

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

MELINDA WIGGINS-BREED,	:	APPEAL NO. C-120175
	:	TRIAL NO. A-1103529
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ZOOLOGICAL SOCIETY OF	:	
CINCINNATI,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See S.Ct.R.Rep.Op. 2, App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Melinda Wiggins-Breed sued the Zoological Society of Cincinnati (“the zoo”) for damages resulting from injuries she allegedly sustained when a zoo picnic bench that she sat on partially collapsed. The trial court granted summary judgment in favor of the zoo. This appeal followed.

In one assignment of error, Wiggins-Breed asserts that a genuine issue of material fact existed in regard to whether the zoo had breached its duty to her. Therefore, Wiggins-Breed argues, the trial court should not have entered summary judgment in favor of the zoo. We review this argument de novo applying the standard set forth in Civ.R. 56(C). *Dresher v. Burt*, 75 Ohio St.3d 280, 662 N.E.2d 264 (1996).

For an invitee to show that a premises owner breached its duty of care, the invitee must show that the owner created the condition complained of, or had actual

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knowledge of the condition, or that the dangerous condition existed for a sufficient length of time to establish constructive knowledge of it. *Johnson v. Wagner Provision Co.* (1943), 141 Ohio St. 584, 589, 49 N.E.2d 925; *Catanzano v. The Kroger Co.*, 1st Dist. No. C-930761, 1995 Ohio App LEXIS 22, (Jan. 11, 1995).

Here, it is not disputed that the picnic bench that Wiggins-Breed sat on was missing bolts that had secured part of the bench to the picnic table. Wiggins-Breed claims that the missing bolts were sufficient evidence to raise a question of fact concerning whether the zoo had failed in its duty to inspect the premises. But there is no evidence in the record that the zoo had created this condition, that it had had actual knowledge of the missing bolts, or that the bolts had been missing long enough to impart the zoo with constructive knowledge of this condition. So under *Johnson, supra*, Wiggins-Breed argument fails. We hold that the trial court correctly entered judgment on behalf of the zoo. Wiggins-Breed's sole assignment of error is overruled.

The trial court's judgment is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., HENDON and CUNNINGHAM, JJ.**

To the clerk:

Enter upon the journal of the court on September 19, 2012

per order of the court \_\_\_\_\_.

Presiding Judge