

IN THE SUPREME COURT OF OHIO

ABBRA WALKER AHMAD,

Appellant,

v.

AK STEEL CORP.,

Appellee.

07-0288

On Appeal from the Butler
County Court of Appeals,
Twelfth Appellate District

Court of Appeals
Case No. CA 2006 04 0089

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT ABBRA WALKER AHMAD

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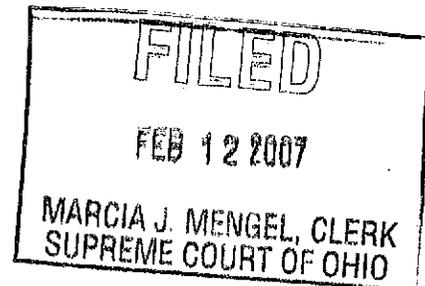


TABLE OF CONTENTS

	<u>Page</u>
EXPLANATION OF WHY THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST	1
STATEMENT OF THE CASE AND FACTS.....	1
ARGUMENT IN SUPPORT OF PROPOSITION OF LAW.....	2
Proposition of Law: Evidence of a violation of an administrative safety regulation raises a genuine issue of material fact regarding a property owner’s duty and breach of that duty.	2
CONCLUSION.....	4
CERTIFICATE OF SERVICE	4
APPENDIX	
	<u>Tab</u>
Opinion of the Twelfth District Court Of Appeals (December 28, 2006)	A
Judgment Entry of the Twelfth District Court of Appeals (December 28, 2006)	B

**EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST**

This case presents a critical issue for property owners and those injured due to hazards that violate administrative safety regulations. Where an injured party charges negligence and points to a hazard that violates an administrative safety regulation as the cause, courts have applied the open and obvious doctrine in different ways. Some Ohio appellate districts suggest that, if the hazard in violation is open and obvious, the violation should be ignored and summary judgment granted. Others suggest that, when such evidence exists, a material question of fact exists and the jury should decide the issue. Ohio law should be harmonized on this important issue. Currently, the rights of an injured party and obligation of a property owner differ depending on the venue of the claim. Furthermore, administrative regulations should be given potency. To ignore the safety regulations would encourage hazards that the regulations' drafters believe to be dangerous.

STATEMENT OF THE CASE AND FACTS

Sheila Walker, Appellant's mother and a life-long Middletown resident, was employed by Johnson Controls at AK Steel Corp.'s ("AK Steel") Middletown headquarters. She worked as a security guard at the facility. On February 4, 2003, at approximately 5 p.m., she departed the building via the front stairway. Descending the stairs, she twisted her ankle and, without a handrail to catch her, fell to the ground.

Sheila was taken to the hospital and diagnosed with a broken left ankle. Less than two weeks later, while recovering at home, Sheila collapsed and died; she was 47 years old. A blood clot from her broken ankle lodged itself in Sheila's lung and killed her.

Appellant filed a complaint against AK Steel on February 3, 2005. It charged that AK Steel negligently maintained the stairway in front of its Middletown headquarters, which led to her mother's fall and subsequent death. Specifically, Appellant alleged that AK Steel's failure to install a handrail on the front stairs violated the Ohio Building Code (OBC) and the Occupational Safety and Health Association (OSHA) safety regulations and would have prevented the fall.

AK Steel filed a Motion for Summary Judgment on January 20, 2006, arguing that the stairs were open and obvious and the Complaint should be dismissed. Despite factual evidence that the stairs violated safety and building codes, the trial court relied on the open and obvious doctrine and granted summary judgment on March 27, 2006. The Twelfth District Court of Appeals agreed and, on December 28, 2006, upheld the trial court's grant of summary judgment. Plaintiff timely filed a motion to certify a conflict between districts, which is currently pending before the Twelfth District Court of Appeals.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: Evidence of a violation of an administrative safety regulation raises a genuine issue of material fact regarding a property owner's duty and breach of that duty.

As discussed above, Ohio's appellate districts differ in their application of the open and obvious doctrine when evidence of a property owner's administrative safety violation exists. This Court has yet to rule on this issue, although a pending case may resolve the split. See *Uddin v. Embassy Suites Hotel*, 109 Ohio St.3d 1455, 2006-Ohio-2226.

The Twelfth District Court of Appeals, in the case below, held that an "alleged violation of an administrative building code does not prohibit the application of the open

and obvious doctrine nor does it preclude summary judgment on a negligence claim.”

Ahmad v. AK Steel Corp., 12th Dist. No. CA2006-04-089, 2006-Ohio-7031, ¶ 9, attached as Exhibit A. The First District Court of Appeals holds otherwise, claiming that such a ruling “renders the provisions of the [Ohio Building Code] without legal significance.”

Francis v. Showcase Cinema Eastgate (1st Dist. 2003), 155 Ohio App.3d 412, 415-16, 801 N.E.2d 535. Instead, the First and Tenth Districts find evidence of a safety violation to be “a genuine issue of material fact regarding ... duty and breach of duty.” *Id.*; see also *Christen v. Don Vonderhaar Market & Catering, Inc.*, 1st Dist. No. C-050125, 2006-Ohio 715; *Uddin v. Embassy Suites Hotel*, 165 Ohio App.3d 699, 2005-Ohio-6613, certiorari granted, 109 Ohio St.3d 1455, 2006-Ohio-2226. *Contra Oliver v. Leaf & Vine*, 2nd Dist. No. 2004 CA 35, 2005-Ohio-1910; *Ryan v. Guan*, 5th Dist. No. 2003 CA 00110, 2004-Ohio-4032. In *Uddin v. Embassy Suites Hotel*, 165 Ohio App.3d 699, 2005-Ohio-6613, ¶ 37, certiorari granted, 109 Ohio St.3d 1455, 2006-Ohio-2226, the Tenth District Court of Appeals holds as follows:

When considering a motion for summary judgment, to ignore a party's purported violation of an administrative rule that is supported by some evidence would vitiate the legal significance of an administrative rule. For instance, in a case wherein summary judgment is sought and application of the open-and-obvious rule is disputed, if a defendant's purported violation of the administrative code that was supported by some evidence was ignored, a party could violate an administrative rule, thereby possibly endangering public safety, yet be insulated from liability because such a violation constituted an open-and-obvious condition.

The failure to install a handrail is a dangerous condition that the drafters of safety regulations attempt to prevent. Ohio law must not allow property owners to escape liability for such a breach of safety regulations. By finding that such conduct gives rise to a material issue of fact, juries will be able to weigh the facts,

including the open and obvious nature of the condition, and reach an appropriate result.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest. The appellant requests that this court accept jurisdiction in this case so that the important issue presented will be reviewed on the merits.

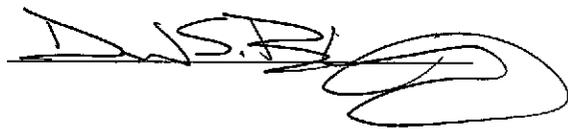
Respectfully submitted,


David S. Blessing

COUNSEL FOR APPELLANT,
ABBRA WALKER AHMAD

CERTIFICATE OF SERVICE

I certify that a copy of this document was sent by first class mail to counsel of appellee, Monica H. McPeck, Attorney for Defendant, Frost Brown Todd LLC, 2200 PNC Center, 201 East Fifth Street, Cincinnati, Ohio 45202-4182, on this 9th day of February, 2006.



Around 5:00 p.m. on February 4, 2003, as appellant's decedent left work, she fell down the front stairway outside of the building. There was no handrail along the concrete steps that led up to the building. She was taken to the hospital and diagnosed with a broken left ankle. Less than two weeks later, she died of a pulmonary embolism.

{¶13} Appellant, individually and as special administrator of the estate, brought suit against appellee alleging negligence. Appellee filed a motion for summary judgment. On March 27, 2006, the trial court granted the motion and dismissed the action ruling that appellant failed to establish that appellee owed a duty to decedent. Appellant timely appealed, raising one assignment of error:

{¶14} "THE TRIAL COURT ERRED IN GRANTING APPELLEE'S MOTION FOR SUMMARY JUDGMENT."

{¶15} Appellant argues in her sole assignment of error that the trial court erred by failing to consider the necessary factors in finding that appellee did not owe a duty, finding that the stairs were open and obvious, and that the violation of a safety regulation does not raise a genuine issue of material fact.

{¶16} We review a trial court's decision granting summary judgment under a de novo standard of review. *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 296. Summary judgment is proper when: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can only come to a conclusion adverse to the party against whom the motion is made, construing the evidence most strongly in that party's favor. Civ.R. 56(C). See, also, *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. In order to establish a claim in negligence, appellant must show that appellee owed decedent a legal duty of care, that this duty was breached, and that this breach proximately caused decedent's injury. *Wallace v. Ohio Dept. of Commerce*, 96 Ohio St.3d 266, 2002-Ohio-4210, ¶ 22. Appellant's failure to prove any

element is fatal to the negligence claim. *Whiting v. Ohio Dept. of Mental Health* (2001), 141 Ohio App.3d 198, 202.

{¶7} Appellant argues the trial court did not correctly consider the absence of a handrail along the steps as a violation of the Ohio Building Code ("OBC") and OSHA standards. A review of the record reveals that the trial court did consider the absence of the handrail. The trial court stated for the purposes of its decision that "[t]his court will assume, arguendo, that the lack of stair railings did violate the OBC." The court concluded that even though there was a violation, the absence of the handrail was open and obvious. Decedent was familiar with the stairs and used them regularly for several years. Additionally, appellant offered no evidence regarding the cause of the fall or how decedent fell.

{¶8} Appellant's second issue presented for review is that the trial court erred in ruling that the stairs were open and obvious and, as a result, appellee had no duty to decedent. The open and obvious doctrine concerns the first prong of a negligence claim, the existence of a duty. Where the danger is open and obvious, a property owner owes no duty of care to individuals lawfully on the premises. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, ¶14. Open and obvious hazards are not concealed and are discoverable by ordinary inspection. *Parsons v. Lawson Co.* (1989), 57 Ohio App.3d 49, 50-51. The dangerous condition at issue does not actually have to be observed by the claimant to be an open and obvious condition under the law. *Lydic v. Lowe's Cos., Inc.*, Franklin App. No. 01AP-1432, 2002-Ohio-5001, ¶10. Rather, the determinative issue is whether the condition is observable. *Id.*

{¶9} We addressed this issue in *Souther v. Preble County District Library, West Elkton Branch*, Preble App. No. CA2005-04-006, 2006-Ohio-1893. In *Souther*, a library patron fell off a step located inside the library, injuring his hip. *Id.* at ¶3. There was no handrail located along the step. *Id.* He underwent hip replacement surgery. *Id.*

Approximately six months later decedent died due to an infection from the surgery. *Id.* The trial court granted summary judgment in favor of the library. *Id.* at ¶4. In affirming the trial court we ruled that an alleged violation of an administrative building code does not prohibit the application of the open and obvious doctrine nor does it preclude summary judgment on a negligence claim. *Id.* at ¶38. "The open and obvious nature of a condition is one of many facts to be considered on summary judgment in a negligence claim." *Id.* The only difference between *Souther* and the case at bar is that the decedent in *Souther* was a licensee and the decedent in this case was a business invitee. *Id.* at ¶15. This distinction does not change our analysis.

¶10 Like *Souther*, the absence of the handrail in this case was open and obvious. Prior usage alone may not be conclusive as to the knowledge of a hazard, but decedent's knowledge of the steps can be inferred from the fact that she used the staircase for several years prior to the accident as an employee at AK Steel. *Id.* citing *Olivier v. Leaf & Vine*, Miami App. No. 2004 CA 35, 2005-Ohio-1910.

¶11 In her final argument, appellant urges us to revisit and overturn our decision in *Souther*. Citing the split among Ohio jurisdictions on this issue, appellant argues that any violation of a federal or state administrative safety regulation raises a genuine issue of material fact regarding a property owner's duty and breach thereof. See *Christen v. Don Vonderhaar Market & Catering*, Hamilton App. No. C-050125, 2006-Ohio-715; and *Uddin v. Embassy Suites Hotel*, 165 Ohio App.3d 699, 2005-Ohio-6613, certiorari granted, 109 Ohio St.3d 1455, 2006-Ohio-2226 (both holding a genuine issue of material fact exists where a safety regulation is violated). See, also, *Olivier v. Leaf & Vine*, Miami App. No. 2004 CA 35, 2005-Ohio-1910; and *Ryan v. Guan*, Licking App. No. 2003CA00110, 2004-Ohio-4032 (both holding an alleged administrative safety violation does not preclude application of the open and obvious doctrine). We decline to revisit our decision in *Souther*.

{¶12} In view of the preceding, we conclude that appellant failed to show there were any genuine issues of material fact for trial. Accordingly, the trial court properly granted summary judgment in favor of appellee. Appellant's sole assignment of error is overruled.

Judgment affirmed.

YOUNG and BRESSLER, JJ., concur.

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

FILED
2006 APR 28 PM 1:57
BUTLER COUNTY
CLERK OF COURTS

ABBRA WALKER AHMAD, et al.

Plaintiffs-Appellants,

CASE NO. CA2006-04-089

- vs -

JUDGMENT ENTRY

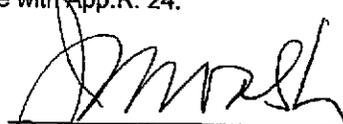
AK STEEL CORP.,

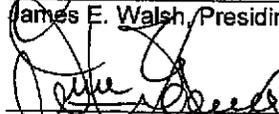
Defendant-Appellee.

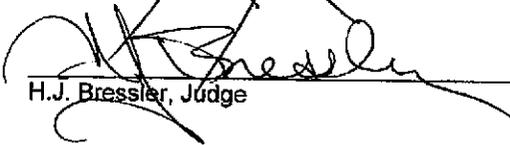
The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.


James E. Walsh, Presiding Judge


William W. Young, Judge


H.J. Bressler, Judge