

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Snow Which Is Level With Handicap Ramp Is Still “Open And Obvious”

By Christian P. Odium

In *Miller v Hot Rod Motorcycles, Inc*, an unpublished decision of the Court of Appeals, the Court rejected Plaintiff’s attempt to utilize a snow covered condition to avoid the “open and obvious” defense.

Plaintiff fell as he stepped off a corner of the handicap ramp that was leading to Defendant’s store. Plaintiff sued under negligence and nuisance theories. Plaintiff testified that the edge of the ramp was concealed due to an accumulation of snow. The trial court granted Defendant’s motion to dismiss based on the “open and obvious” defense.

Plaintiff argued that the trial court erred in that the condition causing his injuries was not open and obvious and that even if it was, special aspects of the condition existed so as to remove the matter from the application of the “open and obvious” doctrine. Plaintiff testified that he had been to Defendant’s place of business on at least two prior occasions. The Court noted that Plaintiff was familiar with the general layout of the store’s entrance and exit. The Court also pointed out that Plaintiff had testified that there had been a terrible storm the night before he fell with sleet, freezing rain, and snowfall. Plaintiff admitted that the sidewalk in front of the building and the handicap ramp had been shoveled.

The Court then analyzed Plaintiff’s actions as he left Defendant’s premises. The only available door opened outward about 60 degrees. Despite the limited access through the door, Plaintiff walked up the handicap ramp to enter the store without any apparent problems. Plaintiff testified that he was carrying purchases as he left the store, and a store employee assisted him by holding the door open. Plaintiff claimed that because the door only opened part way, it forced him to step onto the “deadfall” area of the handicap ramp rather than directly onto the ramp itself.

Again, the Court noted that Plaintiff acknowledged there had been a snowfall the evening before, and that snow had accumulated to the height of the ramp. The Court recognized that Plaintiff was aware that there was a ramp, basic knowledge dictates that a ramp will have elevated sides and that ramps are an alternative to steps to provide access to a higher area.

SECRET WARDLE NOTES:

Once again, a plaintiff has attempted to utilize temporary weather conditions to defeat the “open and obvious” danger defense. The *Miller* Court recognized that a handicap ramp is an “open and obvious” danger. This decision also recognizes that a court may look to some subjective analysis, as it relates to the plaintiff’s prior use of the alleged dangerous condition, when analyzing whether it is “open and obvious” as a matter of law.

Miller also reiterates that the court recognizes a plaintiff’s attempt to avoid these types of defenses by adding premises liability. In this case, Plaintiff also alleged a nuisance claim to avoid the “open and obvious” defense. However, the label was disregarded by the Court which recognized the allegations truly sounded in premises liability.

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Furthermore, the Court pointed out that Plaintiff had not testified that he thought the ramp continued beyond the visibly shoveled area.

The Court reasoned that any surface covered with several inches of snow poses as an obvious danger, as anything from ice to sharp objects could be under the snow. The Court ultimately ruled that given Plaintiff's observations, as well as the fact that he was able to walk up the ramp and through the same door through which he exited, any danger posed by the snow covered side slopes of the ramp was open and obvious.

The Court rejected Plaintiff's claim that the condition was effectively unavoidable because there was only one door open for use at the business, and it was not working properly. The Court again acknowledged that Plaintiff was confronted with the exact same situation when entering the store and managed to do so without incident. The Court noted that Plaintiff was aware of the situation before he entered the store and at that time he could have elected to return at a later time rather than face the conditions presented. The Court reasoned that there was no indication that Plaintiff had to be at Defendant's store on that precise date and time to deal with a crucial and urgent matter or that Plaintiff was somehow trapped.

Plaintiff also argued that the slope of the "dead fall" on the ramp exceeded the maximum percentage of slope allowed under the Michigan Building Code and that the violation presented a special aspect. The Court recognized that a violation of a building code serves as evidence of negligence, but does not necessarily support a "special aspects" analysis. The Court ruled that there was nothing unusual about the areas around the ramp being full of snow that would create an unreasonable risk of harm.

Finally, Plaintiff argued that this set of facts supported a claim of nuisance. Plaintiff's complaint alleged that Defendant "improperly operated and maintained the premises," by maintaining a ramp that was not in conformance with the applicable building code and the door was partially inoperable. The Court held that when an injury arises from a condition of the land, rather than from activity or conduct that created the condition, the action sounds in premises liability and not nuisance.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline SE, Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

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CONTRIBUTORS

Premises Liability Practice Group Chair

Mark F. Masters

Premises Liability Practice Group Co-Chair

Caroline Grech-Clapper

Editor

Bonny Craft

We welcome your questions and comments.

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