

OHIO CASE SUMMARIES

**A SERVICE OF
GREEN & GREEN, LAWYERS**
A Legal Professional Association

Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.

Court of Appeals: Tenth District

Case Name: *Cabakoff v. Turning Heads Hair Designs, Inc.*, 2009-Ohio-815

Decided: February 24, 2009

Issue(s): The open and obvious defense as applied to a hair salon's power cords.

Summary of Opinion: Plaintiff was injured when, after having her hair styled, she tripped over power cords as she attempted to get up from the styling chair. Plaintiff was in her late eighties and a weekly customer of the salon. Plaintiff's stylist kept her curling iron and blow dryer in a cubby hole on the right side of her work station, but the power cords stretched out across the floor. Plaintiff asserts that when she attempted to get out of the chair, she caught her foot in the power cords and fell.

The trial court granted summary judgment to the hair salon on the basis of the open and obvious defense. On appeal, the hair salon noted plaintiff's admission that, while she was sitting in the styling chair, she saw the power cords at the work station as they hung down to the floor. The Tenth District Court of Appeals, however, held that plaintiff's knowledge that the cords reached the floor did not mean she could or should have seen the cords extending out to the side of the chair where she attempted to walk. Moreover, the court noted, the record was absent of any evidence as to whether the power cords on the floor were visible, where they were located in relation to the styling chair, or how far they extended out onto the floor from the base of the chair. Without this evidence, the court held, it was unable to determine whether the power cords were observable.

The court also speculated that the hair stylist may have altered the application of

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

the open and obvious doctrine by assisting plaintiff in getting out of the styling chair. The court stated that the stylist's actions may have caused plaintiff to rely on the assurance inherent in that assistance and may have diminished plaintiff's appreciation of the dangerous cords. The task of determining whether the stylist impacted plaintiff's ability to appreciate the danger, it held, rests with the trier of fact.

Court of Appeals: Eleventh District

Case Name: *Frano v. Red Robin Internatl., Inc.*, 2009-Ohio-685

Decided: February 13, 2009

Issue(s): The open and obvious doctrine as applied to restaurant tables on risers.

Summary of Opinion: Ms. Frano and her son-in-law went to a Red Robin restaurant for lunch. The hostess seated them in a booth, and the booths in the restaurant were elevated on a platform six inches higher than the level floor. They did not ask to sit at a table on the floor level or anywhere in particular in the restaurant, nor did they object to being seated in a booth. Ms. Frano had no difficulty getting into the booth, and the lighting conditions in the restaurant were good. Plaintiff testified that the step was "apparent" and "obvious." As she left the booth, however, plaintiff testified she "forgot about the step" and fell.

Both the trial court and the appellate court agreed that summary judgment for Red Robin was appropriate in this case based on the open and obvious doctrine. The Eleventh District Court of Appeals held that, because the determinative issue is whether the condition was observable, the plaintiff's admissions on this point are fatal to her claim. Moreover, the court held that there were no attendant circumstances that may have interfered with Ms. Frano's ability to appreciate and observe the step down from the booth. On this point, plaintiff testified that on her way out, there was nothing distracting her and there was nothing obstructing her view of the step.

On appeal, plaintiff argued that she "forgot about the step" as she left the booth and did not see it. This, plaintiff argued, created a genuine issue of material fact as to whether the step was an open and obvious condition. The Court of Appeals disagreed and held that "generally, the plaintiff's failure to avoid a known peril is not excused by the fact that he [or she] 'did not think' or 'forgot.'" The court also cited numerous decisions denying liability to plaintiffs who are trying to descend a step they successfully ascended upon arriving at a property.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.