

OHIO CASE SUMMARIES

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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 Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: Ninth District Court of Appeals

Case Name: *Tucker v. Kanzios*, 2009-Ohio-2788

Decided: June 15, 2009

Issue(s): Premises Liability/Landlord-Tenant Relationship

Summary of Opinion: Mary Tucker broke her ankle when she fell down the basement stairs in Laura Kanzios's house. Tucker had been living at Kanzios's house in exchange for help with daily household chores. Tucker had been painting the basement stairwell with a roller, and when she braced herself on the handrail to reach a portion of the wall it came loose. She tried to grab the other handrail to stabilize herself, but it also came loose and she tumbled down the stairs.

Tucker sued Kanzios in the Lorain County Common Pleas Court, alleging that she was a tenant in Kanzios's house, and that Kanzios had violated Ohio's landlord-tenant act by not keeping the handrails in repair. She further claimed that Kanzios's failure to maintain the handrails breached a common-law duty owed to her.

The trial court granted Kanzios summary judgment on both of the aforementioned claims, reasoning that Tucker was a licensee, not a tenant, and Kanzios's only duty to her was to refrain from willfully injuring her. Tucker appealed.

The Ninth District Court of Appeals held that triable issues of fact existed on all of Tucker's claims. First, there were genuine issues of fact under Ohio's landlord-tenant act as to whether or not Tucker was entitled to the residence to the exclusion of others, and further, whether a legitimate written or oral agreement of lease existed.

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Second, addressing the common-law claim, the court reasoned that a genuine issue existed as to whether or not Tucker was a business invitee rather than a licensee because it appeared Kanzius benefitted from Tucker's presence at the residence. The court explained that if Tucker was an invitee Kanzius had a duty to keep the house in a reasonably safe condition.

Finally, the court concluded that a genuine issue existed as to whether or not it was foreseeable that Tucker would use the handrails for support while painting the basement stairwell. The court explained that it was not necessary that Kanzius anticipated the particular injury, but it was sufficient that her alleged failure to maintain the handrails was likely to result in an injury to someone.

The judgment was reversed and remanded.

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