

YOU AND THE LAW

Oops! Analysis of a Slip and Fall Hazard

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City of Corpus Christi v. Ferguson
2014 Tex. App. LEXIS 1299

In December 2009, Janette Ferguson traveled to Corpus Christi, Texas, to participate in the Harbor Lights Festival boat parade. The day prior to the festival, Ferguson spent the night on her family's sailboat that was kept in a slip on the city marina's C pier. Upon waking the following morning, Ferguson walked to the marina's bathroom facility to take a shower and was returning to her family's sailboat when she slipped and fell on a sheet of ice after passing through the pier gates. Apparently, marina employees had drained the water from a hose overnight to prevent the water line from freezing, and employees claimed that signs were placed around the facility warning marina users of this circumstance. Ron Hebert, who leased a slip on the same pier, observed the spigot on the morning of Ferguson's accident with water trickling out of it and alerted marina employees that ice had formed at the gate. The City disputed Hebert's claim in that he had failed to check in with the marina office upon arrival that evening; therefore, he could not have alerted the employees of the hazard.

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The Complaint

Ferguson sued the City of Corpus Christi for general and gross negligence as well as premises liability.

Findings

The City responded to the plaintiff's claim by filing a dilatory plea to the jurisdiction claiming that it was immune from Ferguson's lawsuit under the sovereign immunity statute. Texas sovereign immunity is well established in protecting governmental entities from lawsuits. However, the Texas Tort Claims Act (TTCA) "provides a limited waiver of sovereign immunity" (p. 7) in three scenarios, one of which is premises defects, which was applicable to this case. Further, when a premises liability claim is made, the TTCA applies the state's recreational use statute as a way for the governmental entity to benefit from its limited liability. Therefore, the City of Corpus Christi appealed the trial court's denial of its plea to the jurisdiction, claiming that when she fell at the marina, Ms. Ferguson was engaged in a recreational activity.

The main question for the Court of Appeals of Texas was whether the plaintiff was engaged in a recreational activity at the time of her injury. The City claimed the plaintiff was engaged in a recreational activity, whereas Ms. Ferguson asserted that her need to walk to the shower was a "matter of necessity, not leisure" (p. 12). The Court relied upon *City of Bellmead v. Torres* (2002) as the legal precedent in determining whether a particular activity is recreational. Specifically, the determining factor hinged on "what the plaintiff was doing at the time" (p. 9) of her injury. Because the plaintiff had been engaged in boating activities, the Court determined that she was engaged in a recreational activity. Therefore, under the Texas recreational use statute, the City owed the plaintiff the same standard of care as that owed to a trespasser, unless evidence of gross negligence could be presented.

The Court of Appeals next reviewed whether Ms. Ferguson had demonstrated gross negligence on the part of the City in maintaining the marina premises. The City knew the air temperature on the night of December 4 was going to drop near or below freezing or they would not have drained the water lines at the marina. Specifically, the spigot near the pier gate had been opened, resulting in a trickle

of water flowing from it creating the patch of ice. Moreover, the City posted signage notifying users of the marina that the water lines would be drained, but failed to anticipate that the draining water might freeze on the pier and create a slip hazard. As a result, the City had actual knowledge of freezing conditions and subjective knowledge of the creation of an extremely risky hazard on the pier. Further, the City had time to remedy this situation as per Ron Hebert's call to the marina office, but failed to do so. Because of these facts, the Court ruled that the plaintiff had provided sufficient evidence of gross negligence.

Verdict

The Court of Appeals of Texas, 13th District, concluded that the trial court did not err in denying the City's plea to the jurisdiction. While the plaintiff was engaged in a recreational activity, the City was also grossly negligent in its maintenance of the pier. This outcome annulled the City's efforts to seek legal shelter under the TTCA and the Texas recreational use statute.

Key Terms

- Dilatory plea: A plea that seeks to delay or defeat the action on procedural grounds (Garner, 2014, p. 1337).
- Plea to the jurisdiction: A preliminary challenge to a court's authority to decide the action before it. In the state of Texas, the standard for a plea to the jurisdiction mirrors that of a traditional motion for summary judgment (*City of Fort Worth v. Robinson*, 2009).

Implications

This case highlights the importance for public municipalities to have clear standards in place to avoid situations that create an environment in which users could be injured. Further, it is important to have these standards and protocols in place for facility inspections, check-in procedures, signage, and response to risk hazards.

Procedures are necessary to maintain a reasonably safe environment, especially in a facility in which water is involved. For recreation and sport organizations, it is crucial to maintain consistency in creating standard procedures and managing a safe facility. Implementing a member sign-in or card swipe entry is an example of

an efficient and organized method to help ensure which participants are in the facility. However, if the protocol is not consistently enforced and users are able to check in after spending the night or participating in recreational activities, a breach of security has occurred. Having clearly documented records with consistent enforcement of the standard procedures allows an organization to use documentation should any legal issue arise. Falling below the standard places in question the integrity of all documentation within an organization. In other words, if a facility cannot accurately document who is inside the facility, all other documentation may be questioned or not taken seriously. Training staff members to consistently enforce facility policies allows all employees and users to have a greater understanding of the process. Moreover, it is important for a facility to always maintain a staff presence at the front desk/check-in area and not allow participants to enter without the proper check-in procedure. In this case, the marina did not consistently follow the check-in procedure by allowing the marina patrol to go on rounds, leaving the front desk unattended.

Facility inspections are also a critically important aspect for an organization to adopt and conduct. Patrols and routine walks around a facility are great times to initiate inspections, to ensure the facility is being safely maintained, and to identify risk hazards, such as a hose leaking water onto a pier or deck. Additionally, facility inspections help document a facility's condition and act as credible evidence should the integrity of the organization come into question in court. Coupled with facility inspections, procedures need to be created to indicate critical risks and have policies in place to rectify identified issues, if and when they are discovered. For example, in this case, once it was recognized that freezing temperatures were imminent, the City needed to take steps to ensure the pier was free of water or that an additional path to the showers was identified and marked so patrons were aware of the changes. Further, signage needs to be placed appropriately in a visible location for all participants to see. If the sign is warning of an unsafe condition occurring overnight, it is important to ensure the sign is well lit throughout the nighttime hours.

Beyond signs, there should be additional methods to notify users of risk issues to avoid problems with language barriers, reading levels

based on education or age, and those with disabilities who may not be able to identify risk via signage properly. Social media has been widely adopted via the public and is an emerging technology that allows organizations flexibility and adaptability in their responses. It has been demonstrated that social media platforms have the ability to coordinate widespread communication and to strengthen information flows. Social media can also be employed to support faster decision cycles and contribute to effective knowledge management (Yates & Paquette, 2011). Organizations use of social media to improve their communication with participants to disseminate vital information to a large population in a relatively short time.

All responses to risk hazards need to be quick, be efficient, and adhere to established standards. Having staff members present at a facility during all hours users are present will help increase response times and decrease potential risks. Situations will arise and not all accidents can be avoided, but there are many procedures that can be in place to help eliminate unnecessary harm.

References

- City of Bellmead v. Torres, 89 S.W.3d 611 (2002).
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