Premises Liability Case Law Update

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DUTY TO WARN INVITEES: Store owner had no duty to warn patron of higher-than-average curb where evidence showed that patron had equal knowledge of the hazard.

McLemore v. Genuine Parts Co.
313 Ga. App. 641 (2012)

Plaintiffs Evelyn and Bobbie McLemore sued the owner of an auto parts store after Evelyn fell while attempting to traverse a curb in the parking lot to enter the store. At the time of the incident, the store was hosting a tool show and cookout in the parking lot. Plaintiffs alleged that Evelyn stepped onto the subject curb and then fell backwards, breaking two ribs and a hip.

Evelyn testified that she and her husband had been to the store three or four times prior to the incident. On each prior occasion, they had parked in the handicapped parking space and used the adjacent ramp to enter the store. On the date of the fall, however, they parked in a lot across the street because the store's lot was full of people, and they were unable to use the handicap ramp because their path was blocked by the "luncheon activities." Although Evelyn admitted that she was able to see the curb as she approached, she claimed that it was "a higher step than other curbs," and she believed she would not have fallen "if it had been a regular height curb." Plaintiffs' expert engineer averred that the curb "was defectively created, designed, built, and maintained" and "constituted a trip hazard." He further asserted that the curb exceeded the height prescribed by applicable building codes, and claimed that the defendant had violated the federal Americans with Disabilities Act by failing to maintain accessible features.

The trial court granted the store's motion for summary judgment, and the Court of Appeals affirmed. The Court of Appeals held that the defendant had no duty to warn Evelyn about the curb, reiterating the principle that a premises owner has no duty to warn of open and obvious hazards. The Court ruled that Evelyn's own testimony showed that she could see the curb — including its height — as she approached and thus had equal knowledge of the hazard. For the same reason, the Court rejected plaintiffs' attempt to rely on the "distraction theory." The Court ruled that this theory was inapplicable because the distraction allegedly created by the tool show did not obstruct Evelyn's view of the curb.

VOLUNTARY DEPARTURE RULE: Store patron who voluntarily departed from designated route had heightened duty of care for his own safety.

Bartlett v. McDonough Bedding Co.
313 Ga. App. 657 (2012)

Plaintiff Lynwood Bartlett was injured when he fell down a stairwell in defendant's bedding and antique shop. The stairwell, which was located between the rear wall of the store and a half-height wall, was illuminated by ceiling fixtures and natural light from windows and had a chain across its top end to prevent its use. Merchandise was displayed on the landing at the top of the stairs.

As Bartlett took a step while looking at merchandise, his left foot went down into the stairwell and he fell backwards. At his deposition, he testified that he was unaware of the stairwell's presence, and claimed that the merchandise on the landing had prevented him from seeing the stairs. He further testified that he "was not looking for a stairway" and so "didn't see one." In contrast, his wife testified that she had no problem seeing the stairs when went to her husband's aid because she was watching where she was going rather than looking at merchandise.

The trial court granted the store's motion for summary judgment, and the Court of Appeals affirmed. The Court of Appeals agreed that the record, when viewed in the light most favorable to plaintiff, showed that the stairwell was concealed by merchandise tightly arranged on the landing. Nevertheless, the Court faulted plaintiff for continuing to move in that direction despite the obstructed view and for his departure from the designated route.

The Court determined that the plaintiff's "attempt to walk between or over the thick clutter of merchandise, where there was not an aisle or clear area of floor visible, constituted a voluntary departure from the route designated and maintained" by the store for its customers' safety and convenience.

Consequently, the plaintiff had a heightened duty of care for his own safety pursuant to the "voluntary departure" rule. Because the plaintiff did not exercise the requisite care, the trial court properly granted summary judgment to the defendant.

DUTY TO INSPECT FOR LATENT DEFECTS: Homeowner could not be held liable for injury caused by incorrectly attached awning where she had neither actual knowledge nor notice of the defect.

Sipple v. Newman
313 Ga. App. 688 (2012)

The defendants, executors of the estate Elise Furse, appealed from the trial court's denial of their motion for summary judgment in a personal-injury action brought by plaintiff Adam Newman. Before her death, Furse had hired Newman to clean pine straw off the roof of her house. While standing

on a ladder to clean pine straw off a metal awning over the house's back door, Newman rested a foot on the awning for balance. The awning gave way, and Newman fell to the ground.

After he fell, Newman discovered that the awning had been attached to the house with nails, which had rusted. Newnan, who was employed as a roofer, testified that he had assumed the awning would be bolted to the house as required by the building code and thus would be able to support the slight weight he applied to it. In fact, the evidence showed that Furse's awning had originally been attached with bolts. At some point, however, a painting contractor removed the awning and reattached it with nails.

At the time of Newman's fall, Furse was 93 years old and bedridden. There was no evidence that she had instructed the painting contractor to reattach the awning with nails or that she knew that the contractor had done so. Newman admitted that Furse could not have seen how the awning was attached when looking at it from the ground. Furthermore, there was no evidence that the awning had ever sagged, buckled, or otherwise revealed that it was not attached securely.

The Court of Appeals ruled that the defendants were entitled to summary judgment. Although a landowner's duty of ordinary care to keep the premises safe requires inspection to discover unknown dangers, the owner is not an insurer of her invitees' safety. The law requires only ordinary diligence, which "may not require an inspection where the owner does not have actual knowledge of the defect and there is nothing in the character of the premises indicating a defect." In this case, there was no evidence that Furse had actual knowledge of the awning's defect or was on notice of the problem. Therefore, the Court of Appeals held that the trial court had erred in denying the defendants' motion for summary judgment.

DUTY TO LICENSEES: Social guest who fell off balcony could not recover from homeowner where condition of balcony did not constitute dangerous activity, hidden peril, pitfall, or mantrap and homeowner had not willfully or wantonly caused injury.

Jordan v. Bennett
312 Ga. App. 838 (2011)

Plaintiff Bennett was attending a party at defendant Jordan's home, which she had visited on three previous occasions. After consuming seven alcoholic beverages, Bennett went onto a balcony to smoke a cigarette and to drink a beer with a friend. About 15 minutes later, Bennett walked to the balcony's edge to toss a cigarette off it. She turned to talk to her friend as she tossed the cigarette, and then fell over the balcony's railing and onto the concrete sidewalk 16 feet below. Bennett did not know what caused her to fall, but "speculated" that she had lost her balance.

Bennett claimed that Jordan was liable for the accident because the balcony railing was just 27.5 inches high and thus not in compliance with the building code. The record showed, however, that both Bennett and her friend could see the height of the railing. In a recorded statement to an insurance adjuster, moreover, Bennett indicated that she had seen how high the balcony was above the ground — even though she later claimed at deposition that she had thought the balcony to be only a ground-level patio.

The trial court denied Jordan's motion for summary judgment, ruling that he had a duty to warn Bennett of the danger associated with the balcony's low railing. The Court of Appeals disagreed, however, and reversed. As a social guest, Bennett had the status of a licensee. A landowner may be held liable for an injury to a licensee only if he willfully or wantonly caused her injury or knowingly exposed her to a dangerous activity, hidden peril, pitfall, or mantrap.

In this case, Jordan had not willfully or wantonly injured Bennett, and the condition of the balcony did not constitute a dangerous activity, hidden peril, pitfall, or mantrap. Therefore, Jordan was entitled to summary judgment. ❖