

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-001923-MR

MAXINE O'HAIR, ADMINISTRATRIX  
OF THE ESTATE OF JERRY O'HAIR

APPELLANT

APPEAL FROM POWELL CIRCUIT COURT  
v. HONORABLE BETH LEWIS MAZE, SPECIAL JUDGE  
ACTION NO. 00-CI-00200

CARL WELLS D/B/A  
WELLS FUNERAL HOME

APPELLEE

### OPINION REVERSING AND REMANDING

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BEFORE: DYCHE and McANULTY, JUDGES, and MILLER,<sup>1</sup> SENIOR JUDGE.  
DYCHE, JUDGE. Maxine O'Hair, as executrix of the estate of  
Jerry O'Hair, appeals from a summary judgment of the Powell  
Circuit Court dismissing her wrongful death action against Carl  
Wells, d/b/a Wells Funeral Home. Her claim is based on the  
alleged negligence of Wells in the maintenance of his funeral  
home, which negligence, she argues, was a substantial factor in  
causing Jerry's death.

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<sup>1</sup> Senior Status Judge John D. Miller sitting as Special Judge by  
Assignment of the Chief Justice pursuant to Section 110 (5)(b)  
of the Kentucky Constitution.

Jerry and his father went to the funeral home on May 22, 2000, to pay their respects to a deceased friend. Rather than proceed to the chapel where the body lay, Jerry opened a door which swung out over a flight of stairs leading to the basement of the building. He fell down these steps, striking his head, and died the next day. Maxine initiated this action to recover damages for Jerry's death, asserting that the funeral home was not in a reasonably safe condition for visitors, and that, among other things, violations of certain regulations by the funeral home constituted negligence *per se*.

The trial court dismissed Maxine's complaint by summary judgment, holding that Jerry's own negligence, "proceeding into darkness," was the sole cause of his fall. The trial court found no causal relationship between the violation of safety codes and the fall, and denied Maxine's request for a finding of negligence *per se*. We reverse and remand for further proceedings.

We have examined the record and find that the record establishes a sufficient issue of material fact to defeat the motion for summary judgment. The condition of the funeral home, whether in violation of any safety codes or not, is such that a jury could find negligence by Wells which was a substantial factor in causing Jerry's death.

In addition, the Life Safety Code incorporated by reference into 815 KAR 10:060(9), although couched in terms of fire safety, applies with equal force to non-fire situations, *dicta* in Rogers v. Redmond, Ky. App., 727 S.W.2d 874 (1987), notwithstanding. Wells has not cross-appealed from the finding of the trial court that the door constituted a violation of the applicable codes. The regulations/codes were promulgated to prevent the type incident that happened here, as well as to protect fire evacuees and persons ascending sets of stairs. The violation is therefore negligence *per se*, and the jury should be allowed to determine if that negligence was a substantial factor in causing Jerry's death. The jury may also, of course, consider Jerry's conduct and its effect, if any upon the accident.

The judgment of the Powell Circuit Court is reversed, and this matter is remanded for proceedings not inconsistent with this opinion.

ALL CONCUR.

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