

LEGAL EAGLE EYE NEWSLETTER

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Assisted Living Resident, Mobility Issues: Court Upholds Verdict For Resident's Fall.

An elderly resident of an assisted living facility sustained a serious head injury in a fall while using a path on the grounds of the facility.

Before the resident fell a facility employee saw him sitting on the seat of his walker using his feet to push himself backward along the downward-sloping path toward a spot where a drainage grate is present.

No one saw him fall. He was found afterward lying on the drainage grate with his legs tangled in his walker.

At the hospital a CT scan gave his physicians little reason to expect a recovery from his head injury.

His family consented to extubation and were present when he passed.

The family's lawsuit resulted in a jury's verdict which found the facility and the deceased each fifty percent at fault. Both sides appealed. The Court of Appeals of Texas affirmed the jury's verdict in all respects.

Facility's Legal Duty

As owner of the property the facility was legally required to exercise reasonable care to protect its residents against a dangerous condition that created a risk of harm that the facility knew about or reasonably should have known about. To be held liable, the facility must have had actual or constructive knowledge of the danger.



The jury's verdict awarded damages to members of the family, but reduced the overall amount by fifty percent to account for the deceased's own negligence which contributed to his fatal accident.

The facility knew the drainage grate posed a fall risk, especially to a resident with mobility problems who used a walker.

COURT OF APPEALS OF TEXAS
August 25, 2015

The jury heard testimony that the drainage grate at the bottom of the incline had openings big enough to catch a cane, walker or shoe, and could cause a senior to trip and fall.

Residents were encouraged to walk the path where the drainage grate is located. Distance markers were set up to help them monitor their progress.

Facility management had to admit that the spot where this accident occurred could be dangerous to a resident with mobility problems.

Management had to admit it was foreseeable that a resident who used a walker could fall on the drainage grate, strike his or her head on the ground and sustain a serious head injury.

Residents, management claimed, had been alerted not to go down to the bottom of the path where the drainage grate is located, but they were not warned specifically about the tripping hazard posed by the drainage grate.

The facility easily could have put up signs warning residents about the danger posed by the drainage grate.

The employee who saw the resident pushing himself backward right before he fell could have intervened more directly and warned him about the danger, the Court said. ***Christian v. O'Banion***, 2015 WL 5013615 (Tex. App., August 25, 2015).

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