

THOUGHT LEADERSHIP

News

COURT CONCLUDES THAT CAR WASH DRAIN WAS OPEN AND OBVIOUS; AFFIRMS SUMMARY JUDGMENT IN FAVOR OF INSURED

Newsbrief

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Last week, the San Antonio Court of Appeals concluded that the drain holes in a self-service car wash bay were open and obvious conditions; thus the car wash company had no duty to warn of the drains. In *Corona v. Andy's Car Wash, Inc.*, No. 04-21-00324-CV, 2022 WL 2230945 (Tex. App.—San Antonio, June 22, 2022, mem. op.), the Coronas stopped at Andy's Car Wash to wash their car. Andy's Car Wash operated a do-it-yourself drive-through automated car wash. The car wash had drains in the concrete floor located in the middle of the car wash bays. The openings between the bars of the drain were described as large enough so that debris from the cars would not clog the drain, and large enough for a foot and leg to be able to step into the drain. Mr. Corona drove directly into the center of one of the self-serve car wash bays and parked over the drain. Mr. Corona washed the car while Mrs. Corona stood outside at the rear of the car. Mrs. Corona observed the soap and water running off the car into the drainage underneath the car. After finishing the wash, Mr. Corona drove toward the vacuuming area, while Mrs. Corona walked three feet behind the car as it moved toward the vacuuming area. Mrs. Corona was looking at her car, not the ground. She did not remember that the drain was there. As she walked, her entire left leg, up to her thigh and pelvic area, fell or sank into the exposed drain causing severe injuries.

Mrs. Corona sued Andy's Car Wash asserting a premises-liability claim. In response, Andy's Car Wash filed a motion for summary judgment, contending that the drain was open and obvious and that Mrs. Corona had subjective knowledge of the existence of the alleged dangerous condition; thus, Andy's Car Wash had no duty to warn her or protect her from the drain. The trial court granted Andy's Car Wash's motion, and Mrs. Corona subsequently appealed.

On appeal, the Court affirmed the trial court's grant of summary judgment, concluding that "the evidence support[ed] the conclusion that the drain was objectively observable to a reasonable person walking through the car wash bay." The Court reasoned that it was "undisputed that the drain [was] large, located in the middle of the concrete floor of the car wash bay, and [was] not concealed." Further, Mrs. Corona admitted that she would have seen the drain if she had been looking down as she walked behind her car. "Because the drain holes were open and obvious conditions on the premises, Andy's Car Wash had no duty, as a matter of law, to warn against them." Notably, because the Court concluded that the allegedly dangerous condition was open and obvious, the Court did not address whether Mrs. Corona had subjective knowledge of the condition.