Premises Liability in Tennessee

December 2009

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Premises Liability Practice in Tennessee

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CHAPTER 1
PREMISES LIABILITY – THE BASICS

I. OVERVIEW OF THE CAUSE OF ACTION

Accidents occur and injuries frequently result because of the condition in which property is maintained. "Slip and fall," "trip and fall," and premises liability are all titles employed to designate these accidents often caused by the condition of traversed areas. The causes of slip and fall injuries increase in number and variety as construction materials and methods vary, as the uses to which premises are put multiply, and as the objects that find their way onto walkways continue to increase in variety. The increased causes of accidents lead to an increase in the number of accidents which, in turn, correlates into a rise in the number of lawsuits that are filed.

A premises liability claim begins when a plaintiff commences an action against a premises owner alleging injury occurred while the plaintiff was present upon commercial or residential premises, due to the negligence of the premises owner, management, or some other person or entity associated with the ownership or operation of the premises. These premises liability claims essentially involve allegations of negligence. To establish a prima facie case, the plaintiff must prove: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct falling below the applicable standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate, or legal cause. *Bradshaw v. Daniel*, 854 S.W.2d 865, 869 (Tenn. 1993).

A. Duty

The existence of a duty owed by the defendant to the plaintiff is a necessary ingredient of every negligence case. *Church v. Perales*, 39 S.W. 3d 149, 156 (Tenn App. 2000). Determining whether a duty exists in the circumstances of a particular case requires the court to decide whether the plaintiff has a legal interest which is entitled to protection at the hands of the defendant. *Bradshaw v. Daniel*, 854 S.W.2d at 869-70. In this context, duty connotes the obligation to act reasonably to protect another from an unreasonable risk of harm. *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995); *Heatherly v. Merrimack Mut. Fire Ins. Co.*, 43 S.W.3d 911, 915 n.2 (Tenn. Ct. App. 2000). Moreover, courts will typically refuse to impose a duty where no unreasonable risk of harm can be anticipated. *Rice v. Sabir*, 979 S. W. 2d 305 (Tenn. 1998). When deciding whether a particular risk of harm is unreasonable, the courts consider (1) the foreseeable probability of the harm occurring, (2) the potential magnitude of the harm, (3) the importance, social value, and usefulness of the defendant's activities, (4) the feasibility and the relative costs and burdens of alternative, safer conduct, and (5) the usefulness and relative safety of the alternative, safer conduct. *Coln v. City of Savannah*, 966 S.W.2d 34, 39 (Tenn. 1998).

What duty may be owed by a premises owner to those entering upon the premises depends upon the legal status of the plaintiff at the time of the occurrence. A plaintiff may have been a trespasser, a licensee, an invitee, or a person on the premises as a matter of right, but it is this status of the plaintiff that determines the measure of duty owed by the defendant to the plaintiff.

Traditionally, the possessor of a premises owes to invitees, those whose presence is not only desired but induced, the duty to exercise reasonable care for their safety while they are on his premises; while a mere licensee is entitled to a lesser degree of care, i.e., "not to injure him willfully or by gross negligence nor lead him into a trap." *Hudson v. Gaitan*, 675 S.W. 2d 699, 703 (Tenn. 1984). However, in *Hudson*, Tennessee abrogated this distinction in favor of the requirement that the landowner exercise ordinary care under all circumstances with respect to invitees and social guests on the premises. *Id*. Subject to certain exceptions where children are concerned (attractive nuisance or playground doctrines), an owner or occupant owes no duty to a trespasser to anticipate his presence, is only required to avoid injuring him by wanton, willful, or reckless conduct and must avoid injuring him by active negligence after his presence has been discovered.[1]

Further, "in order for an owner or operator of premises to be held liable for negligence in allowing a dangerous or defective condition to exist on its premises, the plaintiff must prove, in addition to the elements of negligence, that: 1) the condition was caused or created by the owner, operator, or his agent, or 2) if the condition was created by someone other than the owner, operator, or his agent, that the owner or operator had actual or constructive notice that the condition existed prior to the accident. *Martin v. Washmaster Auto Center, U.S.A*, 946 S.W.2d 314, 318 (Tenn. Ct. App. 1996) (citing *Ogle v. Winn-Dixie Greenville, Inc.*, 919 S.W.2d 45, 47 (Tenn. App. 1995); *Jones v. Zayre, Inc.*, 600 S.W.2d 730 ,732 (Tenn. App. 1980)).

Children

In Tennessee, if a child has been enticed or lured onto the premises by the instrumentality or condition causing the harm (the attractive nuisance doctrine) or if the owner knows or should know that children habitually use the property as a playground (the playground doctrine), the owner has a duty to exercise reasonable care to eliminate the dangerous condition or otherwise to protect the child or children." *Metropolitan Government of Nashville v. Counts*, 541 S.W.2d 133 (Tenn. 1976). The purpose of the playground/attractive nuisance doctrine is not to create a cause of action against

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[1] Some jurisdictions have rejected the common-law status classifications as determinative of liability and have adopted the rule that an owner or occupier of land is held to a duty of reasonable care under all circumstances. In such premises liability actions, the basis of liability is generally held to be negligence. *See Stallings v. Food Lion, Inc.*, 539 S.E.2d 331 (N.C. Ct. App. 2000).