

THOUGHT LEADERSHIP

News

PLAINTIFF FAILS TO ESTABLISH THAT UNSTABLE CONCRETE WALKWAY WAS AN UNREASONABLY DANGEROUS CONDITION – SUMMARY JUDGMENT AFFIRMED

Newsbrief

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Last week, the Beaumont Court of Appeals concluded that the plaintiff, who fell on an unstable and detached piece of concrete on a walkway, failed to establish that the condition was unreasonably dangerous. Therefore, the court of appeals affirmed the trial court's grant of summary judgment in favor of the premises-owner defendants. In *Valentine v. ASA Holdings Real Estate, et. al*, No. 09-18-00447-CV, 2020 WL 1173703 (Tex. App.—Beaumont, March 12, 2020, mem. op.), the plaintiff was walking on the walkway into a building where her doctor's office was located. She stepped on a piece of concrete that shifted, and she fell forward and hurt her knees. Consequently, she filed a lawsuit based on a claim of premises liability.

In turn, the premises-owner defendants filed a no-evidence motion for summary judgment, arguing, in part, that there was no evidence that the instability of the concrete rose to the level of an unreasonable risk of harm. In response to the motion, the plaintiff argued that the piece of unstable and detached concrete was an unreasonably dangerous condition because it "would move when stepped on and that someone might fall due to the piece of concrete moving under foot." As her supporting evidence, the plaintiff relied solely upon her affidavit attached to her response, wherein she described her fall and her perception of the condition of the concrete.

The trial court granted summary judgment in favor of the premises owner and the court of appeals affirmed. The court of appeals began its analysis by noting that "a condition is not unreasonably dangerous simply because it is not foolproof." Then, the court concluded that the plaintiff failed to present more than a scintilla of evidence about the concrete walkway to establish that it was an unreasonably dangerous condition. The court reasoned that the plaintiff "produced no evidence about how long the condition had existed, whether it had caused prior injuries or falls, whether the condition was unusual, whether the condition presented a prohibited degree of danger, whether [the plaintiff] had reasonable alternatives other than to go through the area where the condition was located, and whether the condition met applicable safety standards." The court further reasoned that the plaintiff "presented no expert testimony about the condition, and she relied solely upon her own [affidavit] testimony."