

[Cite as *Charlton v. Ohio Dept. of Transp.*, 1992-Ohio-277.]

IN THE COURT OF CLAIMS OF OHIO

ESTHER CHARLTON, et al.	:	
Plaintiffs	:	CASE NO. 91-09022
v.	:	<u>DECISION</u>
OHIO DEPARTMENT OF TRANSPORTATION	:	Judge Russell Leach
Defendant	:	

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Plaintiffs leased a house from defendant during the year 1989. The house was located in the City of Mount Healthy, Ohio, which is situated in Hamilton County. On August 17, 1989, plaintiff, Esther Charlton, while exiting the rear of the house, slipped and fell off a set of stairs containing six steps. Ms. Charlton sustained injuries to her hip as a result of the fall.

Plaintiffs filed this action seeking damages for injuries sustained from the fall. The matter came on for trial regarding the sole issue of liability on August 11, 1992.

During the course of trial, plaintiffs claimed that the stairs failed to contain a handrail. Plaintiffs asserted that such omission constituted both *negligence per se* and ordinary negligence by defendant.

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Plaintiffs' first assertion, more specifically, is that defendant was *negligent per se* because both the City of Mount Healthy Building Code and the Hamilton County Building Code required that the stairs contain a handrail. Conversely, defendant argues that it had no duty to comply with the codes, and thus it was not *negligent per se*.

The rule is that where a statute or ordinance imposes upon a person a duty to do or omit to do a definite act and the failure to perform that duty proximately results in injury to another, that person is *negligent per se*.

*Buckeye Stages, Inc. v. Bowers* (1935), 129 Ohio St. 412. The court finds that neither the City of Mount Healthy Building Code or the Hamilton County Building Code required that the subject stairs contain a handrail. Both 7150.04(D) of the City of Mount Healthy Building Code and 7S-2(D) of the Hamilton County Building Code provide that their regulations do not apply to an existing residential structure unless the structure's use is changed from residential to something else, such as business. The evidence indicates that the use of the house had not changed from residential use. Accordingly, defendant had no duty to comply with either building code, and thus defendant was not *negligent per se*.

Plaintiffs' second assertion is that the failure of the subject stairs to contain a handrail amounted to ordinary negligence by defendant and such negligence was the proximate cause of plaintiffs' injuries. Conversely, defendant denies that it was negligent and argues that Ms. Charlton's own actions were the sole and proximate cause of plaintiffs' injuries.

Ohio's comparative negligence statute, R.C. 2315.19, bars plaintiffs from recovery if Ms. Charlton's own actions were a greater cause of their injuries than any acts of defendant. The court finds that even in the absence of a building code regulation, defendant may have been negligent in leasing a residential property without a handrail on a set of stairs, but if so, Ms. Charlton's own actions, using a set of stairs without a handrail, was a greater cause of plaintiffs' injuries than any acts of defendant. Therefore, plaintiffs are barred from recovery.

In view of the above, the court finds that plaintiffs have failed to prove that they are entitled to relief. Thus, the court renders judgment for defendant.

RUSSELL LEACH

Case No. 91-09022

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DECISION

Judge

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ESTHER CHARLTON, et al. :  
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v. : JUDGMENT ENTRY  
OHIO DEPARTMENT OF : Judge Russell Leach  
TRANSPORTATION :  
Defendant :

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Upon consideration of all the evidence and for the reasons set forth in the decision rendered concurrently herewith, it is ORDERED that judgment is rendered in favor of defendant and against plaintiff. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

RUSSELL LEACH  
Judge

Entry cc:

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0334A/CEM

Filed 9-17-92

Jr. Vol. 325, Pg. 35

To S.C. reporter 10-19-2001