

In the Supreme Court of Ohio

APPEAL FROM THE BUTLER COUNTY
COURTS OF APPEALS
TWELFTH APPELLATE DISTRICT
Case No. CA 2006 04 0089

ABBRA WALKER AHMAD,
Individually and as Special Administrator
of the Estate of Sheila A. Walker,
Appellant,

v.

AK STEEL CORP.,
Appellee.

REPLY BRIEF OF APPELLANT ABBRA WALKER AHMAD

David S. Blessing (0078509)
The Blessing Law Firm
119 East Court Street, Suite 500
Cincinnati, Ohio 45202
Phone No. (513) 621-9191
Fax No. (513) 621-7086
david@blessing-attorneys.com

Counsel for Appellant Abbra Walker Ahmad

Paul W. Flowers (0046625)
Paul W. Flowers, Co. LPA
50 Public Square, Suite 3500
Cleveland, Ohio 44113
Phone No. (216) 344-9393
Fax No. (216) 244-9395
pwf@pwfco.com

*Counsel for Amicus Curiae Ohio
Association for Justice*

Monica H. McPeck (0071078)
Frost Brown Todd LLC
201 East Fifth Street, Suite 2200
Cincinnati, Ohio 45202
Phone No. (513) 651-6182
Fax No. (513) 651-6981
mmcpeck@fbtlaw.com

Counsel for Appellee AK Steel Corp.

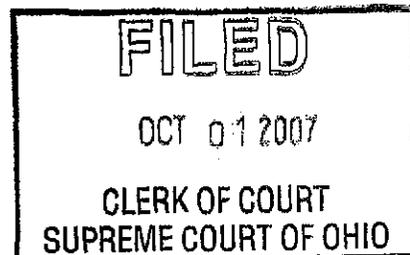


TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
ARGUMENT	1
A. Standard of Review	2
B. AK Steel Violated the OSHA Safety Regulations and the Ohio Building Code.	3
C. A Handrail Would Have Prevented Sheila Walker’s Fall.....	5
D. The Majority View Across the Country Is That Violations of Administrative Safety Regulations Serve as Some Evidence of Negligence	6
E. AK Steel Misapprehends Ohio Appellate Rulings on This Issue	9
CONCLUSION	10
CERTIFICATE OF SERVICE	11
<u>APPENDIX</u>	<u>Appx. Page</u>
<u>CASES</u>	
<i>Franklin v. Peterson</i> , App. No. 208964, 1999 Mich. App. LEXIS 836	1
<i>Juresa v. Radan</i> , 8th Dist. No. 64951, 1994 Ohio App. LEXIS 1933	4
<i>Klostermeier v. In & Out Mart</i> , 6th Dist. No. L-00-1204, 2001 Ohio App. LEXIS 1499	7
<i>Owens v. Taylor</i> , 10th Dist. No. 92AP-211, 1992 Ohio App. LEXIS 3847	12
<u>STATUTE</u>	
R.C. 4101.11	15

ADMINISTRATIVE RULES AND REGULATIONS

Ohio Building Code § 101.2 (2002)17

Ohio Building Code § 102.6 (2002)17

Ohio Building Code § 1003.3.11 (2002)18

OSHA Standards for General Industry,
Section 1910.23, Chapter 29, Code of Federal Regulations (2003)....19

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Beals v. Walker</i> (1976), 416 Mich. 469, 331 N.W.2d 700.....	7
<i>Bertrand v. Alan Ford, Inc.</i> (Mich. 1995), 449 Mich. 606, 537 N.E.2d 185.....	8
<i>Chambers v. St. Mary's School</i> (1998), 82 Ohio St.3d 563, 1998-Ohio-184, 697 N.E.2d 198.....	8
<i>Christen v. Don Vonderhaar Market and Catering, Inc.</i> 1st Dist. No. C-050125, 2006-Ohio-715.....	5, 9
<i>Conroy v. Briley</i> (Fla.App.1966), 191 So.2d 601	7
<i>Craig v. Taylor</i> (1996), 323 Ark. 363, 915 S.W.2d 257.....	6
<i>Doe v. Shaffer</i> (2000), 90 Ohio St.3d 388, 738 N.E.2d 1243	2
<i>Duncan v. Capitol South Community Urban Redevelopment Corp.</i> , 10th Dist. No. 02AP-653, 2003-Ohio-1273	9
<i>Francis v. Showcase Cinema Eastgate</i> (2003), 155 Ohio App.3d 412, 2003-Ohio-6507, 801 N.E.2d 535	9
<i>Franklin v. Peterson</i> , 1999 Mich. App. LEXIS 836.....	8
<i>Juresa v. Radan</i> , 8th Dist. No. 64951, 1994 Ohio App. LEXIS 1933.....	5, 6
<i>Klostermeier v. In & Out Mart</i> , 6th Dist. No. L-00-1204, 2001 Ohio App. LEXIS 1499.....	9
<i>Konicek v. Loomis Bros., Inc.</i> (Iowa 1990), 457 N.W.2d 614.....	7
<i>Martins v. Healy</i> (Mass.Super.Ct.2002), 15 Mass.L.Rep.42	7
<i>Owens v. Taylor</i> , 10th Dist. No. 92AP-211, 1992 Ohio App. LEXIS 3847	5
<i>Paschal v. Rite Aid Pharmacy, Inc.</i> (1985), 18 Ohio St.3d 203, 18 OBR 267, 480 N.E.2d 474.....	1, 2
<i>Porter v. Montgomery Ward & Co., Inc.</i> (1957), 48 Cal.2d 846, 313 P.2d 854	7

<i>Renfro v. Ashley</i> (1958), 167 Ohio St. 472, 150 N.E.2d 50	6
<i>Sessions v. Nonnenmann</i> (Ala. 2002), 842 So.2d 649	6
<i>Singerman v Municipal Service Bureau, Inc.</i> (Mich. 1997), 455 Mich. 135, 565 N.W.2d 383	7, 8
<i>Toll Brothers, Inc. v. Considine</i> (Del. 1998), 706 A.2d 493	6, 7
<i>Uddin v. Embassy Suites Hotel</i> (2005), 165 Ohio App.3d 699, 2005-Ohio-6613, 848 N.E.2d 519, certiorari granted, 109 Ohio St.3d 1455, 2006-Ohio-2226, 847 N.E.2d 5, case dismissed, 113 Ohio St.3d 1249, 2007-Ohio-1791, 864 N.E.2d 638	9
<i>Wichichowski v. Gladioux Enterprises, Inc.</i> (1998), 54 Ohio App.3d 177, 561 N.E.2d 1012	9

RULES OF COURT

Civ. R. 56	2, 3
S.Ct.Prac.R. VII	4

STATUTE

R.C. 4101.11	2, 10
--------------------	-------

ADMINISTRATIVE RULES AND REGULATIONS

Ohio Building Code § 101.2 (2002)	4, 5
Ohio Building Code § 102.6 (2002)	4
Ohio Building Code § 1003.3.11 (2002)	5
OSHA Standards for General Industry, Section 1910.23, Chapter 29, Code of Federal Regulations (2003)	3, 4

OTHER AUTHORITIES

2 Restatement of the Law 2d, Torts (1965)	8
---	---

INTRODUCTION

Appellee AK Steel Corporation (“AK Steel”) raises three lines of argument in its brief. First, AK Steel claims that it did not violate any safety regulation by failing to install handrails on the front steps of its Middletown, Ohio headquarters. It presents an internet news story and company press release (neither part of the record and neither considered below) in an effort to have this Court review this new material and rule that the safety regulations at issue did not apply to AK Steel. Second, the company contends that calamity (“legal absurdity” and “open season on landowners”) would be visited on Ohio if this Court embraced the principles set forth in the Restatement and by courts which support Appellant’s arguments. Third, AK Steel contends that all but one of the Ohio courts of appeal and the majority of decisions from other jurisdictions support its views. We submit that AK Steel’s arguments lack merit.

ARGUMENT

The issue in this appeal is whether the open and obvious nature of a condition on AK Steel’s property nullifies a prescribed duty to maintain the property in a reasonably safe condition. AK Steel argues that the openness of a danger exonerates the company from its violations of administrative safety regulations. In contrast, we submit that those upon whom a duty rests should not receive license to ignore dangerous conditions that violate administrative safety regulations just because the dangerousness may be obvious.

We must begin with Ohio public policy as set forth by statute and case law. It is a fundamental tenant of Ohio law that a property owner or occupier must maintain his premises in a reasonably safe condition and not expose an invitee to unnecessary or unreasonable danger. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203,

204, 18 OBR 267, 480 N.E.2d 474. The Ohio legislature has placed a duty upon every employer to employees and “frequenters,” stating as follows in R.C. 4101.11:

Every employer shall furnish employment which is safe for the employees engaged therein, shall furnish a place of employment which shall be safe for the employees therein and for frequenters thereof, shall furnish and use safety devices and safeguards, shall adopt and use methods and processes, follow and obey orders, and prescribe hours of labor reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters.

This statutory duty not only requires an employer to generally maintain a safe workplace. *Id.* It also specifically requires that the employer furnish and use “safety devices and safeguards.” *Id.* Furthermore, it does not limit this duty in any way with regard to open and obvious conditions.

AK Steel would have this Court rule that the open-and-obvious doctrine permits a property owner to expose an invitee to unreasonable danger. Such a result would fly in the face of Ohio public policy, as delineated by statute and through common-law. The open-and-obvious doctrine does not eliminate all common-law and statutory duty to keep the property in a safe condition and free from unreasonable dangers. And, it does not exonerate employers from “furnish[ing] and us[ing] safety devices and safeguards.” R.C. 4101.11. Ohio law does not allow AK Steel to sit idly by as employees and other individuals are exposed to an easily correctable danger on a daily basis.

A. Standard of Review

The grant of summary judgment by the trial court is to be reviewed *de novo*. *Doe v. Shaffer* (2000), 90 Ohio St.3d 388, 390, 738 N.E.2d 1243. Summary judgment is only proper where there is no genuine issue of material fact and reasonable minds can only come to a conclusion adverse to the party against whom the motion is made. See Civ. R.

56(C). The evidence should be construed most strongly in the non-movant's favor; here, in favor of Appellant Abbra Walker Ahmad ("Ahmad"). Given AK Steel's violations of the safety regulations, which caused Sheila Walker's fall and death, a genuine issue of fact exists as to whether AK Steel maintained the premises in a manner prescribed by its common-law and statutory duties.

B. AK Steel Violated the OSHA Safety Regulations and the Ohio Building Code.

AK Steel admits that the stairs upon which Sheila Walker fell did not have a handrail. But it argues in its merit brief that the absence of a handrail did not violate the Occupational Safety and Health Administration ("OSHA") safety regulations or the Ohio Building Code. We suggest that AK Steel's reading of these regulations in an attempt to skirt their application is convoluted and fails; evidence of these safety violations are substantiated in the record.

1. The Lack of a Handrail Violates the OSHA Safety Regulations.

Despite AK Steel's assertion to the contrary, the stairs upon which Sheila Walker fell required a handrail under the OSHA regulations. Under a clear reading of the regulations, the lack of a handrail violated 29 C.F.R. 1910.23(d)(1). It requires that handrails be installed on "every flight of stairs having four or more risers." *Id.* AK Steel claims that its expert, who testified that the four stairs had only two risers, was uncontradicted. (Merit Brief of Appellee, p. 6.) In fact, Appellant offered the affidavit of expert John F. Berry to rebut AK Steel's convoluted reading of the regulation. (Supp. to Merit Brief of Appellee 7.) Mr. Berry reasoned that the stairs at issue had four risers, which results in a violation of the OSHA regulation.¹ (Supp. to Merit Brief of Appellee

¹ A picture of the stairs in question is on page 43 of the Supplement to the Merit Brief of

7.)

OSHA issued a citation to AK Steel for the lack of handrails on these very steps, just months after Sheila Walker's fall. (Id.) This citation reveals the same reading of the regulation by the agency. (Supp. 44.) It alleged that these stairs violated 29 CFR 1910.23(d)(1). (Id.) Under its common-sense reading, the stairs in question required a handrail and the lack thereof constituted a violation of the OSHA regulations.

2. The Lack of a Handrail Violates the Ohio Building Code.

AK Steel submits an internet news story and a company press release, never considered by the courts below, as part of its supplement to its merit brief. AK Steel relies on these materials in arguing that the requirements of the Ohio Building Code do not apply to its Middletown headquarters, that the building is exempted because of its age. This argument was not made and no evidentiary support was given to the trial court in response to Ahmad's allegations that AK Steel violated the Ohio Building Code. In spite of S.Ct.Prac.R. VII, which limits documents included in the supplements to "portions of the record," AK Steel first introduced this argument and submitted these materials with its merit brief.

We have filed a motion to strike the improper documents submitted by AK Steel. In the alternative, we have moved for leave to supplement the record with authenticated evidence to rebut AK Steel's new materials. Section 102.6 of the 2002 Ohio Building Code allows an existing structure to "continue **without change** * * * ." Id. (emphasis added). In the case of AK Steel's Middletown headquarters, there has been substantial construction, alteration, and repair to the building to bring it under the scope of the code. Id. at § 101.2 (stating that the provisions apply to construction, alteration, and repair of

every building or structure). Public records indicate that AK Steel applied for and has been issued numerous building permits from the Middletown Division of Inspection pertaining to work at the headquarters after the adoption of the handrail requirement in the modern code. (See, e.g., documents attached to Appellant's Motion to Strike.)

There is absolutely nothing in the record to suggest that the Ohio Building Code does not apply to the AK Steel building. The code requires handrails on stairways in "every building or structure." 2002 Ohio Building Code §§ 101.2, 1003.3.11. And, a handrail did not exist on the stairs in question. (Supp. 43.) This is neither the proper time nor the forum to submit new evidence and revisit this issue.

C. A Handrail Would Have Prevented Sheila Walker's Fall.

AK Steel next argues that there is no direct causal link between the lack of a handrail and Sheila's fall. Appellant is not required to prove the exact cause of Sheila's fall, but must show that handrails would have prevented it. *Christen v. Vonderhaar Market & Catering, Inc.*, 1st Dist. No. C-050125, 2006-Ohio-715, ¶ 17-18; *Owens v. Taylor*, 10th Dist. No. 92AP-211, 1992 Ohio App. LEXIS 3847, *7-*8 ("Whatever the reason for plaintiff's losing her balance, she testified that with a handrail she would not have fallen. Inasmuch as a handrail is designed to protect those who for whatever reason find themselves falling, the lack of a handrail, under plaintiff's testimony, may be found a proximate cause of plaintiff's fall.") While guessing or speculation as to the effect of a handrail is not sufficient,² the evidence here rises above mere speculation. An Injury/Accident report with information from the decedent establishes that the handrail would have actually prevented the fall and her eventual death. (Supp. 46.) Thus, the issue of proximate cause should be left for a jury to determine. *Juresa v. Radan*, 8th Dist.

No. 64951, 1994 Ohio App. LEXIS 1933, *3 (“The determination of proximate cause is a decision to be left to the trier of fact.”).

D. The Majority View Across the Country Is That Violations of Administrative Safety Regulations Serve as Some Evidence of Negligence.

AK Steel contends that Appellant has misread related holdings from other states. It points to a scattering of decisions to show that there is some support for its belief that the open-and-obvious doctrine should trump any violation of administrative regulation. To be sure, there are some reported decisions that support AK Steel’s argument. See, e.g., *Sessions v. Nonnenmann* (Ala. 2002), 842 So.2d 649. Nonetheless, the majority view is well-established: violations of administrative safety regulations serve, at least, as some evidence of a duty owed and breach thereof. (See cases cited at Merit Brief of Appellant, pp. 10-13.)

AK Steel attempts to discount this case law, claiming each is not analogous to the issue here presented. For example, AK Steel contends that *Craig v. Taylor* (1996), 323 Ark. 363, 915 S.W.2d 257, should be ignored because it “do[es] not even discuss the open and obvious doctrine.” (Merit Brief of Appellee, p. 20.) However, as explained in the dissenting opinion in *Craig v. Taylor*, application of Arkansas’ open-and-obvious doctrine was a central issue in the case. The dissent criticizes the majority’s holding and argues that no duty to warn exists “when the danger is obvious.” *Craig*, 323 Ark. at 371 (J. Brown, dissenting).

In *Toll Brothers, Inc. v. Considine* (Del. 1998), 706 A.2d 493, the plaintiff alleged that an uncovered four-inch by eleven-inch hole in the floor constituted a failure to maintain a safe workplace by the defendants. *Id.* at 494. The court found that the

² *Renfro v. Ashley* (1958), 167 Ohio St. 472, 150 N.E.2d 50.

violation required a jury determination on the issue of negligence. *Id.* Whether or not these decisions address the open-and-obvious doctrine by name, each holds that a violation of an administrative safety regulation serves as evidence on negligence. See, e.g. *Toll Brothers, Inc. v. Considine* (Del.1998), 706 A.2d 493; *Konicek v. Loomis Bros., Inc.* (Iowa 1990), 457 N.W.2d 614; *Beals v. Walker* (1976), 416 Mich. 469, 331 N.W.2d 700; *Porter v. Montgomery Ward & Co., Inc.* (1957), 48 Cal.2d 846, 313 P.2d 854 (holding that a violation of a regulation requiring a handrail creates a rebuttable presumption of negligence)(later codified at Section 669, Cal.Evid.Code); *Conroy v. Briley* (Fla.App.1966), 191 So.2d 601; *Martins v. Healy* (Mass.Super.Ct.2002), 15 Mass.L.Rep.42. As evidence of negligence, violations of safety regulations create a genuine issue of material fact, making summary judgment improper.

AK Steel further relies on *Singerman v. Municipal Service Bureau, Inc.* (Mich. 1997), 455 Mich. 135, 565 N.W.2d 383, to support its proposition that “open and obvious hazards preclude liability, even where * * * it is undisputed the defendant violated safety rules.” (Merit Brief of Appellee, p.18.) Gary Singerman, the plaintiff, was an experienced hockey player and former coach, who sustained an injury during a pick-up hockey game. *Singerman*, 455 Mich. at 137-138. Mr. Singerman brought an action alleging that poor lighting at the facility constituted negligence on the part of defendants. *Id.* at 138. The Supreme Court affirmed the grant of summary judgment in favor of the defendant, saying the lighting condition was open and obvious. *Id.* at 141. The *Singerman* court also discussed the violation of “safety rules” – the hockey rink required all participants to wear a helmet, a rule which the plaintiff (not any defendant) flouted. *Id.* at 142-143. While *Singerman* is factually a different case from this one, we agree that

Singerman provides insight into the state of the open-and-obvious doctrine in Michigan. The Michigan high court notes that a property owner may be liable for open and obvious dangers where the condition was unreasonable. *Id.* at 140-141. And the rule that an invitor has a duty to protect an invitee against foreseeable dangerous conditions, including those that are open and obvious, has been followed in Michigan. See *id.*; *Bertrand v. Alan Ford, Inc.* (Mich. 1995), 449 Mich. 606, 537 N.W.2d 185; *Franklin v. Peterson*, App. No. 208964, 1999 Mich. App. LEXIS 836, * 4.

The Second Restatement of Torts adopts this very view. Section 343A(1) states as follows: “A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.” Section 288B of the Second Restatement tells us how this issue intersects with violations of administrative regulations. It offers alternative approaches to address such a violation:

- (1) The unexcused violation of a legislative enactment or an administrative regulation which is adopted by the court as defining the standard of conduct of a reasonable man, is negligence in itself.
- (2) The unexcused violation of an enactment or regulation which is not so adopted may be relevant evidence bearing on the issue of negligence conduct.

2 Restatement of the Law 2d, Torts (1965) 37, Section 288B. Subsection (1), above, embraces a negligence per se approach that this Court rejected in *Chambers v. St. Mary's School* (1998), 82 Ohio St.3d 563, 1998-Ohio-184, 697 N.E.2d 198. The second subsection is the approach we urge here: that a violation be used as “relevant evidence bearing on the issue of negligent conduct.” 2 Restatement of the Law 2d, Torts (1965) 37, Section 288B.

E. AK Steel Misapprehends Ohio Appellate Rulings on This Issue.

AK Steel suggests that the First Appellate District stands alone in holding that open and obvious administrative violations serve as evidence of negligence. See, e.g., *Christen v. Vonderhaar Market & Catering, Inc.*, 1st Dist. No. C-050125, 2006-Ohio-715; *Francis v. Showcase Cinema Eastgate* (2003), 155 Ohio App.3d 412, 2003-Ohio-6507, 801 N.E.2d 535. But the Tenth District stands with the First District in this conclusion. *Uddin v. Embassy Suites Hotel* (2005), 165 Ohio App.3d 699, 2005-Ohio-6613, 848 N.E.2d 519, certiorari granted, 109 Ohio St.3d 1455, 2006-Ohio-2226, 847 N.E.2d 5, case dismissed, 113 Ohio St.3d 1249, 2007-Ohio-1791, 864 N.E.2d 638. We submit that *Duncan v. Capitol South Community Urban Redevelopment Corp.*, 10th Dist. No. 02AP-653, 2003-Ohio-1273, does not undermine the Tenth District's *Uddin* holding. It states that a "violation of a specific provision may be evidence of defendants' negligence, or even render defendants strictly liable." *Duncan*, 2003-Ohio-1273 at ¶ 33. AK Steel trumpets the *Duncan* court's affirmance of summary judgment in favor of the defendants. (Merit Brief of Appellees, p. 15.) But, the *Duncan* court reached this conclusion only because Duncan "offer[ed] no evidence to support [his] allegations." *Duncan*, 2003-Ohio-1273 at ¶ 33.

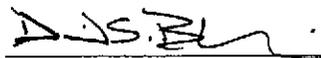
Similarly, AK Steel suggests that the Court of Appeals for the Sixth Appellate District has reviewed this issue and supports its argument, citing *Klostermeier v. In & Out Mart*, 6th Dist. No. L-00-1204, 2001 Ohio App. LEXIS 1499, and *Wichichowski v. Gladieux Enterprises, Inc.* (1998), 54 Ohio App.3d 177, 561 N.E.2d 1012. But the *Klostermeier* court held that the property owner had no notice of the danger and thus no duty, and the danger in *Wichichowski* did not violate the then-current safety regulations. *Klostermeier*, 2001 Ohio App. LEXIS at *11; *Wichichowski*, 54 Ohio App.3d at 179.

The clearest assertion of public policy on the question here presented comes from the General Assembly. R.C. 4101.11 establishes a duty to provide a safe place of employment for employees and frequenters. The statute requires the employer to “furnish and use safety devices and safeguards” and to “do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters.” Id. The legislature’s stated policy may not be ignored.

CONCLUSION

AK Steel had a common-law and statutory duty to maintain its premises in a reasonably safe condition and to avoid exposing Sheila Walker to unnecessary or unreasonable dangers. R.C. 4101.11 clearly states this duty. AK Steel’s failure to comply with OSHA safety regulations and the Ohio Building Code, which required the company to install a handrail on the front stairs of its facility, is evidence that it did not maintain the premises in a reasonably safe condition. A jury should determine whether, given evidence of this violation and the openness of the danger, AK Steel maintained its premises in a reasonably safe condition.

Respectfully submitted,



David S. Blessing

COUNSEL FOR APPELLANT,
ABBRA WALKER AHMAD

CERTIFICATE OF SERVICE

I certify that a copy of this Reply to Merit Brief of Appellee AK Steel Corporation was sent by ordinary U.S. mail to counsel,

Monica H. McPeck, Attorney
Counsel for Appellee
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202-4182,

Paul W. Flowers, Attorney
Counsel for Amicus Curiae Ohio Association for Justice
Paul W. Flowers, Co. LPA
50 Public Square, Suite 3500
Cleveland, Ohio 44113,

on this 1st day of October, 2007.



David S. Blessing

COUNSEL FOR APPELLANT,
ABBRA WALKER AHMAD

LEXSEE 1999 MICH. APP. LEXIS 836

JAMES E. FRANKLIN, Plaintiff-Appellant, v DAVID PETERSON and CAROL PETERSON, Defendants-Appellees.

No. 208964

COURT OF APPEALS OF MICHIGAN

1999 Mich. App. LEXIS 836

August 17, 1999, Decided

NOTICE: [*1] IN ACCORDANCE WITH THE MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

PRIOR HISTORY: Oakland Circuit Court. LC No. 97-536409 NO.

DISPOSITION: Affirmed.

JUDGES: Before: Kelly, P.J., and Jansen and White, JJ.

OPINION

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants in this premises liability case. We affirm.

This case arises out of a slip and fall that occurred on April 21, 1996 at a home owned by defendants. Plaintiff, a real estate salesperson, was showing defendants' house to potential buyers. While exiting defendants' house, plaintiff fell and broke his foot as he was stepping off a cement slab adjacent to the front porch. Specifically, the cement slab was elevated three inches from the cement sidewalk which led to the driveway. Apparently, plaintiff was waving goodbye to the prospective buyers, was not looking down, and fell off the cement slab.

Plaintiff filed suit, alleging negligence and intentional nuisance. Plaintiff's negligence claim included claims that defendants failed to exercise ordinary care to

protect plaintiff from unreasonable risks of injury that were known [*2] or should have been known to defendants, failed to maintain the premises in a reasonably safe condition, failed to warn plaintiff of the danger, failed to discover possible dangerous conditions which a reasonable person would have discovered upon inspection, and maintained a hazard because of the change in elevation which is a violation of ordinances of the city of Troy and the State of Michigan. The trial court granted defendants' motion for summary disposition, ruling that the step was open and obvious and not unreasonably dangerous, and that plaintiff failed to show that defendants created or continued a condition knowing that injury was substantially certain to follow because of the condition.

A trial court's ruling on a motion for summary disposition is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Because the trial court relied on materials outside the pleadings, we assume that the trial court granted the motion on the basis of MCR 2.116(C)(10), which tests the factual support for the claim. *Spiek, supra*, pp 337-338. The court is to consider all record evidence, make all reasonable inferences [*3] in favor of the nonmoving party, and determine whether a genuine issue of any material fact exists to warrant a trial. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition because the step was not open and obvious and, if it was open and obvious, the step was unreasonably dangerous.

There is no dispute that plaintiff was an invitee on defendants' premises at the time he fell. The landowner

owes an invitee a duty to exercise reasonable care to protect the invitee from unreasonable risk of harm caused by a dangerous condition on the land that the owner knows or should know that his invitee will not discover, realize, or protect himself against. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). Invitors may be held liable for an invitee's injury that result from a failure to warn of a hazardous condition or from the negligent maintenance of the premises or defects in the physical structure in the building. *Id.*, p 610. Where a condition is open and obvious, the scope of the invitor's duty may [*4] be limited. *Id.* Although there may be no duty to warn of a fully obvious condition, the invitor may still have a duty to protect an invitee against foreseeably dangerous conditions. *Id.*, p 611. Therefore, the open and obvious doctrine does not relieve the invitor of the general duty of reasonable care. *Id.*

The rule generated is that if the particular activity or condition creates a risk of harm *only* because the invitee does not discover the condition or realize its danger, then the open and obvious doctrine will cut off liability if the invitee should have discovered the condition and realized its danger. On the other hand, if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions. The issue then becomes the standard of care and is for the jury to decide. [*Id.*]

The Court concluded in *Bertrand, supra*, p 614, that because the danger of tripping and falling on a step is generally open and obvious, the failure to warn theory cannot establish liability. However, if there are special aspects [*5] of the particular steps that make the risk of harm unreasonable, the failure to remedy the dangerous condition may result in a breach of the duty to keep the premises reasonably safe. There must be something unusual or unique about the steps because of their character, location, or surrounding conditions in order for a duty to exercise reasonable care to remain with the invitor. *Id.*, pp 614, 617.

First, we agree with the trial court that the cement

slab in question was open and obvious. Whether a danger is open and obvious depends upon whether it is reasonable to expect an average person of ordinary intelligence to discover the danger upon casual inspection. *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 10; 574 NW2d 691 (1997). Plaintiff testified at his deposition that he did not recall seeing the step before he fell. Similarly, in his affidavit, plaintiff averred that he fell because he did not see or perceive the change in elevation of the cement slab. However, plaintiff admitted at his deposition that there was nothing hidden about the configuration of the cement slab. Finally, plaintiff had entered through the front door and walkway twice [*6] on the same day before he fell. A review of the photographs attached to the briefs also confirms that there is nothing about the cement slab that makes any defect to be hidden. Accordingly, defendants had no duty to warn plaintiff about any dangers associated with the fully obvious cement slab because it is reasonable to expect an average person of ordinary intelligence to discover any danger associated with the cement slab upon casual inspection.

Plaintiff next argues that, although the step may be considered open and obvious, there were unusual characteristics about the step which caused it to pose an unreasonable risk of harm. First, plaintiff contends that the step violated the Building Officials and Code Administrators (BOCA) National Building Code requirements (as adopted by the city of Troy and the State of Michigan) relating to steps. Second, plaintiff contends that the step was difficult to see, that he did not perceive any change in elevation, and, thus, it posed an unreasonable risk of harm.

With respect to plaintiff's contention that the step elevation of three inches violated the requirement of the BOCA that the rise should be a minimum of four inches¹, we note that [*7] violation of an ordinance or administrative rule and regulation is evidence of negligence, however, such a violation does not go to the question whether there is something unique about the steps that renders them unreasonably dangerous even when the open and obvious danger is perceived. Ultimately, the question is whether there is something unusual about the cement slab because of its character, location, or surrounding conditions. *Bertrand, supra*, p 617. The slab itself is not broken, cracked, or sloped. There is nothing that surrounds the slab so that it is difficult to see. The conditions on the day of plaintiff's

accident were dry and sunny. According to another real estate agent who saw plaintiff fall, plaintiff was waving goodbye to two customers, was not looking down, and he simply fell off the cement slab. Thus, plaintiff fell because he was not looking where he was going and not because of the three-inch rise, as opposed to a four-inch rise, of the slab.

1 The cement slab in question was built, along with the driveway and sidewalk, in the summer of 1988 by a company hired by defendants. While defendants contended that the applicable 1987 BOCA code did not contain a minimum riser requirement applicable to the steps at issue, defendants abandoned that position at argument.

[*8] Plaintiff's additional contention that the step should have been made more open and obvious is irrelevant to whether the risk associated with the obvious step was unreasonable. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). Accordingly, viewing the evidence in a light most favorable to plaintiff, he has failed to establish a genuine issue of material fact regarding whether the step was obvious and whether the step posed an unreasonable risk of harm despite its obviousness. *Bertrand, supra*, p 624.

Plaintiff next argues that the trial court erred in

granting defendants' motion for summary disposition regarding his intentional nuisance claim because the step constituted an intentional nuisance in fact.

Liability for nuisance is predicated upon the existence of a dangerous condition. *Lynd v Choccolay Twp*, 153 Mich App 188, 203; 395 NW2d 281 (1986). A nuisance in fact is a condition which becomes a nuisance by reason of the circumstances and surroundings. *Id.* As discussed above, the step at issue is not a dangerous condition. Since there is no dangerous condition, [*9] there is no nuisance. *Tolbert v U.S. Truck Co*, 179 Mich App 471, 474; 446 NW2d 484 (1989). Further, there are no "circumstances and surroundings" which cause the step to become a nuisance. Therefore, there is no nuisance in fact. *McCracken v Redford Twp Water Dep't*, 176 Mich App 365, 371; 439 NW2d 374 (1989). Because plaintiff failed to establish a genuine issue of fact regarding whether the step constituted an intentional nuisance in fact, the trial court did not err in dismissing plaintiff's intentional nuisance claim.

Affirmed.

/s/ Michael J. Kelly

/s/ Kathleen Jansen

/s/ Helene N. White

LEXSEE 1994 OHIO APP. LEXIS 1933

CVETKA JURESA, Plaintiff-Appellant v. ANTHONY RADAN, Defendant-Appellee

NO. 64951

**COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY**

1994 Ohio App. LEXIS 1933

May 5, 1994, Announced

NOTICE:

[*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

PRIOR HISTORY: CHARACTER OF PROCEEDING: Civil appeal from Common Pleas Court. Case No. 207145.

DISPOSITION: JUDGMENT: Affirmed.

COUNSEL: FOR PLAINTIFF-APPELLANT: James L. Burns, Esq., Repicky & Associates, 2200 The Illuminating Bldg., 55 Public Square, Cleveland, Ohio 44113.

FOR DEFENDANT-APPELLEE: Kevin F. Payne, Esq., Payne & Payne, 1535 Leader Building, 526 Superior Avenue, N.E., Cleveland, Ohio 44114.

JUDGES: PORTER, SWEENEY, KRUPANSKY

OPINION BY: JAMES M. PORTER

OPINION

JOURNAL ENTRY and OPINION

PORTER, J.:

Plaintiff-appellant Cvetka Juresa appeals from a judgment entered below on an unanimous jury verdict finding that defendant-appellee Anthony Rodan's negligence was not the proximate cause of her injuries

and that same was caused solely by plaintiff's own negligence in falling down stairs. Plaintiff asserts that the verdict was against the manifest weight of the evidence and contrary to law. Defendant raises cross-assignments of error regarding the directed verdict against him on negligence. We find no merit to plaintiff's appeal and affirm the judgment below.

Plaintiff is a seventy-one-year-old [*2] woman of Yugoslavian descent who speaks limited English. Her testimony at trial was elicited in part through an interpreter. She rented the second floor of a two-family residence owned by defendant on East 43rd Street in Cleveland. On August 1, 1989, after only a month's tenancy, plaintiff was washing the stairways leading to her apartment in preparation for moving out. There was no handrail on the stairways area in which she was working. She was washing from the top down and backing down the stairs as she completed the steps. She fell backwards down the steps and said she did not know why she fell.

She was treated and released at St. Vincent Charity Hospital's emergency room later that day. Complaining of pain in her buttocks, she was seen again on August 4-5, 1989 and diagnosed with a remote compression fracture of the T-10 vertebrae segment of the thoracic level. Her doctor testified that this condition resulted from the stairways fall.

At the conclusion of a four day trial, the trial court directed a verdict in favor of plaintiff on the issue of the landlord's negligence, holding he was negligent as a matter of law for not having a handrail on the stairs as required by the landlord's [*3] duty under *R.C. 5321.04*. The court submitted the issues of proximate cause and

comparative negligence to the jury on special interrogatories with a general verdict. The jury unanimously answered the special interrogatories by finding that plaintiff was herself negligent, and that her negligence was the proximate cause of her injuries. Their unanimous general verdict was for the defendant. Plaintiff filed a timely appeal asserting in her sole assignment of error that the verdict and judgment were against the manifest weight of the evidence and contrary to law.

In determining whether a jury verdict is against the manifest weight of the evidence, this Court must presume that the jury's findings were correct. Judgments supported by some competent credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence. *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273. "Finally, if the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment most favorable to sustaining the trial court's [*4] verdict and judgment." *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19, 526 N.E.2d 1350.

Plaintiff argues that her testimony established that if a handrail had been present, she would have hung on to it while washing the steps or caught herself and prevented the damaging fall. Therefore, plaintiff concludes, that the absence of the handrail must have been a proximate cause of the fall and her injuries.

To warrant a finding that the negligence is the proximate cause of an injury, it must appear that the injury was the natural and probable consequence of the negligence alleged, and that it was such as ought to have been foreseen in the light of the attending circumstances. *Shroades v. Rental Homes* (1981), 68 Ohio St.2d 20, 25, 427 N.E.2d 774; *Springsteel v. Jones & Laughlin Steel Corp.* (1963), 2 Ohio App.2d 353, 192 N.E.2d 81. The determination of proximate cause is a decision to be left to the trier of fact. *Springsteel, supra*; *Cremeans v. Willmar Henderson Mfg. Co.* (1991), 57 Ohio St.3d 145, 151, 566 N.E.2d 1203.

In the case at hand, the jury unanimously concluded that plaintiff failed to meet her burden and found the absence of the handrail was not the proximate [*5] cause of plaintiff's injury, but rather the plaintiff's negligence was. Plaintiff did testify that if there had been a handrail

present, she would not have fallen because she would have been holding on to the handrail with one hand while washing the steps with the other hand. The jury was not required to accept as true plaintiff's speculative testimony that the handrail would have, in fact, prevented her from falling and injuring herself. Plaintiff admitted that she did not know why she fell, but gave a conflicting account to the emergency room personnel that she had "tripped and sat down hard on the step." Plaintiff's evidence that the handrail would have prevented the fall was not compelling. It is common experience that people fall down stairs even when there are handrails present. Plaintiff's medical records revealed a history of dizziness, difficulty with walking and prior falls. Given the conflicting evidence and the inferences to be drawn therefrom, the proximate cause and contributory negligence issues were jury questions. Their findings were not against the manifest weight of the evidence or contrary to law.

This conclusion is supported by *Renfroe v. Ashley* (1958), 167 [*6] Ohio St. 472, 150 N.E.2d 50, where the Ohio Supreme Court affirmed a directed verdict based on speculative testimony. In *Renfroe*, the plaintiff testified as follows:

I was leaving my apartment to go to work and I fell down the stairs. I don't know whether I slipped or tripped or what happened. All of a sudden I was flying down and automatically reached for a handrail because there was one at my father's apartment and I know I could have prevented the fall had there been a handrail.

Renfroe, at pp. 474-475.

In sustaining the trial court's directed verdict on behalf of defendant, the Supreme Court reasoned:

Why plaintiff-appellant "slipped or tripped" is left to conjecture, and whether in the circumstances the presence of a handrail would have prevented the fall is too speculative in nature to leave to a jury's guess * * * Moreover, if we assume that the defendant was subject to the handrail statute and was negligent as a matter of law in not providing a handrail,

the testimony given by plaintiff-appellant was too meager and inconclusive to support a finding that such negligence was the direct or proximate cause of plaintiff-appellant's unfortunate mishap. It [*7] need hardly be added that in order to recover for a negligent act it is essential to show that it was a proximate cause of the result complained of.

Renfroe at p. 475.

The jury herein concluded that plaintiff's own negligence was the proximate cause of her fall and injuries. Giving the jury's findings, the deference to which they are entitled, the plaintiff failed to prove to their satisfaction that the missing handrail was the proximate cause of plaintiff's injuries.

Plaintiff's assignment of error is overruled.

The disposition of this appeal as aforesaid renders moot consideration of the defendant's cross-assignment of error that the trial court erred in directing a verdict on defendant's negligence through application of the landlord-tenant statute. *App. R. 12(A)(1)(c)*.

Judgment affirmed.

It is ordered that appellee recover of appellant his costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to *Rule 27 of the Rules of Appellate Procedure*.

[*8] JAMES D. SWEENEY, P.J., and

KRUPANSKY, J., CONCUR.

JAMES M. PORTER, JUDGE

N.B. This entry is made pursuant to the third sentence of *Rule 22(D), Ohio Rules of Appellate Procedure*. This is an announcement of decision (see Rule 26). Ten (10) days from the date hereof this document will be stamped to indicate journalization, at which time it will become the judgment and order of the court and time period for review will begin to run.

LEXSEE 2001 OHIO APP. LEXIS 1499

Ginger R. Klostermeier, Appellant v. In & Out Mart, et al., Appellees

Court of Appeals No. L-00-1204

COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, LUCAS COUNTY

2001 Ohio App. LEXIS 1499

March 30, 2001, Decided

PRIOR HISTORY: [*1] Trial Court No. CI-98-3059.

DISPOSITION: AFFIRMED IN PART AND REVERSED IN PART.

COUNSEL: Charles E. Boyk, for appellant.

Michael J. Manahan, for appellees In & Out Mart and The Village Farm Dairy, Co.

Mark P. Seitzinger and Shannon J. Dedmon, for appellee DAE, Inc., d/b/a Interstate Commercial Glass and Door.

JUDGES: James R. Sherck, J., JUDGE, Richard W. Knepper, J., JUDGE, CONCUR. George M. Glasser, J., dissents. Judge George M. Glasser, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

OPINION BY: James R. Sherck

OPINION

DECISION AND JUDGMENT ENTRY

SHERCK, J. This appeal comes to us from a summary judgment issued by the Lucas County Court of Common Pleas in a personal injury case involving a fall at a convenience store entrance. Because we conclude that there remain genuine issues of material fact as to one defendant but not to the other, we reverse in part and affirm in part.

Appellant, Ginger Klostermeier, sued In & Out Mart,

Inc. and Village Farm Dairy, Co. for claims relating to alleged injuries she sustained from a fall at a convenience store owned and operated by appellees. Appellant also sued DAE, Inc., dba Interstate Commercial Glass & Door.

The [*2] following facts were disclosed during discovery depositions. The entrance of the In & Out Mart is comprised of two doors with hydraulic closers. When facing the doors from the outside, the door on the right opens to the right; the left door, which opens to the left, is usually locked. On November 3, 1997, DAE installed a new door closer on the right door.

On May 29, 1998, appellant entered through the right-hand door and fell immediately. A store cashier, who came over to assist appellant, discovered that the sandal from her right foot was caught under the door. The cashier removed the sandal. Appellant then got up, bought some lottery tickets, and left the store. Later, she underwent surgery to repair a broken left arm and other damage inflicted on her left elbow and shoulder.

Appellant testified that she has multiple sclerosis("MS") which was in remission at the time of her fall. She stated that, due to the MS, she walks slightly slower than normal, but that her mobility is not substantially impaired. She does not use a cane, walker, or other device to assist her. Appellant testified that she did not know what caused her fall and had entered the store at least twenty times during [*3] the months prior to the incident. She acknowledged that she did not notice that the door closed faster than normal and had never had a problem with it before. Appellant explained that on this date, however, she had approached the door from the right side, instead of her customary left side approach. In

her opinion, it took her longer than normal to enter the doorway, since she had to step around the door as she opened it.

Appellant said that her fiance went back to the store the following day, but could not find anything wrong with the door. Nonetheless, he told her that he thought that the right door closed too quickly.

A consultant engineer testified in deposition that on June 15, 1998, he inspected the doors at the convenience store in question. The consultant stated that he did ten closing tests on each door. His findings were that the door on the right took an average of 1.602 seconds to close and the left door took 2.63 seconds. He opined that the doors did not conform to the Americans with Disabilities Act ("ADA") minimum closing time standard of three seconds. In his opinion, the "right door in particular closes very fast and presents a hazard to people that have a walking [*4] disability."

An employee from the store also testified in deposition that she had not seen appellant fall. She confirmed that she had pulled appellant's "flip-flop" type bedroom slipper from under the door. The employee stated that appellant, who was a regular customer, had been in the store approximately five minutes earlier that same day, entering through the same door. The employee also stated that the store is open from 7:00 a.m. to 12:00 midnight. She stated that between six and eight hundred people come into the store each day during just her eight hour shift, with probably more on weekends. The employee did not recall any prior complaints about the door or any other previous problems.

Representatives from DAE also testified that the closer was properly installed, but was not specifically checked or calibrated for closing time.

Appellees moved for summary judgment which was granted by the trial court. The court ruled that it was unconvicted that appellant was a member of the class protected under the ADA. The court also determined that a violation of the ADA did not constitute negligence *per se* and that appellant had failed to establish that appellee had any notice of [*5] any defect in the door. The court further stated that appellant had walked through the door numerous times and was aware of the workings of the door. Even if it did close too fast, it would have been an open and obvious danger, according to the court. It also noted that allegedly appellant did not know what caused

her fall. Finally, the court ruled that DAE also did not have notice of the dangerous condition of the door, and thus, appellant had failed to establish any duty breached by DAE.

Appellant now appeals that decision, setting forth the following three assignments of error:

"A. THE LOWER COURT ERRED IN DETERMINING AS A MATTER OF LAW THAT APPELLANT HAD NOT SHOWN A CLAIM OF COMMON LAW NEGLIGENCE AGAINST APPELLEE IN & OUT MART AS OWNER AND OCCUPIER OF THE PREMISES WHERE APPELLANT WAS INJURED.

"B. THE LOWER COURT ERRED IN DETERMINING AS A MATTER OF LAW THAT APPELLANT HAD NOT SHOWN A CLAIM OF COMMON LAW NEGLIGENCE AGAINST APPELLEE DEA [S/C] AS THE INSTALLER OF THE CLOSER ON THE DOOR WHICH INJURED APPELLANT.

"C. THE LOWER COURT ERRED IN DETERMINING THAT APPELLANT HAD NOT SHOWN A CLAIM OF NEGLIGENCE PER SE AGAINST APPELLEES FOR VIOLATION OF THE AMERICAN WITH DISABILITIES [*6] ACT."

I.

We will address appellant's first and third assignments of error together. Appellant argues that the trial court erred in granting summary judgment when it determined that appellant failed to establish either a common law or a *per se* negligence claim pursuant to a violation of the ADA.

The standard of review of a grant or denial of summary judgment is the same for both a trial court and an appellate court. *Lorain Natl. Bank v. Saratoga Apts.* (1989), 61 Ohio App. 3d 127, 129, 572 N.E.2d 198. Summary judgment will be granted if "the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of facts, if any, *** show that there is no genuine issue as to any material fact" and, construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as

a matter of law." *Civ.R. 56(C)*.

The existence of a duty in a negligence action is generally a question of law for the court to determine. *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 318, 544 N.E.2d 265. However a breach [*7] of that duty, i.e., whether a defendant properly discharged his duty of care, is normally a question for the trier of fact. *Commerce & Industry Ins. Co. v. Toledo* (1989), 45 Ohio St. 3d 96, 98, 543 N.E.2d 1188.

In this case, appellant claims that a violation of the ADA constitutes evidence of either negligence *per se* or negligence. The ADA, 42 U.S.C. Sections 12101, et seq., was enacted to eliminate discrimination against individuals with disabilities. 42 U.S.C. Section 12101(b). A person is considered to be disabled under the ADA if that individual: 1) has a physical or mental impairment that substantially limits one or more major life activities; 2) has a record of such impairment; or 3) is regarded as having such an impairment. 42 U.S.C. Section 12102(2)(A)-(C).

The trial court was "unconvinced" that appellant is "disabled" as defined by the ADA. That conclusion is erroneous, as the court focused only on the first ADA criteria, saying that appellant had not proven that she was "substantially limited" in her activities. Appellant, however, has a "record of impairment" since she [*8] receives government disability compensation because of her multiple sclerosis and is, thus, "disabled" as defined by the ADA. Therefore, in our view, appellee is a member of the class of persons protected by the ADA.

Title III of the ADA requires that public business establishments remove architectural barriers or offer alternative methods of providing disabled persons with access to goods, services, and facilities. See 42 U.S.C. Sections 12181(a) and (b)(2). The requirements of the ADA for building accessibility have been incorporated into the Ohio Basic Building Code ("OBBC") and the Ohio Administrative Code ("OAC"). See *Ohio Adm. Code 4112-5-06*.

A violation of the ADA is not negligence *per se* because it requires a determination of whether certain acts are reasonable under the specific circumstances of each case. See *Berge v. Columbus Community Cable Access* (1999), 136 Ohio App. 3d 281, 313-314, 736 N.E.2d 517, citing to *Hurst v. Ohio Dept. of Rehab. & Corr.* (1995), 72 Ohio St. 3d 325, 327, 650 N.E.2d 104

and *Westervelt v. Rooker* (1983), 4 Ohio St. 3d 146, 147-148, 447 N.E.2d 1307. Likewise, violations of [*9] the ADA guidelines, as incorporated by the OAC and OBBC, are not evidence of negligence *per se* since they are administrative rules. See *Chambers v. St. Mary's School* (1998), 82 Ohio St. 3d 563, 697 N.E.2d 198. However, such violations may be considered as evidence of negligence. *Id.* at 568.

We now turn to the issue of whether or not appellant met her burden on summary judgment as to the negligence claim against appellee In & Out Mart. The owner of a business premises owes an invitee a duty of ordinary care to maintain the premises in a reasonably safe condition and to warn the invitee of any latent dangers on the premises of which the owner had knowledge or should have had knowledge. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St. 3d 203, 480 N.E.2d 474; *Anderson v. Ruoff* (1995), 100 Ohio App. 3d 601, 605, 654 N.E.2d 449. One who invites the public onto its premises to transact business is not an insurer of their safety. *Paschal*, 480 N.E.2d at 475. The occurrence of an injury to a business invitee does not give rise to a presumption of negligence by the owner or occupier of the premises. *Parras v. Std. Oil Co.* (1953), 160 Ohio St. 315, 116 N.E.2d 300, [*10] paragraph one of the syllabus.

Rather, liability is predicated on an owner or occupier's superior knowledge of the specific condition that caused injuries to a business invitee. *Debie v. Cochran Pharmacy-Berwick, Inc.* (1967), 11 Ohio St. 2d 38, 40, 227 N.E.2d 603; *McGuire v. Sears, Roebuck & Co.* (1996), 118 Ohio App. 3d 494, 497, 693 N.E.2d 807. The existence of a duty of reasonable care depends upon the foreseeability of the injury. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 472 N.E.2d 707. An injury is foreseeable when a reasonably prudent person would have anticipated that an injury was likely to result from the performance or nonperformance of an act. *Mussivand v. David* (1989), 45 Ohio St. 3d 314, 320-21, 544 N.E.2d 265. The foreseeability of harm usually depends on the defendant's knowledge of the hazard. *Menifee, supra*, at 77; see, also, *Wright v. Goshen Twp.*, 1997 Ohio App. LEXIS 2452 (June 9, 1997), Clermont App. No. CA96-11-100, unreported.

Under *Menifee and Wright*, to impose a duty upon the market, appellant must show that In & Out Mart had knowledge or should have known that the [*11] door

was not calibrated correctly and that injury was likely to result from this defect. The facts of this case, even when construed in a light most favorable to appellant, do not support such a finding. No other accidents or complaints occurred involving the door and appellant herself used the door numerous times without incident. In & Out Mart had the door repaired by a third party and had no notice that the repair may not have been within ADA standards or that injury might be foreseeable. Under these circumstances, the trial court properly found that because In & Out Mart had no notice of any hazardous condition, no duty arose. Therefore, the trial court properly granted summary judgment as to appellant's negligence claim since material questions of fact do not remain in dispute, and appellee is entitled to judgment as a matter of law.

Accordingly, appellant's first (A) and third (C) assignments of error are not well-taken.

II.

Appellant, in her second (B) assignment of error, asserts that the trial court erred in granting summary judgment in favor of appellee, DAE, Inc.

An independent contractor who negligently creates a dangerous condition on real property may not be relieved [*12] of liability for injuries to third parties sustained as a result of those dangerous conditions. See *Simmers v. Bentley Constr. Co.* (1992), 64 Ohio St. 3d 642, 597 N.E.2d 504. The contractor is liable to all those who may foreseeably be injured by the structure if he fails to disclose dangerous conditions known to him or when the work is negligently done. *Jackson v. Franklin* (1988), 51 Ohio App. 3d 51, 53, 554 N.E.2d 932.

In this case, appellee DAE, Inc., holding itself out to be a repairer/installer of door closers, owed appellant the duty of ordinary care not to negligently perform the installation of the closer or leave the premises in a dangerous condition. Since evidence was presented that DAE, Inc. installed but did not calibrate the door closer, there is a question of fact as to whether DAE's acts constituted negligence in the fulfillment of its duty to appellant. Therefore, since material questions of fact remain in dispute, appellee DAE, Inc. was not entitled to summary judgment.

Accordingly, appellant's second (B) assignment of error is well-taken.

The judgment of the Lucas County Court of Common Pleas is affirmed in part and reversed in [*13] part, and remanded for proceedings consistent with this decision. Court costs of this appeal are assessed to appellees.

JUDGMENT AFFIRMED IN PART

AND REVERSED IN PART.

A certified copy of this entry shall constitute the mandate pursuant to *App.R.* 27. See, also, 6th *Dist.Loc.App.R.* 4, amended 1/1/98.

James R. Sherck, J.

JUDGE

Richard W. Knepper, J.

JUDGE

CONCUR.

George M. Glasser, J.,

dissents.

Judge George M. Glasser, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

DISSENT BY: George M. Glasser

DISSENT

GLASSER, J., dissenting. I must respectfully dissent from that part of the majority opinion that finds appellant's second assignment of error well-taken. I do not believe that the evidence before the trial court supports a finding that there is a question of fact as to whether DAE's acts constituted negligence in the fulfillment of its duty to appellant.

The evidence reveals that on the date that the door closer was installed, which was substantially prior to appellant's injury, DAE exercised ordinary care in performing the

installation and did not leave the premises in a dangerous condition.

[*14] This conclusion is supported by the testing of

the door closer after it was installed and the length of time that passed without any complaint by users of the door prior to appellant's injury. As to the testing of the door closer, although the installer did not calibrate the opening and closing of the door in the scientific manner that might be utilized by one with an engineering background which is suggested by the opinion, his testing of the door subsequent to the installation was reasonable

and appropriate pursuant to his experience in the installation of door closers.

Therefore, I would find that the trial court properly granted the motion for summary judgment in favor of DAE, Inc., and affirm the judgment of the Lucas County Court of Common Pleas.

LEXSEE 1992 OHIO APP. LEXIS 3847

**Pamela Owens, Plaintiff-Appellant, v. Gerald A. Taylor, et al,
Defendants-Appellees.**

No. 92AP-211 (REGULAR CALENDAR)

**COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT, FRANKLIN
COUNTY**

1992 Ohio App. LEXIS 3847

July 21, 1992, Rendered

PRIOR HISTORY: [*1] APPEAL from the Franklin County Court of Common Pleas.

DISPOSITION: Judgment reversed and cause remanded.

COUNSEL: Ross & Andrioff Co., L.P.A., and Mark J. Ross, for appellant.

Lane, Alton & Horst, Rick E. Marsh, and Jeffrey S. Ream, for appellees.

JUDGES: BRYANT, WHITESIDE, PETREE

OPINION BY: BRYANT

OPINION

OPINION

BRYANT, J.

Plaintiff-appellant, Pamela Owens, appeals from a judgment of the Franklin County Court of Common Pleas granting the directed verdict motion of defendant-appellee, Gerald A. Taylor, at the close of plaintiff's evidence in a trial to a jury.

On December 3, 1990, plaintiff filed an action against defendant, asserting that defendant negligently maintained the apartment which she rented from him; that the front porch and/or ingress-egress area had "neither adequate room to clear the front door which opened out when entering the premises nor any side rails to prevent a

fall therefrom"; and that as a direct and proximate result of defendant's negligence plaintiff sustained personal injuries.

Defendant responded to the complaint with an answer which asserted, among others, the defense of assumption of the risk.

The case was tried before a jury beginning on January 22, [*2] 1992. At the close of plaintiff's case, defendant moved for a directed verdict. The trial court granted defendant's motion, finding no evidence that defendant's failure to place a hand rail on the premises in compliance with the pertinent Columbus city ordinance proximately caused plaintiff's injuries, especially in light of plaintiff's testimony that she does not know what caused her to lose her balance, which in turn led to her fall from the porch and her injuries.

Plaintiff appeals therefrom, assigning two errors:

"I. THE TRIAL COURT ERRED BY DIRECTING A VERDICT FOR THE DEFENDANT ON THE ISSUE OF LIABILITY AT THE CLOSE OF PLAINTIFF'S EVIDENCE.

"II. THE TRIAL COURT ERRED BY NOT SUSTAINING PLAINTIFF'S MOTION FOR A DIRECTED VERDICT, UPON APPELLEE'S OPENING STATEMENT, AS CONCERNING APPELLEE'S AFFIRMATIVE DEFENSE OF IMPLIED ASSUMPTION OF RISK."

In her first assignment of error, plaintiff asserts that the trial court erred in granting a directed verdict, as,

under the standard set forth in *Civ. R. 50*, reasonable minds could conclude that defendant's negligence proximately caused plaintiff's injuries.

Civ. R. 50(A)(4) sets forth the circumstances when a directed verdict [*3] is appropriate, and states:

"When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue."

In her testimony, plaintiff described the steps leading to the stoop and front door of her apartment. The front door of the apartment opened from the right, and was hinged on the left. Due to the width of the stoop, she could not stand on the stoop and swing the door open at the same time; rather, she had to come up the step, get onto the stoop, grab the door knob and then step back onto the first step to swing the door open.

On December 2, 1988, plaintiff and her friend, Karla Fleming, had returned from the laundromat. Plaintiff proceeded up the steps, carrying a partially full laundry bag in her right hand. She testified at trial that she transferred the bag to her left hand, stepped onto the steps in [*4] order to open the door, and reached for the door knob with her right hand. In doing so she lost her balance. She fell off the side of the steps, injuring her arm in an attempt to break her fall.

The steps are thirty inches high. Plaintiff testified that had the steps been moved over as they have been since the accident occurred, she would not have fallen. She further testified that she would not have fallen had a handrail been placed at the steps, as she would have caught herself on the rail. She conceded during cross-examination, however, that had a handrail been placed on the left side of the steps, it would not have broken her fall, as the open door would have prevented her from reaching the handrail. Nor does plaintiff know why she lost her balance.

As the trial court properly noted, in order to prevail herein, plaintiff must prove that defendant had a duty to plaintiff, breached that duty, and that as a proximate

result thereof plaintiff sustained injuries. Since the evidence herein supports all these elements of plaintiff's cause of action under the directed verdict standard set forth under *Civ. R. 50(A)(4)*, plaintiff's first assignment of error is well-taken.

Specifically, [*5] as plaintiff asserts, pursuant to Columbus City Code ("C.C.") 4525.03:

"Every * * * exterior stairway, every porch, and every appurtenance thereto shall be constructed so as to be safe to use and capable of supporting a normal load. * * *

"* * *

"Exterior stairways shall meet the following requirements:

"(a) A handrail shall be placed on at least one side of any stairway which has a total rise of twenty-four (24) inches or more:

"* * *

"(d) Balusters no more than six (6) inches apart or other approved means of protection against falls shall be provided wherever handrails are required."

The evidence herein was clear that no handrail was provided at the side of the stairs of the apartment plaintiff rented from defendant. To the extent no handrail at all was provided, defendant is in violation of C.C. 4525.03(a) with respect to exterior stairways. Moreover, under the standard set forth in *Eisenhuth v. Moneyhon (1954), 161 Ohio St. 367*, defendant's failure to provide the requisite handrail is negligence *per se*.

Defendant asserts, however, and the trial court held, that despite defendants' negligence *per se*, the evidence failed to show [*6] that defendants' negligence proximately caused plaintiff's injuries. Specifically, although plaintiff testified that had a handrail been present she would not have fallen, she later conceded that had the handrail been on the left side of the steps, it would not have prevented plaintiff's fall. Further, noting that the ordinance at issue does not specify where the handrail is to be placed, defendant argues that plaintiff's case is based purely on speculation concerning the side of the steps defendant may have placed the handrail; that had defendant placed the handrail on the left side, and thus been in compliance with C.C. 4525.03, plaintiff

would still have fallen.

While section (a) of C.C. 4525.03 dealing with exterior stairways does not specify on which side of the stairway a handrail shall be placed, section (d) thereof at least suggests that the handrail shall be on the open side, as that section requires balusters to be no more than six inches apart so as to protect against falls. Were the handrail placed on a closed side, as would be the case had defendant placed a handrail in this case on the left side, balusters would not be necessary to protect against falls.

Moreover, [*7] even if C.C. 4525.03(a) with respect to exterior stairways does not require a handrail to be placed on the right side of the steps herein so as to prevent falls, the initial sentence of C.C. 4525.03 requires that every exterior stairway be constructed so as to be safe to use. While we do not suggest that violation of that requirement would render defendant negligent *per se*, his failure to provide a handrail where it would be effective may nonetheless constitute negligence. In this case, given plaintiff's testimony, we cannot conclude as a matter of law that defendant was not negligent in failing to provide a handrail on the right, or open, side of the steps leading to plaintiff's door. Further, given plaintiff's testimony that with a handrail she would not have fallen, plaintiff's testimony provides sufficient evidence of proximate cause to require the issue be submitted to the jury for determination.

Nor does plaintiff's inability to articulate the reason that she lost her balance support a directed verdict. Whatever the reason for plaintiff's losing her balance, she testified that with a handrail she would not have fallen. Inasmuch as a handrail is designed to protect [*8] those who for whatever reason find themselves falling, the lack of a handrail, under plaintiff's testimony, may be found a proximate cause of plaintiff's fall.

The trial court also found that plaintiff's failure to notify defendant of the lack of a handrail and the circumstances involved in opening the front door to her apartment supported a directed verdict. However, such notice is not necessary herein, as defendant created the allegedly unsafe condition; and defendant having done so, plaintiff need not notify him of that condition, unless the rental agreement between the parties so required.¹

¹ Nothing in the record suggests such a requirement.

Finally, while the evidence may suggest that plaintiff also was negligent herein, the degree of relative negligence between plaintiff and defendant is generally a question for the jury. The facts herein do not support a directed verdict on the basis that plaintiff's negligence so clearly outweighs defendant's as to permit that issue to be removed from the [*9] jury.

Given the foregoing, plaintiff's first assignment of error is sustained.

In her second assignment of error, plaintiff asserts that the trial court erred in not granting plaintiff's motion for directed verdict at the close of defendant's opening statement with respect to defendant's assumption of the risk defense for failure of defendant to set forth sufficient facts to support that defense.

While defendant's allusion of the assumption of the risk in his opening statement may have been somewhat obscure, defendant stated that plaintiff had traversed the allegedly unsafe condition on the steps and stoop leading to her front door hundreds of times in the almost eight months between the time she moved into the apartment and the day of her fall. further, even if such statements in defendant's opening statement be insufficient to support an assumption of the risk defense, the trial court properly should allow defendant an opportunity " * * * to explain and qualify his statement, and make such additions thereto as, in his opinion, the proofs at his command would establish * * *" before granting plaintiff's directed verdict motion. *Cornell v. Morrison (1912), 87 Ohio St. 215, [*10] paragraph two of syllabus; Archer v. City of Port Clinton (1966), 6 Ohio St.2d 74.* Finally, given our disposition of plaintiff's first assignment of error, any error in the trial court's refusing to grant plaintiff's directed verdict motion is nonprejudicial: defendant will have the opportunity on retrial to restate his opening statement. Accordingly, plaintiff's second assignment of error is overruled.

Having overruled plaintiff's second assignment of error, but having sustained her first assignment of error, we reverse the judgment of the trial court and remand for further proceedings in accordance herewith.

Judgment reversed and cause remanded.

WHITESIDE and PETREE, JJ., concur.

LEXSTAT ORC 4101.11

PAGE'S OHIO REVISED CODE ANNOTATED
Copyright (c) 2007 by Matthew Bender & Company, Inc
a member of the LexisNexis Group
All rights reserved.

*** CURRENT THROUGH LEGISLATION PASSED BY THE 127TH OHIO GENERAL ASSEMBLY AND FILED
WITH THE SECRETARY OF STATE THROUGH SEPTEMBER 18, 2007 ***

*** ANNOTATIONS CURRENT THROUGH JULY 1, 2007 ***

*** OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH JULY 1, 2007 ***

TITLE 41. LABOR AND INDUSTRY
CHAPTER 4101. SAFETY IN THE WORKPLACE

Go to the Ohio Code Archive Directory

ORC Ann. 4101.11 (2007)

§ 4101.11. Duty of employer to protect employees and frequenters

Every employer shall furnish employment which is safe for the employees engaged therein, shall furnish a place of employment which shall be safe for the employees therein and for frequenters thereof, shall furnish and use safety devices and safeguards, shall adopt and use methods and processes, follow and obey orders, and prescribe hours of labor reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters.

HISTORY:

GC § 871-15; 103 v 95, § 15; Bureau of Code Revision. Eff 10-1-53.

NOTES:

Related Statutes & Rules

Cross-References to Related Statutes

Every day a separate violation, *RC § 4101.16.*

Prohibitions, *RC § 4101.15.*

Substantial compliance, *RC § 4101.14.*

2002 OHIO BUILDING CODE BUILDING

Based on:

The ICC International Building Code /2000



BUILDING OFFICIALS & CODE ADMINISTRATORS INTERNATIONAL, INC.

4051 West Flossmoor Road
Telephone: 708-799-2300
E-mail codes@bocai.org

Country Club Hills, IL 60478-5795
Facsimile: 708-799-4981
<http://www.bocai.org>

BOCA MIDEAST REGIONAL OFFICE

1245 Sunbury Road, Suite 100
Telephone: 614-890-1064

Westerville, OH 43081-9444
Facsimile: 614-890-9712

CHAPTER 1

ADMINISTRATION

101	GENERAL
102	APPLICABILITY
103	CERTIFIED BUILDING DEPARTMENTS AND PERSONNEL
104	DUTIES AND POWERS
105	APPROVALS
106	CONSTRUCTION DOCUMENTS
107	TEMPORARY STRUCTURES AND USES
108	CONSTRUCTION DOCUMENTS EXAMINATION AND INSPECTION FEES
109	INSPECTIONS AND TESTING
110	CERTIFICATE OF OCCUPANCY
111	SERVICE UTILITIES
112	BOARD OF APPEALS
113	VIOLATIONS
114	STOP WORK ORDER
115	UNSAFE BUILDINGS
116	CHANGES TO THE CODE
117	INDUSTRIALIZED UNITS
118	PRODUCTS AND MATERIALS
	SECTION 119 APPROVED AGENCIES

SECTION 101 GENERAL

101.1 Title. Chapters 4101:1-1 to 4101:1-35 of the Ohio Administrative Code shall be designated as the "Ohio Building Code" for which the designation "OBC" may be substituted. The "International Building Code 2000, first printing, Chapters 1 to 35," as published by the International Code Council, Inc. and the March 2001 "Supplement to the International Codes" with errata and editorial changes provided to the publishers of the Ohio Building Code as of the adoption date of this rule are incorporated fully as if set out at length herein with substitutions as set forth below. References in these chapters to "this code" or to the "building code" in other sections of the Ohio Administrative Code shall mean the "Ohio Building Code."

101.2 Scope. The provisions of the "Ohio Building Code" shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures. No building or its equipment or accessories, to which the rules of the Board shall be erected, constructed, or installed, except in conformity with the rules of the Board.

Exceptions:

1. Detached one-, and two-, and three-family dwellings and structures incidental to those dwellings which are not constructed as industrialized units shall comply with local residential codes, if any, adopted by the authority having jurisdiction. This exception does not include the energy provisions required in "Chapter 13, Energy Efficiency" of the OBC (see Sections 3781.06, 3781.181, and 3781.182 of the Ohio Revised Code);
2. Buildings owned by and used for a function of the United States government;
3. Buildings or structures which are incident to the use for agricultural purposes of the land on which said buildings or structures are located, provided such buildings or structures are not used in the business of retail trade; for the purposes of this section, a building or structure is not considered used in the business of retail trade if fifty percent or more of the gross income received from sales of products in the building or structure by the owner or operator is from sales of products produced or raised in a normal crop year on farms owned or operated by the seller (see Sections 3781.06 and 3781.061 of the Ohio Revised Code);

4. Agricultural labor camps;
5. Type A or Type B family day-care homes;
6. Buildings or structures which are designed, constructed, and maintained in accordance with federal standards and regulations and are used primarily for federal and state military purposes where the U.S. secretary of defense, pursuant to 10 U.S.C. Sections 18233(a)(1) and 18237, has acquired by purchase, lease, or transfer, and constructs, expands, rehabilitates, or corrects and equips, such buildings or structures as he determines to be necessary to carry out the purposes of Chapter 1803 of the U.S.C.
7. Manufactured homes constructed under "24 CFR Part 3280," "Manufactured Home Construction And Safety Standards."

101.2.1 Appendices. The content of the appendices to the Ohio Administrative Code is not adopted material but is approved by the Board of Building Standards (BBS) and provided as a reference for code users.

101.3 Intent. The purpose of this code is to establish uniform minimum requirements for the erection, construction, repair, alteration, and maintenance of buildings, including construction of industrialized units. Such requirements shall relate to the conservation of energy, safety, and sanitation of buildings for their intended use and occupancy with consideration for the following:

1. Performance. Establish such requirements, in terms of performance objectives for the use intended.
2. Extent of use. Permit to the fullest extent feasible, the use of materials and technical methods, devices, and improvements which tend to reduce the cost of construction without affecting minimum requirements for the health, safety, and security of the occupants of buildings without preferential treatment of types or classes of materials or products or methods of construction.
3. Standardization. To encourage, so far as may be practicable, the standardization of construction practices, methods, equipment, material and techniques, including methods employed to produce industrialized units.

The rules of the Board and proceedings shall be liberally construed in order to promote its purpose. When the building official finds that the proposed design is a reasonable interpretation of the provisions of this code, it shall be approved. Materials, equipment and devices approved by the building official pursuant to Section 118 shall be constructed and installed in accordance with such approval.

101.4 Referenced codes. The other codes listed in Sections 101.4.1 to 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

101.4.1 Mechanical. Chapters 4101:2-1 to 4101:2-15 of the Ohio Administrative Code, designated as the "Ohio Mechanical Code," shall apply to the installation, alterations, repairs, and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances including ventilating, heating, cooling, refrigeration systems, incinerators, systems.

101.4.2 Plumbing. Chapters 4101:3-1 to 4101:3-13 of the Ohio Administrative Code, designated as the "Ohio Plumbing Code," shall apply to the installation, alterations, repairs and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where

inches (267 mm). The rise to the next alternating tread surface should not be more than 8 inches (203 mm).

1003.3.3.11 Handrails. Stairways shall have handrails on each side. Handrails shall be adequate in strength and attachment in accordance with Section 1607.7.

Exceptions:

1. Aisle stairs complying with Section 1008 provided with a center handrail need not have additional handrails.
2. Stairways within dwelling units, spiral stairways and aisle stairs serving seating only on one side are permitted to have a handrail on one side only.
3. Decks, patios, and walkways that have a single change in elevation where the landing depth on each side of the change of elevation is greater than what is required for a landing do not require handrails.
4. In Group R-3 occupancies, a change in elevation consisting of a single riser at an entrance or egress door does not require handrails.
5. Changes in room elevations of only one riser within dwelling units in Group R-2 and R-3 occupancies do not require handrails.

1003.3.3.11.1 Height. Handrail height, measured above stair tread nosings, or finish surface of ramp slope, shall be uniform, not less than 34 inches (864 mm) and not more than 38 inches (965 mm).

1003.3.3.11.2 Intermediate handrails. Intermediate handrails are required so that all portions of the stairway width required for egress capacity are within 30 inches (762 mm) of a handrail. On monumental stairs, handrails shall be located along the most direct path of egress travel.

1003.3.3.11.3 Handrail graspability. Handrails with a circular cross section shall have an outside diameter of at least 1.25 inches (32 mm) and not greater than 2 inches (51 mm) or shall provide equivalent graspability. If the handrail is not circular, it shall have a perimeter dimension of at least 4 inches (102 mm) and not greater than 6.25 inches (160 mm) with a maximum cross-section dimension of 2.25 inches (57 mm). Edges shall have a minimum radius of 0.01 inch (0.25 mm).

1003.3.3.11.4 Continuity. Handrail-gripping surfaces shall be continuous, without interruption by newel posts or other obstructions.

Exceptions:

1. Handrails within dwelling units are permitted to be interrupted by a newel post at a stair landing.
2. Within a dwelling unit, the use of a volute, turnout or starting easing is allowed on the lowest tread.
3. Handrail brackets or balusters attached to the bottom surface of the handrail that do not project horizontally beyond the sides of the handrail within 1.5 inches (38 mm) of the bottom of the handrail shall not be considered to be obstructions.

1003.3.3.11.5 Handrail extensions. Handrails shall return to a wall, guard or the walking surface or shall be continuous to the handrail of an adjacent stair flight. Where handrails are not continuous between flights, the handrails shall extend horizontally at least 12

inches (305 mm) beyond the top riser and continue to slope for the depth of one tread beyond the bottom riser.

Exceptions:

1. Handrails within a dwelling unit that is not required to be accessible need extend only from the top riser to the bottom riser.
2. Aisle handrails in Group A occupancies in accordance with Section 1008.12.

1003.3.3.11.6 Clearance. Clear space between a handrail and a wall or other surface shall be a minimum of 1.5 inches (38 mm). A handrail and a wall or other surface adjacent to the handrail shall be free of any sharp or abrasive elements.

1003.3.3.11.7 Stairway projections. Projections into the required width at each handrail shall not exceed 4.5 inches (114 mm) at or below the handrail height. Projections into the required width shall not be limited above the minimum headroom height required in Section 1003.3.3.2.

1003.3.3.12 Stairway to roof. In buildings four or more stories in height above grade, one stairway shall extend to the roof surface, unless the roof has a slope steeper than four units vertical in 12 units horizontal (33-percent slope). In buildings without an occupied roof, access to the roof from the top story shall be permitted to be by an alternating tread device.

1003.3.3.12.1 Roof access. Where a stairway is provided to a roof, access to the roof shall be provided through a penthouse complying with Section 1509.2.

Exception: In buildings without an occupied roof, access to the roof shall be permitted to be a roof hatch or trap door not less than 16 square feet (1.5 m²) in area and having a minimum dimension of 2 feet (610 mm).

1003.3.4 Ramps. Ramps used as a component of a means of egress shall conform to the provisions of Sections 1003.3.4.1 through 1003.3.4.9.

Exceptions:

1. Ramped aisles within assembly rooms or spaces shall conform with the provisions in Section 1008.10.
2. Curb ramps shall comply with ADAAG.

1003.3.4.1 Slope. Ramps within an accessible route or used as part of a means of egress shall have a running slope not steeper than one unit vertical in 12 units horizontal (8-percent slope). The slope of other ramps shall not be steeper than one unit vertical in eight units horizontal (12.5-percent slope).

Exception: Aisle ramp slope in occupancies of Group A shall comply with Section 1008.10.

1003.3.4.2 Cross slope. The slope measured perpendicular to the direction of travel of a ramp shall not be steeper than one unit vertical in 50 units horizontal (2-percent slope).

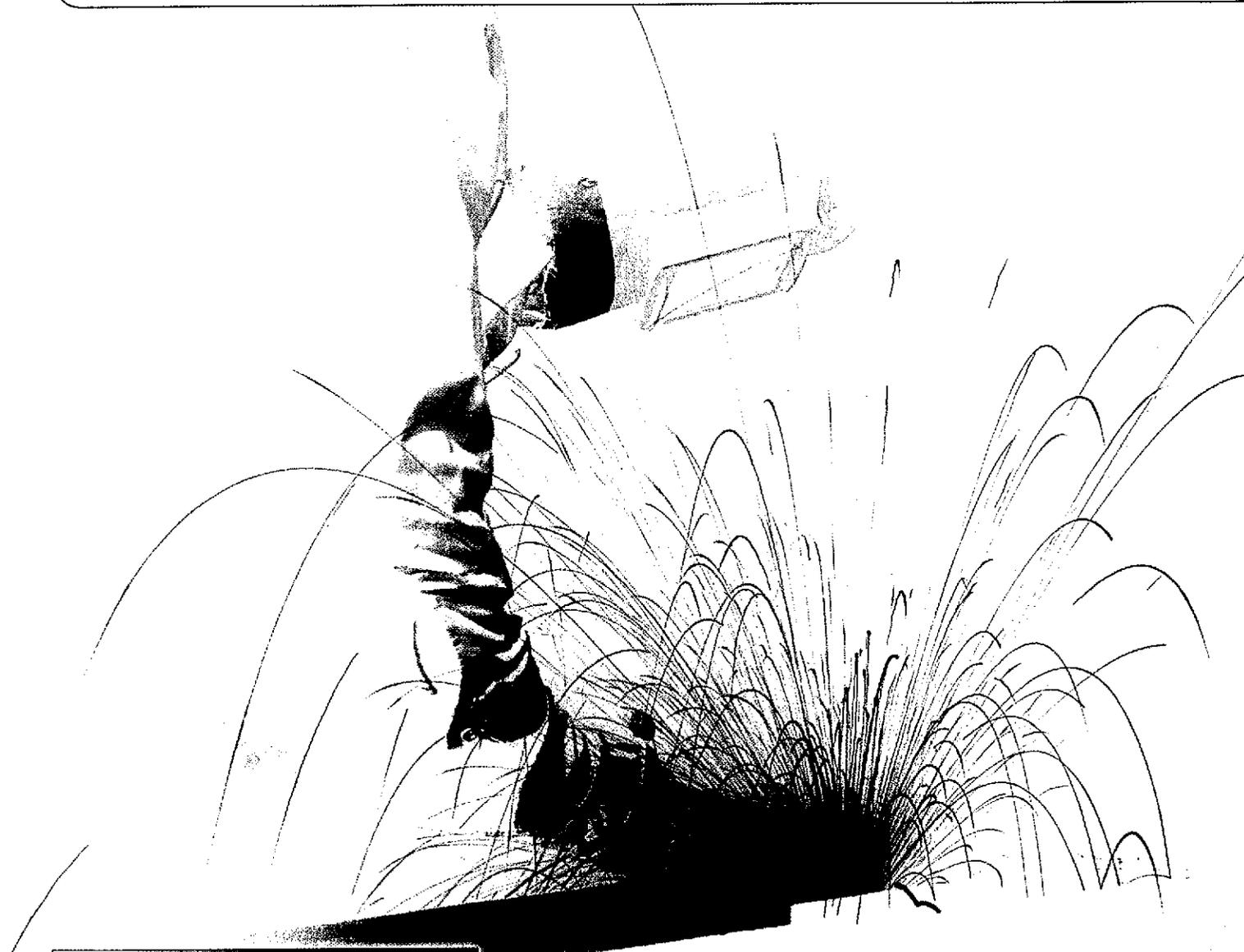
1003.3.4.3 Vertical rise. The r 30 inches (762 mm) maximum

1003.3.4.4 Minimum dimensions of means of egress ramps shall comply with Sections 1003.3.4.4.1 through 1003.3.4.4.3.

1003.3.4.4.1 Width. The minimum width of a means of egress ramp shall not be less than that required for corridors by Section 1004.3.2.2. The clear width of a ramp and the clear width between handrails, if provided, shall be 36 inches (914 mm) minimum.

Now Including OSHA
Interpretation Letters

OSHA Standards for General Industry



(29 CFR PART 1910)
With Amendments as of January 1, 2003

Approved by the Occupational
Safety and Health Administration
under OSHA Departmental Authority

19

CCH Safety Professional Series
safety.cch.com



§1910.22 General requirements.

This section applies to all permanent places of employment, except where domestic, mining, or agricultural work only is performed. Measures for the control of toxic materials are considered to be outside the scope of this section.

1910.22(a) Housekeeping. (1) All places of employment, passageways, storerooms, and service rooms shall be kept clean and orderly and in a sanitary condition.

1910.22(a)(2) The floor of every workroom shall be maintained in a clean and, so far as possible, a dry condition. Where wet processes are used, drainage shall be maintained, and false floors, platforms, mats, or other dry standing places should be provided where practicable.

1910.22(a)(3) To facilitate cleaning, every floor, working place, and passageway shall be kept free from protruding nails, splinters, holes, or loose boards.

1910.22(b) Aisles and passageways. (1) Where mechanical handling equipment is used, sufficient safe clearances shall be allowed for aisles, at loading docks, through doorways and wherever turns or passage must be made. Aisles and passageways shall be kept clear and in good repairs, with no obstruction across or in aisles that could create a hazard.

1910.22(b)(2) Permanent aisles and passageways shall be appropriately marked.

1910.22(c) Covers and guardrails. Covers and/or guardrails shall be provided to protect personnel from the hazards of open pits, tanks, vats, ditches, etc.

1910.22(d) Floor loading protection. (1) In every building or other structure, or part thereof, used for mercantile, business, industrial, or storage purposes, the loads approved by the building official shall be marked on plates of approved design which shall be supplied and securely affixed by the owner of the building, or his duly authorized agent, in a conspicuous place in each space to which they relate. Such plates shall not be removed or defaced but, if lost, removed, or defaced, shall be replaced by the owner or his agent.

1910.22(d)(2) It shall be unlawful to place, or cause, or permit to be placed, on any floor or roof of a building or other structure a load greater than that for which such floor or roof is approved by the building official.

§1910.23 Guarding floor and wall openings and holes.

1910.23(a) Protection for floor openings. (1) Every stairway floor opening shall be guarded by a standard railing constructed in accordance with paragraph (e) of this section. The railing shall be provided on all exposed sides (except at entrance to stairway). For infrequently used stairways where traffic across the opening prevents the use of fixed standard railing (as when located in aisle spaces, etc.), the guard shall consist of a hinged floor opening cover of standard strength and construction and removable standard railings on all exposed sides (except at entrance to stairway).

1910.23(a)(2) Every ladderway floor opening or platform shall be guarded by a standard railing with standard toeboard on all exposed sides (except at entrance to opening), with the passage through the railing either provided with a swinging gate or so offset that a person cannot walk directly into the opening.

1910.23(a)(3) Every hatchway and chute floor opening shall be guarded by one of the following:

1910.23(a)(3)(i) Hinged floor opening cover of standard strength and construction equipped with standard railings or permanently attached thereto so as to leave only one exposed side. When the opening is not in use, the cover shall be closed or the exposed side shall be guarded at both top and intermediate positions by removable standard railings.

1910.23(a)(3)(ii) A removable railing with toeboard on not more than two sides of the opening and fixed standard railings with toeboards on all other exposed sides. The removable railings shall be kept in place when the opening is not in use.

Where operating conditions necessitate the feeding of material into any hatchway or chute opening, protection shall be provided to prevent a person from falling through the opening.

1910.23(a)(4) Every skylight floor opening and hole shall be guarded by a standard skylight screen or a fixed standard railing on all exposed sides.

1910.23(a)(5) Every pit and trapdoor floor opening, infrequently used, shall be guarded by a floor opening cover of standard strength and construction.

While the cover is not in place, the pit or trap opening shall be constantly attended by someone or shall be protected on all exposed sides by removable standard railings.

1910.23(a)(6) Every manhole floor opening shall be guarded by a standard manhole cover which need not be hinged in place. While the cover is not in place, the manhole opening shall be constantly attended by someone or shall be protected by removable standard railings.

1910.23(a)(7) Every temporary floor opening shall have standard railings, or shall be constantly attended by someone.

1910.23(a)(8) Every floor hole into which persons can accidentally walk shall be guarded by either:

1910.23(a)(8)(i) A standard railing with standard toeboard on all exposed sides, or

1910.23(a)(8)(ii) A floor hole cover of standard strength and construction. While the cover is not in place, the floor hole shall be constantly attended by someone or shall be protected by a removable standard railing.

1910.23(a)(9) Every floor hole into which persons cannot accidentally walk (on account of fixed machinery, equipment, or walls) shall be protected by a cover that leaves no openings more than 1 inch wide. The cover shall be securely held in place to prevent tools or materials from falling through.

1910.23(a)(10) Where doors or gates open directly on a stairway, a platform shall be provided, and the swing of the door shall not reduce the effective width to less than 20 inches.

1910.23(b) Protection for wall openings and holes. (1) Every wall opening from which there is a drop of more than 4 feet shall be guarded by one of the following:

1910.23(b)(1)(i) Rail, roller, picket fence, half door, or equivalent barrier. Where there is exposure below to falling materials, a removable toe board or the equivalent shall also be provided. When the opening is not in use for handling materials, the guard shall be kept in position regardless of a door on the opening. In addition, a grab handle shall be provided on each side of the opening with its center approximately 4 feet above floor level and of standard strength and mounting.

1910.23(b)(1)(ii) Extension platform onto which materials can be hoisted for handling, and which shall have side rails or equivalent guards of standard specifications.

1910.23(b)(2) Every chute wall opening from which there is a drop of more than 4 feet shall be guarded by one or more of the barriers specified in paragraph (b)(1) of this section or as required by the conditions.

1910.23(b)(3) Every window wall opening at a stairway landing, floor, platform, or balcony, from which there is a drop of more than 4 feet, and where the bottom of the opening is less than 3 feet above the platform or landing, shall be guarded by standard slats, standard grill work (as specified in paragraph (c)(11) of this section), or standard railing.

Where the window opening is below the landing, or platform, a standard toe board shall be provided.

1910.23(b)(4) Every temporary wall opening shall have adequate guards but these need not be of standard construction.

1910.23(b)(5) Where there is a hazard of materials falling through a wall hole, and the lower edge of the near side of the hole is less than 4 inches above the floor, and the far side of the hole more than 5 feet above the next lower level, the hole shall be protected by a standard toeboard, or an enclosing screen either of solid construction, or as specified in paragraph (c)(11) of this section.

1910.23(c) Protection of open-sided floors, platforms, and runways.

(1) Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a toeboard wherever, beneath the open sides

1910.23(c)(1)(i) Persons can pass,

1910.23(c)(1)(ii) There is moving machine

1910.23(c)(1)(iii) There is equipment with which falling materials could create a hazard.

1910.23(c)(2) Every runway shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides 4 feet or more above floor or ground level. Wherever tools, machine parts,

or materials are likely to be used on the runway, a toeboard shall also be provided on each exposed side.

Runways used exclusively for special purposes (such as oiling, shafting, or filling tank cars) may have the railing on one side omitted where operating conditions necessitate such omission, providing the falling hazard is minimized by using a runway of not less than 18 inches wide. Where persons entering upon runways become thereby exposed to machinery, electrical equipment, or other danger not a falling hazard, additional guarding than is here specified may be essential for protection.

1910.23(c)(3) Regardless of height, open-sided floors, walkways, platforms, or runways above or adjacent to dangerous equipment, pickling or galvanizing tanks, degreasing units, and similar hazards shall be guarded with a standard railing and toe board.

1910.23(d) **Stairway railings and guards.** (1) Every flight of stairs having four or more risers shall be equipped with standard stair railings or standard handrails as specified in paragraphs (d)(1) (i) through (v) of this section, the width of the stair to be measured clear of all obstructions except handrails:

1910.23(d)(1)(i) On stairways less than 44 inches wide having both sides enclosed, at least one handrail, preferably on the right side descending.

1910.23(d)(1)(ii) On stairways less than 44 inches wide having one side open, at least one stair railing on open side.

1910.23(d)(1)(iii) On stairways less than 44 inches wide having both sides open, one stair railing on each side.

1910.23(d)(1)(iv) On stairways more than 44 inches wide but less than 88 inches wide, one handrail on each enclosed side and one stair railing on each open side.

1910.23(d)(1)(v) On stairways 88 or more inches wide, one handrail on each enclosed side, one stair railing on each open side, and one intermediate stair railing located approximately midway of the width.

1910.23(d)(2) Winding stairs shall be equipped with a handrail offset to prevent walking on all portions of the treads having width less than 6 inches.

1910.23(e) **Railing, toe boards, and cover specifications.** (1) A standard railing shall consist of top rail, intermediate rail, and posts, and shall have a vertical height of 42 inches nominal from upper surface of top rail to floor, platform, runway, or ramp level. The top rail shall be smooth-surfaced throughout the length of the railing. The intermediate rail shall be approximately halfway between the top rail and the floor, platform, runway, or ramp. The ends of the rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard.

1910.23(e)(2) A stair railing shall be of construction similar to a standard railing but the vertical height shall be not more than 34 inches nor less than 30 inches from upper surface of top rail to surface of tread in line with face of riser at forward edge of tread.

1910.23(e)(3) [Reserved]

1910.23(e)(3)(i) For wood railings, the posts shall be of at least 2-inch by 4-inch stock spaced not to exceed 8 feet; the top and intermediate rails shall be of at least 2-inch by 4-inch stock. If top rail is made of two right-angle pieces of 1-inch by 4-inch stock, posts may be spaced on 8-foot centers, with 2-inch by 4-inch intermediate rail.

1910.23(e)(3)(ii) For pipe railings, posts and top and intermediate railings shall be at least 1 1/2 inches nominal diameter with posts spaced not more than 8 feet on centers.

1910.23(e)(3)(iii) For structural steel railings, posts and top and intermediate rails shall be of 2-inch by 2-inch by 3/8-inch angles or other metal shapes of equivalent bending strength with posts spaced not more than 8 feet on centers.

1910.23(e)(3)(iv) The anchoring of posts and framing of members for railings of all types shall be of such construction that the completed structure shall be capable of withstanding a load of at least 200 pounds applied in any direction at any point on the top rail.

1910.23(e)(3)(v) Other types, sizes, and arrangements of railing construction are acceptable provided they meet the following conditions:

1910.23(e)(3)(v)(a) A smooth-surfaced top rail at a height above floor, platform, runway, or ramp level of 42 inches nominal;

1910.23(e)(3)(v)(b) A strength to withstand at least the minimum requirement of 200 pounds top rail pressure;

1910.23(e)(3)(v)(c) Protection between top rail and floor, platform, runway, ramp, or stair treads, equivalent at least to that afforded by a standard intermediate rail;

1910.23(e)(4) A standard toeboard shall be 4 inches nominal in vertical height from its top edge to the level of the floor, platform, runway, or ramp. It shall be securely fastened in place and with not more than 1/4-inch clearance above floor level. It may be made of any substantial material either solid or with openings not over 1 inch in greatest dimension.

Where material is piled to such height that a standard toeboard does not provide protection, paneling from floor to intermediate rail, or to top rail shall be provided.

1910.23(e)(5)(i) A handrail shall consist of a lengthwise member mounted directly on a wall or partition by means of brackets attached to the lower side of the handrail so as to offer no obstruction to a smooth surface along the top and both sides of the handrail. The handrail shall be of rounded or other section that will furnish an adequate handhold for anyone grasping it to avoid falling. The ends of the handrail should be turned in to the supporting wall or otherwise arranged so as not to constitute a projection hazard.

1910.23(e)(5)(ii) The height of handrails shall be not more than 34 inches nor less than 30 inches from upper surface of handrail to surface of tread in line with face of riser or to surface of ramp.

1910.23(e)(5)(iii) The size of handrails shall be: When of hardwood, at least 2 inches in diameter; when of metal pipe, at least 1 1/2 inches in diameter. The length of brackets shall be such as will give a clearance between handrail and wall or any projection thereon of at least 3 inches. The spacing of brackets shall not exceed 8 feet.

1910.23(e)(5)(iv) The mounting of handrails shall be such that the completed structure is capable of withstanding a load of at least 200 pounds applied in any direction at any point on the rail.

1910.23(e)(6) All handrails and railings shall be provided with a clearance of not less than 3 inches between the handrail or railing and any other object.

1910.23(e)(7) Floor opening covers may be of any material that meets the following strength requirements:

1910.23(e)(7)(i) Trench or conduit covers and their supports, when located in plant roadways, shall be designed to carry a truck rear-axle load of at least 20,000 pounds.

1910.23(e)(7)(ii) Manhole covers and their supports, when located in plant roadways, shall comply with local standard highway requirements if any; otherwise, they shall be designed to carry a truck rear-axle load of at least 20,000 pounds.

1910.23(e)(7)(iii) The construction of floor opening covers may be of any material that meets the strength requirements. Covers projecting not more than 1 inch above the floor level may be used providing all edges are chamfered to an angle with the horizontal of not over 30 degrees. All hinges, handles, bolts, or other parts shall set flush with the floor or cover surface.

1910.23(e)(8) Skylight screens shall be of such construction and mounting that they are capable of withstanding a load of at least 200 pounds applied perpendicularly at any one area on the screen. They shall also be of such construction and mounting that under ordinary loads or impacts, they will not deflect downward sufficiently to break the glass below them. The construction shall be of grillwork with openings not more than 4 inches long or of slatwork with openings not more than 2 inches wide with length unrestricted.

1910.23(e)(9) Wall opening barriers (rails, rollers, picket fences, and half doors) shall be of such construction and mounting that, when in place at the opening, the barrier is capable of withstanding a load of at least 200 pounds applied in any direction (except upward) at any point on the top rail or corresponding member.

1910.23(e)(10) Wall opening grab handles shall be not less than 12 inches in length and shall be so mounted as to give 3 inches clearance from the side framing of the wall opening. The size, material, and anchoring of the grab handle shall be such that of withstanding a load of at least 200 pounds applied in any direction at any point of the handle.

1910.23(e)(11) Wall opening screens shall be of such construction and mounting that they are capable of withstanding a load of at least 200

pounds applied horizontally at any point on the near side of the screen. They may be of solid construction, of grillwork with openings not more than 8 inches long, or of slatwork with openings not more than 4 inches wide with length unrestricted.

[39 FR 23502, June 27, 1974, as amended at 43 FR 49744, Oct. 24, 1978; 49 FR 5321, Feb. 10, 1984]

§1910.24 Fixed industrial stairs.

1910.24(a) Application of requirements. This section contains specifications for the safe design and construction of fixed general industrial stairs. This classification includes interior and exterior stairs around machinery, tanks, and other equipment, and stairs leading to or from floors, platforms, or pits. This section does not apply to stairs used for fire exit purposes, to construction operations to private residences, or to articulated stairs, such as may be installed on floating roof tanks or on dock facilities, the angle of which changes with the rise and fall of the base support.

1910.24(b) Where fixed stairs are required. Fixed stairs shall be provided for access from one structure level to another where operations necessitate regular travel between levels; and for access to operating platforms at any equipment which requires attention routinely during operations. Fixed stairs shall also be provided where access to elevations is daily or at each shift for such purposes as gauging, inspection, regular maintenance, etc., where such work may expose employees to acids, caustics, gases, or other harmful substances, or for which purposes the carrying of tools or equipment by hand is normally required. (It is not the intent of this section to preclude the use of fixed ladders for access to elevated tanks, towers, and similar structures, overhead traveling cranes, etc., where the use of fixed ladders is common practice.) Spiral stairways shall not be permitted except for special limited usage and secondary access situations where it is not practical to provide a conventional stairway. Winding stairways may be installed on tanks and similar round structures where the diameter of the structure is not less than five (5) feet.

1910.24(c) Stair strength. Fixed stairways shall be designed and constructed to carry a load of five times the normal live load anticipated but never of less strength than to carry safely a moving concentrated load of 1,000 pounds.

1910.24(d) Stair width. Fixed stairways shall have a minimum width of 22 inches.

1910.24(e) Angle of stairway rise. Fixed stairs shall be installed at angles to the horizontal of between 30° and 50°. Any uniform combination of rise/tread dimensions may be used that will result in a stairway at an angle to the horizontal within the permissible range. Table D-1 gives rise/tread dimensions which will produce a stairway within the permissible range, stating the angle to the horizontal produced by each combination. However, the rise/tread combinations are not limited to those given in Table D-1.

TABLE D-1

Angle to horizontal	Rise (in inches)	Tread run (in inches)
30° 35'	6 1/2	11
32° 05'	6 3/4	10 3/4
33° 41'	7	10 1/2
35° 16'	7 1/4	10 1/4
36° 52'	7 1/2	10
38° 29'	7 3/4	9 3/4
40° 08'	8	9 1/2
41° 44'	8 1/4	9 1/4
43° 22'	8 1/2	9
45° 00'	8 3/4	8 3/4
46° 38'	9	8 1/2
48° 16'	9 1/4	8 1/4
49° 54'	9 1/2	8

1910.24(f) Stair treads. All treads shall be reasonably slip-resistant and the nosings shall be of nonslip finish. Welded bar grating treads without nosings are acceptable providing the leading edge can be readily identified by personnel descending the stairway and provided the tread is serrated or is of definite nonslip design. Rise height and tread width shall be uniform throughout any flight of stairs including any foundation structure used as one or more treads of the stairs.

1910.24(g) Stairway platforms. Stairway platforms shall be no less than the width of a stairway and a minimum of 30 inches in length measured in the direction of travel.

1910.24(h) Railings and handrails. Standard railings shall be provided on the open sides of all exposed stairways and stair platforms. Handrails shall be provided on at least one side of closed stairways preferably on the right side descending. Stair railings and handrails shall be installed in accordance with the provisions of §1910.23.

1910.24(i) Vertical clearance. Vertical clearance above any stair tread to an overhead obstruction shall be at least 7 feet measured from the leading edge of the tread.

[39 FR 23502, June 27, 1974, as amended at 43 FR 49744, Oct. 24, 1978; 49 FR 5321, Feb. 10, 1984]

§1910.25 Portable wood ladders.

1910.25(a) Application of requirements. This section is intended to prescribe rules and establish minimum requirements for the construction, care, and use of the common types of portable wood ladders, in order to insure safety under normal conditions of usage. Other types of special ladders, fruitpicker's ladders, combination step and extension ladders, stockroom step ladders, aisle-way step ladders, shelf ladders, and library ladders are not specifically covered by this section.

1910.25(b) Materials—(1) Requirements applicable to all wood parts. (i) All wood parts shall be free from sharp edges and splinters; sound and free from accepted visual inspection from shake, wane, compression failures, decay, or other irregularities. Low density wood shall not be used.

1910.25(b)(1)(ii) [Reserved]

1910.25(b)(2) [Reserved]

1910.25(c) Construction requirements.

1910.25(c)(1) [Reserved]

1910.25(c)(2) Portable stepladders. Stepladders longer than 20 feet shall not be supplied. Stepladders as hereinafter specified shall be of three types:

Type I—Industrial stepladder, 3 to 20 feet for heavy duty, such as utilities, contractors, and industrial use.

Type II—Commercial stepladder, 3 to 12 feet for medium duty, such as painters, offices, and light industrial use.

Type III—Household stepladder, 3 to 6 feet for light duty, such as light household use.

1910.25(c)(2)(f) General requirements.

1910.25(c)(2)(f)(a) [Reserved]

1910.25(c)(2)(f)(b) A uniform step spacing shall be employed which shall be not more than 12 inches. Steps shall be parallel and level when the ladder is in position for use.

1910.25(c)(2)(f)(c) The minimum width between side rails at the top, inside to inside, shall be not less than 11 1/2 inches. From top to bottom, the side rails shall spread at least 1 inch for each foot of length of stepladder.

1910.25(c)(2)(f)(d)-(e) [Reserved]

1910.25(c)(2)(f)(f) A metal spreader or locking device of sufficient size and strength to securely hold the front and back sections in open positions shall be a component of each stepladder. The spreader shall have all sharp points covered or removed to protect the user. For Type III ladder, the pail shelf and spreader may be combined in one unit (the so-called shelf-lock ladder).

1910.25(c)(3) Portable rung ladders.

1910.25(c)(3)(f) [Reserved]

1910.25(c)(3)(ii) Single ladder. (a) Single ladders longer than 30 feet shall not be supplied.

1910.25(c)(3)(ii)(b) [Reserved]

1910.25(c)(3)(iii) Two-section ladder. (a) Two-section extension ladders longer than 60 feet shall not be supplied. All ladders of this type shall consist of two sections, one to fit within the side r

1910.25(c)(3)(iii)(b) [Reserved]

1910.25(c)(3)(iv) Sectional ladder. (a) Assembled companions or sectional ladders longer than lengths specified in this subdivision shall not be used.