



Washington Court of Appeals Confirms That a Landowner Need Not Warn a Licensee of Dangers on Property They Do Not Own

From the desk of Tom McCurdy: Landowners owe certain duties to individuals present on their land. The extent of the duty depends on whether the individual is an invitee, a licensee, or a trespasser. Regardless of status, must a landowner warn of dangers on another's land? Read on to find out.

Case Pointer: In this premises liability case, a young girl was camping with a youth group near Lake Cle Elum when she tragically drowned while swimming. Her youth group was camping on land adjacent to the lake, which was owned by a third party. After her death, her estate filed suit against the landowners of the campsite, arguing that they had a duty to warn the girl of the dangers of the lake. The trial court granted the landowners' motion for summary judgment, holding that landowners have no duty to warn licensees of dangers on land owned by others. The Washington Court of Appeals affirmed, holding that landowners have no duty to warn guests of dangers present on the land of another. Although unreported, this case provides valuable insight on limitations of the scope of a landowner's duty to warn licensees about dangers on adjacent property.

[Bethay et al. v. Parker et al., Wash. Ct. of Appeals, No. 35541-1-III \(October 2, 2018\) \(unpublished\).](#)

In July 2015, Shawn Parker and KBSM, LLC ("Defendants") allowed a youth group to camp on land they owned near Lake Cle Elum. Defendants had been allowing the youth group to utilize the land for camping trips free of charge for several years without incident. However, on July 27, 2015, Christine Bethay drowned while swimming in nearby Morgan Creek Cove. Four counselors from the youth group led fifteen children from the camping area on Defendants' land across a federally owned strip of land and down into the cove to swim. Christine Bethay was among those children and, while the counselors were distracted, she drowned in the cove.

Christine Bethay's estate (the "Estate") filed suit against Defendants, arguing that, as landowners, they had a duty to warn Christine about the dangerous conditions in the cove. In response, Defendants filed a Motion for Summary Judgment arguing that they did not owe a duty to Christine to warn of dangers on property they did not own. The trial court agreed with Defendants and dismissed the Estate's lawsuit.

The Estate appealed, arguing that Defendants owed Christine the same duties as an invitee and, accordingly, that their duty extended to warning her about the dangers of neighboring property.

The Court of Appeals began by noting that "[a] licensee is defined as a person who is privileged to enter or remain on land only by virtue of the possessor's consent." (Internal quotation marks and citation omitted). In terms of the duties owed a licensee, it stated that "a landowner need not inspect his property for hidden dangers, but need only make safe or warn licensees of dangers on his property that the owner knows or has reason to know of, and of which licensees are not reasonably likely to discover."



Tom McCurdy

tmccurdy@smithfreed.com

Phone: 206.576.7575
Fax: 206.576.7580
www.smithfreed.com

Washington Office
1215 4th Ave, Suite 900
Seattle, WA 98161



Washington Case Update



The Estate argued that Christine was not a licensee, but rather, an invitee and was thus owed a higher standard of care. The Estate argued that *Degel v. Majestic Mobile Manor, Inc.* compelled such a result. *Degel* was a premises liability case involving a child who fell down a steep embankment at the edge of property owned by the defendants. The child was seriously injured when he fell into a stream at the bottom of the embankment and sued the landowner. The lawsuit alleged that the landowner failed to take reasonable care to prevent harm by neglecting to place a fence in front of the steep embankment. The trial court dismissed the action, holding that the landowner had no duty to protect against the inherent dangers of natural bodies of water. The Washington Supreme Court reversed, holding that a landowner owes invitees the duty of taking reasonable precautions to protect against harm. Accordingly, a jury question remained as to whether the landowner should have known of the potential harm of the steep embankment and the stream at the bottom.

The court was not convinced by the Estate's argument, and it distinguished *Degel* in four ways. First, it concluded that Christine was a licensee, not an invitee. Second, it noted that the dangerous property (the cove) was not owned by the landowner, while the dangerous property in *Degel* (the steep embankment) was owned by the landowner. Third, the events leading up to Christine's drowning did not take place on Defendants' land, contrary to the facts in *Degel*. Finally, the court noted that Defendants had no control over the dangerous condition in the cove (the water level), whereas the landowner in *Degel* did have control over the conditions (i.e., fencing).

The court noted that each of these distinguishing factors was "likely fatal" to the Estate's case. However, it focused on the second distinguishing factor, noting that it was dispositive on its own. That is, the fact that Defendants, in this case, did not own the land on which the danger was present was sufficient to absolve Defendants of liability. In so holding, it noted that the Estate "presented no authority suggesting that landowner liability extends to create a duty to protect guests (whether business invitee or licensee) from hazards, either known or unknown, on someone else's property."

Accordingly, although a landowner owes a duty to guests, depending on their status, to warn of and/or make safe dangers on the property, this duty does not extend to warning guests of dangers on adjacent properties.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at: https://www.courts.wa.gov/opinions/pdf/355411_unp.pdf



Tom McCurdy

tmccurdy@smithfreed.com

Phone: 206.576.7575
Fax: 206.576.7580
www.smithfreed.com

Washington Office
1215 4th Ave, Suite 900
Seattle, WA 98161

