

**IN THE SUPREME COURT OF OHIO
CASE NO. 2007-0288**

ABBRA WALKER AHMAD,	:	On Appeal from the Butler County
	:	Court of Appeals, Twelfth Appellate
Appellant,	:	District
	:	
v.	:	Court of Appeals
	:	Case Number CA 2006 04 0089
	:	
AK STEEL CORP.,	:	
	:	
Defendant/Appellee.	:	
	:	

**MEMORANDUM IN OPPOSITION OF JURISDICTION OF APPELLEE
AK STEEL CORPORTION**

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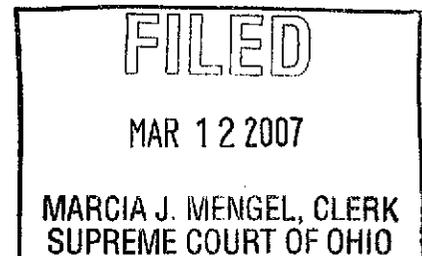


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I. APPELLEE'S STATEMENT AS TO WHY THIS IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

Far from being a case of public or great general interest, the scenario presented in this case is among the most routine in Ohio jurisprudence: a fall of a business invitee on private property in the face of an open and obvious condition. Appellant asks the Court to grant jurisdiction, claiming Ohio appellate districts are in conflict regarding whether a claimant can defeat summary judgment where a property owner allegedly violates an administrative regulation in spite of the open and obvious nature of the condition of the property. However, Ohio law is decidedly not in conflict with respect to this case. This case is not on point with the cases cited by Appellant¹, and Ohio law is clear that summary judgment was properly granted to AK Steel. In addition to very important factual and policy issues that distinguish this case from those cited by Appellant, AK Steel does not concede that the stairs at issue were dangerous or that the absence of a handrail was a violation of any applicable regulation or standard; to the contrary, the absence of any evidence in the record to support these contentions establishes the stairs were not dangerous and that there was no violation.

However, even assuming there was evidence of a dangerous condition or a violation of a regulation, decades of Ohio precedent and strong public policy demonstrate this case was properly dismissed on summary judgment because the condition of the property was open and obvious. With compelling precedent behind the Twelfth District's decision in this case, there is simply no public or great general interest in hearing these same issues again.

II. STATEMENT OF THE CASE AND FACTS

A. Introduction and Procedural Posture

¹ *Uddin v. Embassy Suites Hotel*, (10th Dist.), 165 Ohio App.3d 699, 2005-Ohio-6613, cert granted 109 Ohio St.3d 1455, 2006-Ohio-2226; *Christen v. Vonderhaar Market & Catering, Inc.* (1st. Dist), 2006-Ohio-6507; *Francis v. Showcase Cinema Eastgate* (1st Dist.), 2003-Ohio-6507.

Appellant's only claim against AK Steel in this case was that AK Steel was negligent in failing to install handrails on the steps at issue. AK Steel denied these allegations and filed its Motion for Summary Judgment. The trial court granted AK Steel's Motion for Summary Judgment, holding that AK Steel was under no duty to protect the decedent, a business invitee, from any alleged danger posed by the absence of a handrail, since the condition was open and obvious. The court ruled that, even assuming the absence of a handrail was a violation of an administrative regulation, such violations were open and obvious and did not preclude summary judgment. Importantly, neither the trial judge nor any other individual or entity ever ruled that there was a violation of any applicable code or regulation.

In a unanimous decision, the Twelfth District upheld the trial court's decision granting summary judgment. Noting that the Appellant "offered no evidence regarding the cause of the fall or how decedent fell," the Twelfth District ruled that the absence of a handrail was open and obvious, which obviated the duty owed to the Appellant.

B. Statement of Facts

The decedent was employed by Johnson Controls, a security company that contracted with AK Steel to provide security services at its Middletown headquarters. The decedent worked full-time at the Middletown headquarters and went up and down the sets of stairs in question every day, without incident, for several years prior to her fall in February 2003.

There was no evidence establishing what caused the decedent's fall: there were no witnesses to the fall, the decedent never discussed what caused her fall, and no one was able to articulate what AK Steel did or did not do to cause the fall. As a result of her fall, the decedent fractured her ankle. Two weeks later, the decedent unfortunately died of a pulmonary embolism.

The stairs on which the decedent fell were not equipped with a handrail. However, there

was no evidence supporting Appellant's allegation of negligence or that any alleged negligence caused the fall and subsequent death of the decedent in this case. The only expert testimony in this case established that AK Steel did not violate any OSHA regulation or standard, pursuant to OSHA standards and definitions. Moreover, there was no evidence to establish that AK Steel violated any applicable section of the Ohio Building Code.

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: Because any conflict between the districts regarding the application of the open and obvious doctrine does not apply to the facts of this case, and where strong policy and precedent support application of the open and obvious doctrine, summary judgment was properly granted, and this Court should, therefore, deny Appellant's request for jurisdiction.

A. Any conflict between the appellate districts does not apply to this case

Appellant's sole contention in support of jurisdiction is based upon a claimed conflict between this case and cases out of the First and Tenth Appellate districts. However, there is no applicable conflict of law—only distinctions between the facts in the cases cited by Appellant and this case.

In *Uddin*, a ten-year old child drowned in a swimming pool filled with water that was so cloudy many observers testified it was impossible to see the bottom of the pool.² The Tenth District held that, under these specific and narrow circumstances, summary judgment should not have been entered in favor of the pool owner.³ Specifically, the court did not apply long-standing precedent establishing that pools are open and obvious dangers, holding instead that the decedent, a ten year old child, may not have appreciated the additional, hidden dangers of swimming in a pool with murky water.⁴ Therefore, the Tenth District overturned the decision

² See *id.* at ¶¶28-29.

³ See *id.* at ¶¶38, 48.

⁴ See *id.* at ¶¶18-20.

granting summary judgment, holding a reasonable conclusion could have been drawn that a violation of the administrative regulation concerning water clarity added additional, hidden dangers that could have hampered rescue efforts and therefore proximately caused the injury. Likewise, in *Francis*⁵, and in *Christensen*⁶, the other two cases cited by Appellant, the appellate courts held there was substantial evidence that there was, indeed, a violation of an administrative code and, likewise, that the violations could have caused the injury.

In this case, the decedent, an adult woman, worked at the same site for several years, and traversed the same stairs, without incident, every day, for the entire length of her employment. There was no evidence to suggest that the failure to install a handrail on these steps caused her fall, nor that the absence of a handrail created any hidden danger, like the cloudy water in the *Uddin* case may have with a ten year old child.⁷ Here, there is no question that the absence of a handrail was open and obvious to the adult decedent who was very familiar with the stairway at issue. Moreover, unlike in *Uddin*, *Francis*, and *Christen*, Appellant did not present any affidavits, deposition testimony, or evidence to support a reasonable conclusion that anything AK Steel did or failed to do caused the decedent's fall. As the Twelfth District properly noted, Appellant "offered no evidence regarding the cause of the fall or how decedent fell."

In support of her claim that the decision of the Twelfth District is in conflict with decisions from other districts, Appellant claims that AK Steel violated the Ohio Building Code and/or OSHA safety regulations regarding handrails and stairways. However, the Twelfth District's decision should not be reviewed by this Court because there was no evidence to

⁵ *Francis v. Showcase Cinema Eastgate* (2003), 155 Ohio App.3d 412, 2003-Ohio-6507, ¶¶4, 10.

⁶ *Christen v. Vonderhaar Markey & Catering, Inc.*, 2006-Ohio-715, ¶¶1, 2, 20.

⁷ *See Uddin*, 165 Ohio App. 3d at ¶28-29.

establish any such violations, and there was never any administrative ruling of any such violation.

The section of the Ohio Building Code cited by Appellant is legally inapplicable to this case. The issue came to light for the first time in the appellate court proceedings, where the Appellant claimed that a 2005 version of the Ohio Building Code requiring stairways to be equipped with handrails had been violated, despite the fact that this incident occurred in early 2003.⁸ The section cited by Appellant did not take effect until March 1, 2005.⁹ Moreover, there was never any evidence or argument that established that the statute could have been retroactively applied to the AK Steel Middletown headquarters even if this section of the Ohio Building Code had been in effect in 2003. This Court is petitioned by innumerable parties for jurisdiction; the Court should not approve jurisdiction in this case, when Appellant has not even established that the 2005 regulation she cited could be applied to a 2003 incident.

Appellant also asserted, without establishing, that AK Steel violated an OSHA standard.¹⁰ In fact, the only evidence in this case established that AK Steel complied with the cited regulation. The OSHA standard required that “every flight of stairs having four or more risers . . . be equipped with stair railings.”¹¹ The undisputed evidence established that, pursuant to the OSHA standards and definitions, the set of stairs on which the decedent fell had only two risers and thus, the cited OSHA standard was also legally inapplicable.

Therefore, Appellant’s claim that the decision of the Twelfth District is in conflict with decisions from other districts is not only flawed due to the serious factual distinctions between those cases and this case, but also rests on wholly unsubstantiated assertions that AK Steel

⁸ See OBC §1009.11.

⁹ See *id.*

¹⁰ 29 CFR 1910.23(D)(1).

¹¹ See *id.* (emphasis added).

violated the Ohio Building Code and/or an OSHA standard. Unlike in *Uddin, Francis*, and *Christen*, Appellant did not present any evidence to establish that the steps on which the decedent fell were dangerous because they violated an applicable administrative regulation. As a result, the trial court and the Twelfth District's decisions need not be reviewed by this Court, and there is no discernable conflict.

In jurisdictions throughout Ohio, courts uniformly grant summary judgment to land owners when an invitee falls on a step but fails to offer evidence supporting a claim of negligence.¹² The Twelfth District correctly followed its own controlling precedent in *Wallace*, where summary judgment was affirmed in a case where a business invitee was injured when she fell on a step but presented no evidence to establish the landowner was negligent.¹³ "It is well-settled that no presumption or inference of negligence arises from the bare happening of an accident or from the mere fact that an injury has been sustained."¹⁴ Having failed to present evidence of negligence (or for that matter any administrative regulation violation), the Twelfth District properly affirmed summary judgment, and there is no great public interest at issue to justify this Court granting jurisdiction.

B. Long-standing Ohio precedent and strong public policy support the decision of the Twelfth District and suggest this Court should not grant jurisdiction.

Under Ohio law, an owner or occupier of a premises is under no duty to protect a business invitee against dangers which are known to such invitee or are so obvious and apparent to such invitee that she should reasonably discover them and protect herself.¹⁵ "The rationale

¹² See, e.g., *Wallace v. Geyer* (12th Dist.), 1998 Ohio App. LEXIS 3880.

¹³ See *id.* at *7-8.

¹⁴ *Id.*

¹⁵ See *Wallace*, 1998 Ohio App. LEXIS 3880 at *4-5. see also *Souther v. Preble County District Library* (12th Dist.), 2006-Ohio-1893, ¶36.

behind the open-and-obvious doctrine is that the open-and-obvious nature of the hazard itself serves as a warning.”¹⁶

In 1973, this Court affirmed summary judgment in favor of a land owner when an invitee fell on a step that both parties agreed violated the Ohio Building Code.¹⁷ The invitee fell on the abnormally high step as she was exiting the owner’s country club. Even though the step was *admittedly* in violation of the Building Code, this Court affirmed summary judgment because the invitee had used the same step when she entered the club. Thus, she was aware of the abnormally high step, and “[c]ertainly, the mere fact that [an OBC violation exists] does not alter the rule that an invitee with knowledge of such a defect traverses it at his peril.”¹⁸ In this case, there is no question, and both lower courts held, that the condition of the steps was open and obvious.

For decades, the open and obvious doctrine has been repeatedly acknowledged as good law in Ohio, both by this Court and the Twelfth District.¹⁹ In cases where land owners have superior knowledge of dangerous conditions on their property that are not likewise known to invitees, land owners are liable for those dangerous conditions which they have “negligently suffered to exist.”²⁰ However, owners of land are not insurers of the safety of invitees.²¹ Rather, if a condition is “open and obvious” to an invitee, the open and obvious nature of the condition itself serves as the warning to the invitee and obviates any duty on the part of the land owner to

¹⁶ See *Olivier v. Leaf & Vine* (2nd Dist.), 2005-Ohio-1910, ¶21.

¹⁷ See *Raflo v. Losantiville Country Club* (1973), 34 Ohio St. 2d 1, 4.

¹⁸ *Id.* at 4.

¹⁹ See, e.g., *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, 233 N.E.2d 589; *Armstrong v. Best Buy Co., Inc.* (2003), 99 Ohio St.3d 79, 788 N.E.2d 1088, syllabus.

²⁰ *Raflo*, 34 Ohio St.2d at 3-4.

²¹ See *Jackson v. Kings Island* (1979), 58 Ohio St.2d 357, 359, 390 N.E.2d 810.

protect its patrons.²² The principle is entrenched in Ohio law, and for good reason. To rule that land owners have a duty to protect invitees against all dangers, even those that invitees are, or reasonably should be, on notice of would be to create a legal absurdity.

The trial judge, in oral arguments on AK Steel's Motion for Summary Judgment, succinctly articulated the sound public policy behind applying the open and obvious doctrine to the facts of this case at oral argument on AK Steel's Motion for Summary Judgment:

Just as a practical matter if the Court went down that road and accepted that, every violation of a building or safety code or law or regulation would then do away with the open and obvious doctrine. Basically that would pretty much cover the majority of these cases, wouldn't it?

* * * *

. . . [I]t would seem to me that once you depart from the open and obvious doctrine and start accepting any building code violations, creating such a question of fact that every case goes to the jury, that summary judgment would never be appropriate and the open and obvious doctrine would be completely swallowed up.

It seems to me that from my review that there is a safety code regarding almost everything that we see, touch and experience in life; some safety code, building code, some electric code.

* * * *

And anything that happens to any of us, bad luck, along the lines of what happened to this poor lady, Mrs. Walker, could be attributed to some minor or major violation of some safety code.

The trial judge was correct. One need only look at the Ohio Building Code, to which Appellant cites, to realize that limiting the effect of the open and obvious doctrine as Appellant suggests would create an impossible burden for land owners to overcome and would all but swallow the open and obvious doctrine.

²² See *Souther*, 2006-Ohio-1893, ¶38.

The open and obvious doctrine is rooted in sound legal principle. There is no reason to limit its reach in this case, where there is no evidence in the record to suggest that AK Steel was negligent, and the only reasonable conclusion is that the absence of a handrail on the stairs at issue was just as apparent to the decedent as it was to AK Steel.

III. CONCLUSION

This Court should not grant jurisdiction in this case. Any conflict between the appellate districts regarding the application of the open and obvious doctrine does not apply to this case. There are important factual and legal distinctions in this case that take it outside the realm of the conflict cited by Appellant, not the least of which is the important distinction that Appellant did not offer any evidence establishing causation in this case. Moreover, there is no evidence that establishes that the stairs on which the decedent fell were dangerous or that the failure of AK Steel to install a handrail was a violation of a safety regulation or standard. Finally, any such danger was “open and obvious,” and strong Ohio precedent establishes that AK Steel had no duty to protect the decedent against such open and obvious conditions. For all of these reasons, this Honorable Court should not grant jurisdiction in this matter.

Respectfully submitted,

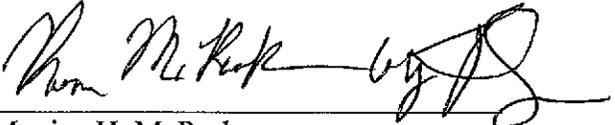


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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been sent by ordinary United States mail, postage prepaid to counsel for Appellant on March 12, 2007.



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