



## **Premises Liability: "Dangerous Stairs"**

— by Jennifer Krumm

*Glorioso v. Ness, \_\_\_ Or. App. \_\_\_ (1/28/04)*

Plaintiff was hired to photograph a wedding held at the defendants' home. Before the ceremony, Plaintiff explored the area where the wedding was to take place, which included the defendants' back deck. The defendants' deck had two levels, separated by a six-inch step that ran most of the length of the deck. The decking material was the same color and appearance on both levels. The deck was not wet, nothing was slippery on the step, and there was no deceptive lighting. As Plaintiff walked toward the arch under which the ceremony was to occur, she fell on the step separating the deck levels and suffered injuries.

Plaintiff sued the defendant homeowners for negligently maintaining an unreasonably safe deck, failing to warn her of the step, and failing to provide a handrail. The defendants sought summary judgment in their favor, arguing that the plaintiff had come to their home for her own purposes, they only had a duty to warn her of concealed dangers, and the stair was not a concealed danger. Plaintiff responded by arguing that she had been invited to their home and that the defendants had a duty to warn her of unreasonable risks of harm. The plaintiff also argued that, in any event, the stair was a concealed danger.

The trial court refused to decide what duty the defendants' owed to the plaintiff. Instead, it concluded that the step was not an "unreasonable risk of harm." It ruled in favor of the defendants on their summary judgment motion.

On appeal, the plaintiff argued that the trial court should not have granted defendants' summary judgment motion for two reasons. First, she argued that there were material questions of fact about whether the step was unreasonably dangerous. Second, she argued that the defendants did not base their summary judgment motion on the grounds that the step did not present an unreasonable risk of harm and it was therefore improper for the court to grant summary judgment *sua sponte*.

The court first held that:

"a step located in a place where steps normally may be found, or with indications in the surrounding area that steps are present, with a surface of the same appearance both above and below, with no deceptive lighting, not covered by slippery substances, and with no established history of causing injury, does not pose an unreasonable risk of harm giving rise to a concomitant duty to warn."

Next, the court held that the grounds used by the trial court to grant summary judgment were similar enough to the defendants' motion that granting summary judgment in their favor was proper.

Accordingly, the court concluded that the plaintiff could not recover from the defendant-homeowners. ❖