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The Kentucky Court of Appeals Affirms the Broad Application of the Open and Obvious Doctrine

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The classic "slip and fall" case has been a constant part of personal injury litigation throughout American legal history. At least in more recent times, the public seems to hold a generally cynical opinion about these sorts of lawsuits. Such cynicism may derive from any number of sources, but those at the top of the list likely include the ostensibly increasing litigiousness of society (and the disfavor of lawsuits in general), suspicions over malingering and exaggerating injuries, and prevailing notions of personal responsibility.

This negative perception of slip and fall cases certainly remains common among the owners of small businesses where these incidents may often take place. However, the good news for these business owners includes the fact that Kentucky law makes it difficult to find success with the majority of slip and fall lawsuits and *relatively* easy to obtain summary judgment (basically having the case dismissed at an earlier stage in the proceedings and before trial).

One key source of the difficulty for plaintiffs in these slip and fall cases is a principle of Kentucky law known as the "open and obvious doctrine." The open and obvious doctrine essentially states that a possessor of business premises is not liable to his customers (called "invitees" in legal terminology) for physical harm caused to them by conditions on the premises whose danger is known or obvious to them unless the possessor should anticipate the harm despite such knowledge or obviousness.

The open and obvious doctrine is by no means a new principle of law, however, the Kentucky Court of Appeals just affirmed its broad application in the case *Smith v. Grubb*, 2011-CA-000223-MR, issued on June, 15, 2012 (decision not yet final). In the *Smith* case, the Court of Appeals pointed out that "[t]he open and obvious doctrine is premised on the rule that a property owner is not an insurer against all accidents on the premises" and that a customer "cannot walk blindly into dangers that are obvious, known to him, or would be anticipated by one of ordinary prudence." *Id.* at *9.

While the open and obvious doctrine cannot absolutely immunize business owners from liability for slip and falls on their premises, its broad applicability, affirmed in the *Smith* case, may come as a pleasant surprise to many of them. Accordingly, although at least some of the cynical attitudes toward slip and fall cases remain justified, business owners should find comfort in the fact that Kentucky legal principles provide a great deal of logical protection to them.

This blog just scratches the surface of the complicated area of the law known as premises liability. If you would like to know more about these issues, please contact Ryan McLane, an associate in the Construction and Civil Litigation Sections at Dressman Benzinger LaVelle psc. Ryan can be reached at (859) 426-2143 or via email at rmclane@dbllaw.com.