The Negligence Report

A Monthly Publication Dedicated to Detailing Recent Cases Pertaining to Civil Liability Issues.

August, 2006

RECENT PREMISES LIABILITY CASES INVOLVING HIDDEN V. VISIBLE CONDITIONS.

In this issue, we will continue the focus on premises liability cases with a look at hidden vs. visible conditions.

In Johnson v. Texas Genco, L.P., 2006 Tex. App. Lexis 4401 (Tex. App. – Houston, [14th Dist.] 2006), the Fourteenth District Court of Appeals in Houston addressed a premises incident which occurred after tropical storm Allison wreaked havoc on Houston. John Johnson was hired through his employer to repair some phone lines at Texas Genco's Green's Bayou plant. In order to perform his work, he had to access a manhole. The man hole was located several feet from a road. Due to the layout of the surrounding property, Mr. Johnson had to climb over a log that was thirty feet long and two feet wide. The log was surrounded by thick grass which was two to three feet in height. For the better part of two days, he walked over the log without incident until the end of the second day when he stepped in a hole and sustained an ankle injury. The property owner was granted no evidence summary judgment by the trial court. The court of appeals found that Mr. Johnson was an invitee, as he was on the premises to repair phone lines, at the request of the property owner. As a result, the property owner owed Mr. Johnson the duty to warn or protect him from dangerous conditions of which they know or through reasonable care should have discovered. The court made much of the fact that only this portion of the Defendant's property was allowed to be kept in a overgrown state. The remainder was carefully manicured like a golf course. The area where the Plaintiff was injured had been mowed a month prior to the incident. The property owner's contract with the mowing company required the property owner to inspect the areas mowed within Seventy-two hours. The appeals court found that this was sufficient evidence to show the property woner was on constructive notice of the condition; the condition being the log and high grass.

A different result was reached in Wong v. Tenet Hospitals, Ltd, 181 S.W.3d 532 (Tex. App. – El Paso, 2005). Ms Wong was visiting her mother at Providence Hospital. She parked along a street adjoining the hospital and proceeded to walk through the landscaping rather than the side walk to enter the hospital. She tripped over a bush and sustained injuries to her back and hands. (Lucky she was just a hop, skip and a jump away from the ER). Tenet obtained a no evidence summary judgment. The Court began by attempting to determine Ms. Wong's legal status on the property. Tenet argued she was a trespasser since she walked through the landscaping, rather than the sidewalk. A landowner only owes a trespasser the duty not to injure her willfully, wantonly or through gross negligence. Ms. Wong argued she was an invitee, as she patronized the hospital gift shop and snack bar in addition to assisting the hospital with the care of her mother. The court concluded neither party was correct and found that Ms. Wong was a licensee. A landowner owes a licensee the same exact duty as a trespasser except that the landowner must correct a dangerous condition of which it is aware. According to the court, Ms. Wong was licensee because she was arriving to visit her mother. As there was no evidence she intended to conduct business with the hospital, she was not an invitee. The court rejected the hospital's argument that she was a trespasser because it could be anticipated she or another member of the public would cross through the landscaping. The court upheld the summary judgment because it found that the one foot high shrub was not unreasonably dangerous. The court also found that the shrub was as easily perceptible to Ms. Wong. As a result, Tenet did not owe her a duty to warn or remove the dangerous condition since she had licensee status. The theory being that Ms. Wong had an opportunity to avoid tripping over the bush as it was easily perceptible.

Comment: If you examine just the bare facts of these cases, it is difficult to reconcile their opposing results. However, Mr. Johnson was owed a higher duty as an invitee, he was forced to step over the long to walk to the manhole and the hole he stepp in was obscured by two foot high grass Whereas, Ms. Wong was owed a less onerous duty, the bush was easily observed and she could have walked down the sidewalk rather than through the landscaping. Sometimes the devil is in the details.

Fenley & Bate, L.L.P.

ATTORNEYS AT LAW

224 E. Lufkin Avenue ▪ P.O. Box 450 ▪ Lufkin, Texas 75902-0450
TELEPHONE (936) 634-3346
TELEFAX (936) 639-5874

415 N. Washington, Ste B, Livingston, Texas 77351
TELEPHONE (936) 327-1100
TELEFAX (936) 327-1107

EMAIL OFFICE@FENLEY-BATE.COM