

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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A Short Handrail and Extra Step on a Darkened Staircase was an Open and Obvious Condition

By Cleo N. Fekaris

In *Edwards v Johnson*, an unpublished decision by the Michigan Court of Appeals, Plaintiff fell as she descended Defendant's basement stairs. Plaintiff argued that the extra step at the bottom of the dark staircase, which extended beyond the handrail, was a hidden danger and caused her to fall. The trial court denied Defendant's motion to dismiss based on the open and obvious defense.

On appeal, Defendant argued that the trial court erred because the short handrail and extra step on which Plaintiff fell were open and obvious. It was undisputed that Plaintiff was a licensee (a social guest) at the time of the incident. Therefore, the duty Defendant owed to Plaintiff was to warn her of any hidden dangers Defendant knew of or had reason to know of if Plaintiff did not know of or have reason to know of the dangers involved. However, a landowner has no duty to safeguard a licensee from an open and obvious danger. A danger is open and obvious if an average person with ordinary intelligence is able to discover the danger and the risk presented upon casual inspection.

Plaintiff's claimed "hidden danger" was the short handrail combined with the darkened extra step. Defendant argued that if Plaintiff had turned on the light before she attempted to walk down the basement stairs, then she would have seen the short handrail and extra step because they were not hidden.

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In *Edwards*, the Court of Appeals placed some responsibility on Plaintiff for her own safety. The condition was open and obvious and there for Plaintiff to see is she had chosen to look. She could have simply turned on the light and would have been able to see the condition, or could have chosen not to walk down the stairs at all.

In short, it is not sufficient for purposes of surviving a dispositive motion for a plaintiff to fail to see an open and obvious condition because he or she chooses not to look. This is another example of an appellate court ruling against a plaintiff who failed to take appropriate care for her own safety.

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Agreeing with Defendant, the Court of Appeals held that a reasonable person in Plaintiff's position would have foreseen the danger of a misstep from traversing down an unfamiliar basement staircase in the dark. The Court explained that "nothing prevented Plaintiff from (1) turning on the light before beginning the descent, (2) turning around and going back up the stairway if it became too dark to see the stairs after she began her descent, or (3) not descending down the dark stairway if she felt uncomfortable turning on the light without Defendant's permission as she claimed in her deposition." The Court held that the short handrail and extra step constituted an open and obvious condition. The Court also noted that the short handrail and extra step did not constitute a "special aspect" of the staircase and that the condition was not unreasonably dangerous.

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