

Dinovi v Miller

2007 NY Slip Op 30156(U)

March 5, 2007

Supreme Court, Suffolk County

Docket Number: 0030232

Judge: Robert W. Doyle

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SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 8-31-06
ADJ. DATE 9-28-06
Mot. Seq. # 001 - MG; CASEDISP

-----X		
BEATRICE DINOVI, as Administratrix of the	:	STEPHEN A. WEINSTEIN, ESQ.
Estate of RALPH DINOVI, deceased and	:	Attorney for the Plaintiffs
BEATRICE DINOVI, individually,	:	225 Broadway, #3000
	:	New York, New York 10007
	:	
Plaintiffs,	:	
	:	NICOLINI, PARADISE,
- against -	:	FERRETTI & SABELLA
	:	Attorneys for the Defendants
	:	P.O. Box 9006
WAYNE MILLER and EILEEN MILLER,	:	114 Old Country Road, Suite 500
	:	Mineola, New York 11501-9006
Defendants.	:	
-----X		

Upon the following papers numbered 1 to 11 read on this motion for summary judgment; Notice of Motion; Order to Show Cause and supporting papers 1 - 8; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 9 - 10; Replying Affidavits and supporting papers 11; Other _____; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that the motion by the defendants for an order granting summary judgment in their favor is determined as follows.

The plaintiff commenced this wrongful death action as a result of injuries sustained by the decedent after a fall at the defendants' home in Smithtown. The plaintiff and decedent, the mother and stepfather of the defendant Wayne Miller, were visiting from Missouri. After they arrived, the parties talked in the kitchen for approximately a half hour. The decedent then started walking to the den and apparently fell while descending a single step separating the dining room from the den. The plaintiff and decedent had visited at least once a year for the previous 16 years and would stay at the house for several days. The incident occurred at night and Wayne Miller testified that he believed a light was on in the den at the time of the incident. The plaintiff testified that no lights were on in the dining room or the den. The defendant Eileen Miller testified that the defendants had lived in the house since 1988 and no one had ever fallen on the

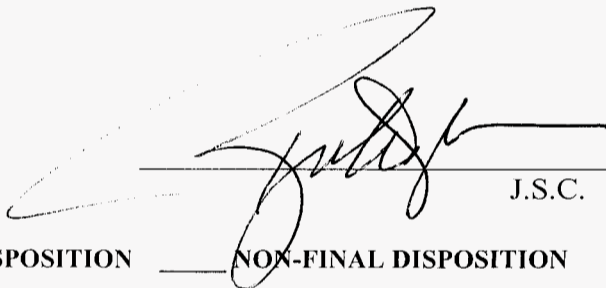
step before. The defendants now move for summary judgment in their favor.

It is well settled that landowners are under a duty to maintain their property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury and the burden of avoiding the risk (*see, Peralta v Henriquez*, 100 NY2d 139, 144; *Demshick v Community Housing Mgmt. Corp.*, 34 AD3d 518 [2d Dept 2006]). There is no duty to protect or warn against an open and obvious condition which, as a matter of law, is not inherently dangerous (*see, Lee v Oh*, 3 AD3d 473 [2d Dept 2004]; *Cupo v Karfunkel*, 1 AD3d 48 [2d Dept 2003]).

Here, the record demonstrates that the single step between the dining room and the den was not inherently dangerous and was readily observable by the reasonable use of one's senses (*see, Pirie v Krasinski*, 18 AD3d 848 [2d Dept 2005]; *Luciano v 144-18 Rockaway Realty Corp.*, 32 AD3d 505 [2d Dept 2006]; *Wint v Fulton Street Art Gallery*, 263 AD2d 541 [2d Dept 1999]). In opposition, the plaintiff contends that no lights were on and the area was dark. However, even assuming that this is true, it is undisputed that the decedent was a regular guest at the house and was familiar with the step but chose to proceed anyway. The plaintiff testified that the condition of the step had not changed and that she had never made any complaints about it. Under these circumstances, the defendants had no duty to protect or warn the decedent about the step (*see, Czorniewy v Mosera*, 298 AD2d 352 [2d Dept 2002]).

Accordingly, the motion for summary judgment is granted and the complaint is dismissed.

Dated: MAR 05 2007



J.S.C.

FINAL DISPOSITION NON-FINAL DISPOSITION