serious injuries.
3. The neighbor's observations of Johnson's location and the uneven sidewalk were not hearsay and supplied circumstantial evidence from which a factfinder could infer that Johnson tripped on the uneven sidewalk.
4. The first assignment of error was overruled because, even assuming the trial court abused its discretion by failing to consider the expert materials, the Johnsons did not demonstrate prejudice; the expert materials did not address the ordinance underlying the negligence per se claim, and the Johnsons did not seek a remand for trial on the ordinary negligence claim.

KEY QUOTATIONS

“Application of negligence per se in a tort action means that the plaintiff has conclusively established that the defendant breached the duty that he or she owed to the plaintiff. It is not a finding of liability per se because the plaintiff will also have to prove proximate cause and damages.” (¶ 9)

“Given that the neighbor found Mr. Johnson on the ground following his fall, at a minimum we conclude that the statement was admissible under Evid.R. 801(2).” (¶ 16)

FACTUAL BACKGROUND

On September 12, 2022, 77-year-old Clarence Johnson fell while walking his dog on an uneven sidewalk near Nic Smith's property and sustained serious injuries. Evidence indicated that the sidewalk height difference may have been between two and three inches or approximately two and one-half inches. Johnson initially could not

recall why he fell, but later testified that a raised portion of the sidewalk caused the fall; a neighbor also testified that Johnson told her immediately afterward that he had tripped on the uneven sidewalk.

PROCEDURAL HISTORY

The Johnsons sued Nic Smith after Clarence Johnson fell on an uneven sidewalk near Smith's property. The trial court granted Smith summary judgment, concluding that the sidewalk defect was insubstantial, that Smith owed no duty, and that the Johnsons failed to establish causation. The Ninth District affirmed in part, reversed in part, and remanded for the trial court to fully analyze the negligence per se claim.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Summit County Court of Common Pleas must fully analyze Clarence Johnson's negligence per se claim and conduct further proceedings consistent with the appellate decision. The judgment was affirmed in part and reversed in part; costs were taxed equally.

CASES CITED

- Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977)
- Dresher v. Burt, 75 Ohio St.3d 280, 292-293 (1996)
- State ex rel. Zimmerman v. Tompkins, 75 Ohio St.3d 447, 449 (1996)
- Chambers v. St. Mary's School, 82 Ohio St.3d 563, 565 (1998)
- Lang v. Holly Hill Motel, Inc., 2009-Ohio-2495, ¶¶ 11, 14-15
- Armstrong v. Best Buy, 2003-Ohio-2573, syllabus
- Campbell v. GMS Management Co., Inc., 1994 WL 108886, *2 (9th Dist. Mar. 30, 1994)
- Mourton v. Finn, 2012-Ohio-3341, ¶ 9 (9th Dist.)
- Neura v. Goodwill Industries, 2012-Ohio-2351, ¶ 19 (9th Dist.)
- Rivenbark v. Discount Drug Mart, 2018-Ohio-4072, ¶ 32 (9th Dist.)
- Magnum Steel & Trading, LLC v. Mink, 2013-Ohio-2431, ¶ 35
- Cromer v. Children's Hospital Medical Center of Akron, 2015-Ohio-229, ¶ 23
- Eisenhuth v. Moneyhon, 161 Ohio St. 367 (1954), paragraph two of the syllabus
- Jacobs v. Great Southern Shopping Center, LLC, 2024-Ohio-1180, ¶¶ 9, 23-25 (10th Dist.)
- Pozniak v. Recknagel, 2004-Ohio-1753, ¶¶ 12-13, 17-18 (9th Dist.)
- Eichorn v. Lustig's, Inc., 161 Ohio St. 11, syllabus, 13 (1954)
- Crowe v. Hoffman, 13 Ohio App.3d 254, 255-256 (6th Dist. 1983)
- Lopatkovich v. City of Tiffin, 28 Ohio St.3d 204, 207 (1986)
- Settie v. Palmer, 1993 WL 498212, *2-3 (9th Dist. Dec. 1, 1993)
- Donnelly v. City of Berea, 2020-Ohio-2722, ¶¶ 16-18 (8th Dist.)

- Burgess v. Johnson, 2011-Ohio-5241, ¶¶ 22-27 (5th Dist.)

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