NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 CA 2476

JOAN SWANSON

VS.

APPLEBEES OF SLIDELL, DOING BUSINESS AS SOUTHERN RIVER RESTAURANTS, L.L.C. AND ZURICH INSURANCE COMPANY

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JUDGMENT RENDERED: MAY 2, 2008

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ON APPEAL FROM THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
DOCKET NUMBER 2004-12439, DIVISION "A"
PARISH OF ST. TAMMANY, STATE OF LOUISIANA

THE HONORABLE RAYMOND S. CHILDRESS, JUDGE

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DOING/BUSINESS/AS--SOUTHERN
RIVERS RESTAURANT, L.L.C. AND
ZURICH INSURANCE COMPANY

BEFORE: GAIDRY, McDONALD AND McCLENDON, JJ

McClendon, J. concurs.

McDONALD, J.

Plaintiff, Joan Swanson, appeals a judgment of the 22nd Judicial District Court dismissing her petition against Southern River Restaurants, LLC and Zurich Insurance Company. For the following reasons, the judgment is affirmed.

On or about May 26, 2003, Mrs. Swanson, a 71-year-old widow and legal secretary from Iowa, was visiting her daughter in Slidell, Louisiana. The family had gone to Applebee's[1] for dinner, arriving around 6:30 p.m. Mrs. Swanson had not visited the restaurant previously, but her daughter had. After placing her drink order, Mrs. Swanson left the table to go to the restroom, which her daughter had indicated was toward the back of the restaurant. As Mrs. Swanson proceeded in the direction her daughter had indicated, she noticed ahead and to the left a restroom sign on a lower level and a handicap ramp leading down to the restrooms. Mrs. Swanson testified that as she came abreast to the ramp she saw it was blocked at the bottom by what appeared to be a gate, although it was too dark for her to identify the obstruction precisely. Due to the blockage of the ramp she continued walking forward and immediately fell to her knees at the bottom of what she later realized was a dimly lit set of low steps. Mrs. Swanson's daughter took her to the Slidell Memorial Hospital emergency room where her left knee and right wrist were x-rayed, revealing fractures to both.[2]

On May 21, 2004, Mrs. Swanson filed a petition for damages against the appellees, alleging that the steps on which Mrs. Swanson fell were

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[1] The petition in this matter was filed against Applebee's of Slidell doing business as Southern Rivers Restaurant, LLC and Zurich Insurance Company, its insurer. Appellee will be referred to herein as Applebee's.

[2] We will not detail the course of Mrs. Swanson's medical treatment, nor her other elements of damages.

defective, improperly marked, and unreasonably dangerous, making the defendants liable for the damages incurred by Mrs. Swanson.

Following a bench trial on the merits, the trial court rendered judgment finding that the steps did not pose an unreasonable risk of harm so as to require correction or warning. Further, that any defects in the steps were not the cause of Mrs. Swanson's fall; she fell because she did not see the steps in front of her.

Mrs. Swanson appeals alleging two assignments of error, (1) the trial court committed legal error when it failed to perform the mandated risk/utility, or unreasonable risk, analysis of the stairway and (2) in the alternative, that the trial court committed manifest error when it found that the stairway did not create an unreasonable risk of harm.

We find no legal error on the part of the trial court in not specifically articulating each step of the duty/risk analysis. It is clear both from the written reasons for judgment and from the judgment itself that the trial court correctly considered the applicable law. There is no merit to appellant's first assignment of error. We next consider the second assignment, that the trial court was manifestly erroneous in finding that the steps did not create an unreasonable risk of harm.

The general rule is that the owner or person having custody of immovable property has a duty to keep such property in a reasonably safe condition. He must discover any unreasonably dangerous condition on the premises and either correct the condition or warm potential victims of its existence. *Smith v. The Runnels Schools, Inc.*, 04-1329 (La. App. 1st Cir. 3/24/05), 907 So.2d 109, 112. Under either a theory of negligence pursuant to La. C.C. art. 2315 or strict liability, La. C.C. art. 2317.1, the plaintiff has the burden of proving that: (1) the property that caused the damage was in

the "custody" of the defendant; (2) the property had a condition that created an unreasonable risk of harm; (3) the unreasonably dangerous condition was a cause in fact of the resulting injury; and (4) defendants had actual or constructive knowledge of the risk. *Vincinnelli v. Musso,* 01-0557 (La. App. 1st Cir. 2/27/02), 818 So.2d 163, 165, *writ denied,* 02-0961 (La. 6/7/02), 818 So.2d 767.

Whether a condition of a thing is unreasonably dangerous requires consideration of: (1) the utility of the thing; (2) the likelihood and magnitude of harm, which includes the obviousness and apparentness of the complained-of condition; (3) the cost of preventing the harm, and (4) the nature of the plaintiff's activity in terms of the activity's social utility or whether the activity is dangerous by nature. *Hutchinson v. Knights of Columbus, Council No. 5747,* 03-1533 (La. 2/20/04), 866 So.2d 228, 235.

In the matter before us, the trial court found that Mrs. Swanson failed to meet her burden of proving both that the steps on which she fell created an unreasonable risk of harm and that the steps were the cause of her injury. After careful review of the record in this matter, we find a reasonable basis for the trial court decision and that it was not manifestly erroneous or clearly wrong.

The plaintiff elicited testimony from an expert in the field of engineering and stairway design and construction that the lighting on the stairs was inadequate; that the tread depth was 1/8 of an inch short of the 13 inch minimum required by code; and that the handrails on the stairs did not meet codal requirements. The trial court found that these minor deficiencies did not create an unreasonable risk of harm. Clearly the defects are minimal, and considering testimony that there were no other accidents or any complaints about the stairs, we find the trial court's finding reasonable.

The trial court further found that Mrs. Swanson's fall was caused by her failure to see what she should have seen, not the condition of the stairs. Again, the record supports this finding. It was readily apparent that the restroom was on a lower level. The stairs that she failed to see were flanked by blonde wood paneling with black handrails attached to both sides. Mrs. Swanson testified that she simply did not see the stairs. We find no error in the trial court finding on this issue.

Based on the foregoing, the judgment of the trial court is affirmed and this opinion is issued in compliance with URCA Rule 2-16.1.B. Costs of this appeal are assessed to the appellant, Joan Swanson.

AFFIRMED.