

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

FIROUZ ADAB	:	APPEAL NO. C-081210
	:	TRIAL NO. A-0605849
and	:	
	:	<i>JUDGMENT ENTRY.</i>
HAIDEH ADAB	:	
	:	
Plaintiffs-Appellants,	:	
	:	
vs.	:	
	:	
FARADID U.S., INC.,	:	
	:	
DR. FREIDOON GHAZI,	:	
	:	
and	:	
	:	
SHIVA GHAZI,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellants, Firouz and Haideh Adab, filed a negligence complaint against defendants-appellees, Dr. Freidoon Ghazi, his wife, Shiva Ghazi, and Faradid U.S., Inc. Mr. Adab suffered severe injuries in a fall at the Ghazis' home, which was built by Faradid. The trial court granted summary judgment in favor of all the defendants. The Adabs have filed a timely appeal from that judgment.

The record shows that Mr. Adab was visiting the new home of Dr. Ghazi, his longtime friend. During a tour of the home, Dr. Ghazi showed Mr. Adab his study. They reached the study by going up the stairway to a landing, climbing an additional

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

step to the right, and turning right again. Mr. Adab stated that the light was good and that he had no problem seeing. As he went up, he noticed the additional step above the landing and the bookcases that surrounded the landing and the second-floor walkway.

Mr. Adab and Dr. Ghazi spent about 15 or 20 minutes listening to music in the study and then decided to go back downstairs. While Dr. Ghazi was in the study turning off the music, Mr. Adab was descending the stairs. He looked at photographs and books displayed on a bookshelf as he stepped to the left down the single step above the landing. He missed the step and fell toward the landing. The landing was too narrow to accommodate his fall, and he fell over the landing and slid backward down the stairs. He suffered numerous injuries from that fall.

The Adabs present two assignments of error for review. In their first assignment of error, they contend that the trial court erred in granting summary judgment in favor of the Ghazis. They argue that the step and the landing were unreasonably dangerous and that the Ghazis had a duty to warn Mr. Adab about the danger. This assignment of error is not well taken.

A landowner's duty to a social guest is a lesser duty than that owed to a business invitee.² A host who invites a social guest to his premises owes the guest the duty (1) to exercise ordinary care not to cause injury to the guest by any act or activities by the host while the guest is on the premises, and (2) to warn the guest of any condition that is known to the host, and, that, by ordinary prudence and foresight, the host should reasonably consider dangerous, if the host has reason to believe that the guest does not know and will not discover the dangerous condition.³

² *Bullucks v. Moore*, 1st Dist. No. C-020187, 2002-Ohio-7332, ¶7.

³ *Scheibel v. Lipton* (1951), 156 Ohio St. 308, 102 N.E.2d 453, paragraph three of the syllabus; *Bullucks*, supra, at ¶7.

The open-and-obvious doctrine still applies in Ohio.⁴ It relates to the threshold issue of duty, and it generally poses a question of law.⁵ Under this doctrine, property owners have no duty to warn a social guest of hazardous conditions that are open and obvious.⁶ The rationale underlying this rule is that the open and obvious nature of the hazard itself serves as a warning. The property owner may reasonably expect that persons entering the premises will discover those dangers and take appropriate measures to protect themselves.⁷

Mr. Adab ascended the staircase to go to the study on the second floor. When he got to the top of the staircase, he went over the landing and up the step to the right. Mr. Adab acknowledged that the light was good, that he could see well generally, and that he saw the step and the landing. A video taken by Dr. Ghazi showed that the step and the landing were out in the open and readily observable. Therefore, the open-and-obvious doctrine applied, and the Ghazis had no duty to warn Mr. Adab about the hazard.

As this court has stated, “Where the hazardous condition is not hidden from view or concealed and is discoverable by ordinary inspection, the court may properly sustain a summary judgment motion against the claimant.”⁸ Further, since Mr. Adab acknowledged going up the stairs and seeing the landing and the step to the right, he cannot now claim that they were unreasonably dangerous going down the stairs.⁹

⁴ *Armstrong v. Best Buy Co., Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, syllabus.

⁵ *Id.* at ¶13; *Frano v. Red Robin Internatl., Inc.*, 181 Ohio App.3d 13, 2009-Ohio-685, 907 N.E.2d 796, ¶19-20; *Johnson v. Logan’s Roadhouse* (Mar. 28, 2008), 5th Dist. No. 34, ¶26.

⁶ *Armstrong*, supra, at syllabus; *Martin v. Christ Hosp.*, 1st Dist. No. C-060639, 2007-Ohio-2795, ¶15.

⁷ *Armstrong*, supra, at ¶5; *Martin*, supra, at ¶15.

⁸ *Martin*, supra, at ¶21, quoting *Parsons v. Lawson Co.* (1989), 57 Ohio App.3d 49, 50-51, 566 N.E.2d 698.

⁹ *Raflo v. Losantiville Country Club* (1973), 34 Ohio St.2d 1, 295 N.E.2d 202, paragraph one of the syllabus; *Frano*, supra, at ¶24-33.

The “attendant circumstances” of a slip and fall may create a material issue of fact as to whether the danger was open and obvious.¹⁰ Attendant circumstances include any distraction that would come to the attention of a pedestrian and reduce the degree of care that an ordinary person would exercise at the time.¹¹ They “must, taken together, divert the attention of the pedestrian, significantly enhance the danger of the defect, and contribute to the fall.”¹²

The Adabs argue that the displays on the bookcases, the lack of marking or a change in color, and the poor lighting and glare were all attendant circumstances. This argument ignores the fact that Mr. Adab acknowledged that the light was good and that he could see well when he went up the stairs. Further, the attendant-circumstances exception is narrow and does not encompass the common and the ordinary.¹³ The Adabs did not allege that anything out of ordinary had occurred, and the record shows that ordinary observation would have revealed the hazard.¹⁴

We find no issues of material fact. Construing the evidence most strongly in the Adabs’ favor, we hold that reasonable minds can come to but one conclusion—that the defect was open and obvious and that the Ghazis had no duty to warn Mr. Adab about the danger. The Ghazis were entitled to judgment as a matter of law. Consequently, the trial court did not err in granting summary judgment in their favor, and we overrule the Adabs’ first assignment of error.¹⁵

¹⁰ *Frano*, supra, at ¶22; *Briel v. Dollar General Store*, 11th Dist. No. 2007-A-0016, 2007-Ohio-6164, ¶38; *Martin*, supra, at ¶19.

¹¹ *Frano*, supra, at ¶22; *McGuire v. Sears, Roebuck & Co.* (1996), 118 Ohio App.3d 494, 499, 693 N.E.2d 807.

¹² *Frano*, supra, at ¶22, quoting *Stockhauser v. Archdiocese of Cincinnati* (1994), 97 Ohio App.3d 29, 33, 646 N.E.2d 198.

¹³ *Gamby v. Fallen Timbers Ent.*, 6th Dist. No. L-03-1050, 2003-Ohio-5184, ¶13.

¹⁴ *Martin*, supra, at ¶21. See, also, *Frano*, supra, at ¶23; *McGuire*, supra, at 498.

¹⁵ See *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267; *Greene v. Whiteside*, 181 Ohio App.3d 253, 2009-Ohio-741, 908 N.E.2d 975, ¶23; *Stinespring v. Natorp Garden Stores* (1998), 127 Ohio App.3d 213, 215, 711 N.E.2d 1104.

In their second assignment of error, the Adabs contend that the trial court erred in granting summary judgment in favor of Faradid. They argue that Faradid negligently installed the bookshelves, which narrowed the landing and created a visual distraction for visitors approaching the step. This assignment of error is not well taken.

A contractor is liable to all those who may be foreseeably injured by the dangerous condition of a structure, not only when the contractor fails to disclose known dangerous conditions, but also when the work is negligently done.¹⁶ In a similar case, this court held that the landowner was not liable for a fall because the dangerous condition was open and obvious. As to the contractor, we stated, “It is unnecessary to address at length [the contractor’s] arguments * * * since [the contractor] was, likewise, entitled to have its motion for summary judgment granted by the trial judge. As an independent contractor and not a store owner, [the contractor] cannot avail itself of the ‘open and obvious’ doctrine *per se* and was required to warn [the landowner’s] customers of any foreseeable risk of harm it created on the premises. However, because we have held that the record does not demonstrate that the elevation of the ceramic tile created a foreseeable risk of harm, whether because it was too trivial or because it was too noticeable and should have been discovered with ordinary care, the trial court correctly granted summary judgment in favor of the [the contractor].”¹⁷

The same logic applies in this case. The risk of harm in this case was not foreseeable because the danger was noticeable, and Mr. Adab should have been able to discover and guard against it with the exercise of ordinary care.

¹⁶ *Fink v. J-II Homes, Inc.*, 12th Dist. No. CA2005-01-021, 2006-Ohio-3083, ¶20; *Hillier v. AVI Foodsystems, Inc.*, 8th Dist. No. 86425, 2006-Ohio-939, ¶10; *Jackson v. Franklin* (1988), 51 Ohio App.3d 51, 53, 554 N.E.2d 932.

¹⁷ *McGuire*, *supra*, at 500-501.

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We find no issues of material fact. Construing the evidence most strongly in the Adabs' favor, we hold that reasonable minds can reach one conclusion—that the risk of harm was not foreseeable. Faradid was entitled to judgment as a matter of law, and the trial court did not err in granting summary judgment in its favor.¹⁸ We overrule the Adabs' second assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANT, P.J., DINKELACKER and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on September 9, 2009

per order of the Court _____
Presiding Judge

¹⁸ See *Temple*, supra, at 327; *Greene*, supra, at ¶23; *Stinespring*, supra, at 215.