

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000473-MR

DAVID RUTLEDGE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 00-CI-002663

LEGRANDE'S AUTO COLLISION CENTER

APPELLEE

OPINION
REVERSING AND REMANDING
** ** * * * * *

BEFORE: BAKER, GUIDUGLI, AND KNOPF, JUDGES.

KNOPF, JUDGE: In April 1999, David Rutledge was injured when he tripped over a step between rooms on the premises of LeGrande's Auto Collision Center in Louisville. Alleging that LeGrande's had been negligent in maintaining an unreasonably dangerous step, Rutledge sued LeGrande's for damages stemming from the injury. On January 31, 2002, the Jefferson Circuit Court granted LeGrande's motion for summary judgment. It ruled that the risk posed by the step was obvious and thus was not unreasonably dangerous. Appealing from that ruling, Rutledge

contends that whether the step posed an unreasonable risk is a question the trial court should have submitted to a jury. We agree and so must reverse and remand.

Rutledge, an insurance appraiser, visited LeGrande's to inspect a damaged car. After the inspection an employee directed him through a parts room to LeGrande's office. Apparently the parts room is on a level slightly below that of the office. The door between the two rooms closes flush against the step up. A sign on the door warned of the step, but Rutledge claims that the parts room was too dark for him to see the sign. When Rutledge opened the door and attempted to enter the office, he tripped on the step and was injured.

As the parties note, summary judgment is not appropriate unless there is no issue of material fact and the moving party is entitled to judgment as a matter of law.¹

That the evidence is not in conflict does not, of course, preclude the existence of issues as to material facts. In a negligence case, . . . whether a party conformed to the standard of care required of him and, if not, whether his failure to do so had a proximate or contributing causal connection with the accident and injury are issues of material fact unless the answer is so clear that there is no room for difference of opinion among reasonable minds.²

¹ Steelvest, Inc. v. Scansteel Service Center, Ky., 807 S.W.2d 476 (1991).

² Adkins v. Greyhound Corporation, Ky., 357 S.W.2d 860,862 (1962).

As a property owner, LeGrande's owed to Rutledge, its invitee, a duty to exercise ordinary care to keep the premises in a reasonably safe condition and to warn him of dangers that were not obvious.³ Whether LeGrande's breached this duty is a jury question unless, as the trial court ruled, the danger posed by the step into the office was so apparent, so open and obvious, that a reasonably careful invitee could be expected, as a matter of law, to discover it.⁴

Although they pose a risk of trips and falls, stairs and steps are such common and necessary features of buildings that generally courts regard their risks as obvious and not unduly great. Business invitees are generally expected to see them and to know how to use them.⁵ If the step is not plainly visible, however, the risk may be deemed latent and the landowner subject to his duty to mitigate and to warn.⁶

³ Lewis v. B&R Corporation, Ky. App., 56 S.W.3d 432 (2001).

⁴ Johnson v. Lone Star Steakhouse & Saloon of Kentucky, Inc., Ky. App., 997 S.W.2d 490 (1999).

⁵ O'Connor & Raque Company v. Bill, Ky., 474 S.W.2d 344 (1971); J.C. Penny Company v. Mayes, Ky., 255 S.W.2d 639 (1952); Myers v. Ben Snyder, Inc., 313 Ky. 832, 233 S.W.2d 1016 (1950).

⁶ Wilkinson v. Family Fair, Inc., Ky., 381 S.W.2d 626 (1964); Milby v. Pace Pontiac, Inc., 176 So. 2d 554 (Fla. App., 1965); Hanley v. James Butler, Inc., 153 N.Y.S. 39 (N.Y. 1915).

In Hanley v. James Butler, Inc.,⁷ the Appellate Division of the Supreme Court of New York characterized a step connecting two rooms of a business and obscured by a door, similar to the step in this case, as likely "faulty construction constituting a trap."⁸ Even LeGrande's, we note, thought this step enough of a latent hazard to call for a warning. Reasonable minds, we believe, could differ when assessing whether this step posed only the ordinary, obvious risk of steps generally or a latent risk requiring LeGrande's to protect or warn its invitees. Whether LeGrande's breached its duty of care to Rutledge is, therefore, a question for the jury.

Accordingly, we reverse the Jefferson Circuit Court's January 31, 2002, summary judgment, and remand for additional proceedings consistent herewith.

ALL CONCUR.

BRIEF FOR APPELLANT:

Timothy R. McCarthy
Nutt Law Office
Louisville, Kentucky

BRIEF FOR APPELLEE:

Lynn M. Watson
Clark & Ward
Louisville, Kentucky

⁷ *Supra*

⁸ 153 N.Y.S. at 40-41.