

14-CI-03563

DIVISION TEN (10)  
JUDGE ANGELA MCCORMICK BISIG

KRISTINE STEVENSON and  
CORWIN STEVENSON

PLAINTIFFS

vs.

**OPINION AND ORDER**

AL J. SCHNEIDER COMPANY d/b/a  
GALT HOUSE HOTEL

DEFENDANT

\* \* \* \* \*

This matter comes before the Court on Motion of the Defendant, Al J. Schneider Company, d/b/a Galt House Hotel (hereinafter, the "Galt House"), for Summary Judgment. The Plaintiffs, Kristine and Corwin Stevenson, filed a Response. The Galt House has filed a Reply. The matter now stands submitted for the Court to rule.

**BACKGROUND**

Kristine Stevenson has filed a negligence claim, alleging she slipped and fell in a shower at the Galt House. Stevenson and her husband were in Louisville to attend a conference. Stevenson had arrived at the Galt House on Friday, July 12, 2013. The fall occurred on Sunday, July 14, 2013. Stevenson alleges this was the first time she showered on this visit to the Galt House, but acknowledges she has showered on other visits to the hotel in November 2007 and January 2013.

Stevenson showered around 9:00 a.m. on July 14 and did not look for or request a bathmat. In a deposition, she stated she did not have any concerns about showering without a bathmat. Stevenson says she fell when she turned to get shampoo. She further states she was not distracted when she fell.

Stevenson was in the bathtub for approximately thirty minutes until a friend returned to the room and called the front desk. Paramedics arrived and Stevenson was transported to Jewish Hospital. She was treated that day and returned to the Galt House to stay the night.

The Galt House installed the bathtub in Stevenson's room in late 2001 or early 2002. It was installed with the industry-standard slip-resistant finish. The Operations Manager and Director of Engineering at the Galt House testified that it is the hotel's policy to have a bathmat in every room. The Director of Engineering testified that the bathmat should have been in Stevenson's room. However, Stevenson testified that in her prior visits to the Galt she may not have used a bathmat while showering and never encountered any prior problems or issues. The Galt House alleges that the bathtub Stevenson showered in was the same as the bathtubs she showered in on previous visits.

In its Motion for Summary Judgment, the Galt House argues the Court to find that it had no duty to provide Stevenson with protection against a slippery bathtub. The Galt House also argues it did not breach any general duty of reasonable care to provide safe premises to Stevenson. Stevenson, on the other hand, argues there is a material question for a fact-finder as to whether the Galt House maintained the premises in a reasonably safe condition

### ANALYSIS

#### 1. Summary Judgment Standard

Civil Procedure Rule 56.03 authorizes summary judgment "if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03. The Court must view the record "in a light

most favorable to the party opposing the motion, and all doubts are to be resolved in his favor.” Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., 807 S.W.2d 476, 480 (Ky. 1991) (citation omitted).

Summary judgment is proper when “it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor and against the movant.” Paintsville Hosp. Co. v. Rose, 683 S.W.2d 255, 256 (Ky. 1985) (quoting Roberson v. Lampton, 516 S.W.2d 838, 840 (Ky. 1974)). The term “impossible” is used in a practical sense and not in an absolute sense. Perkins v. Hausladen, 828 S.W.2d 652, 654 (Ky.1992).

Even if a trial court believes the party opposing the motion for summary judgment may not succeed at trial, “it should not render a summary judgment if there is any issue of material fact.” Steelvest, 807 S.W.2d at 482. The trial judge’s duty is to examine the evidence “not to decide any issue of fact, but to discover if a real issue exists.” Id.

## 2. Negligence

A prima facie negligence claim requires proof that the defendant owed a duty to the plaintiff, the defendant breached that duty, and the plaintiff was injured as a result of this breach. Pathways, Inc. v. Hammons, 113 S.W.3d 85, 88-89 (Ky. 2003).

The existence of a duty is a legal question for the Court. Shelton v. Kentucky Easter Seals Soc., Inc., 413 S.W.3d 901, 908 (Ky. 2013). A land possessor owes a “general duty of reasonable care” to “exercise ordinary care in his activities to prevent foreseeable injury” as well as to “maintain the premises in a reasonably safe condition.” Id.

In Jones v. Abner, 335 S.W.3d 471 (Ky. App. 2011), the Kentucky Court of Appeals stated that an owner of a hotel has “the duty to exercise that degree of care generally used by ordinarily careful, prudent hotel operators...to provide reasonably safe accommodations.” Id. at 477. The plaintiff in Jones claimed a motel bathtub was unreasonably dangerous because it was

overly slick and lacked an adequate non-slipage device. The court disagreed, determining the plaintiff had produced no evidence that the motel's practices had caused a slick surface or the lack of non-slipage devices in the bathtub created an unreasonably dangerous condition. Id. at 475-76.

The Court concludes the reasoning in Jones is applicable to this case. In Jones, the plaintiff "had twice previously used the bathtub without incident and must be assumed to have been fully aware of the condition of the tub." Jones, 335 S.W.3d at 476. Although Stevenson stated she had not showered on this trip prior to her fall, she did testify that she had stayed in the Galt House on two prior occasions and taken showers. The Galt House states that Stevenson used the same type of bathtubs on these occasions. Stevenson further admits she may not have used a bathmat on these prior occasions. Stevenson has also not produced any evidence that the Galt House's practices caused a slick surface on the bathtub.

Moreover, the Court is not convinced that simply because the Galt House has a policy of providing bathmats, it has breached a duty of reasonable care or has not provided reasonably safe conditions. Reasonable care does not require a hotel to provide precautions or warnings "against dangers that are known to the visitor or so obvious to him that he may be expected to discover them." Jones, 335 S.W.3d at 476 (quoting Johnson v. Lone Star Steakhouse & Saloon of Kentucky, Inc., 997 S.W.2d 490, 492 (Ky. App. 1999)). "[T]he risks inherent in bathing or showering are open, apparent, and obvious to anyone who has ever taken a bath or shower." Id. In Jones, the court observed that the plaintiff had not produced evidence of any type of industry standard, statutory law, or common-law rule that could reflect a duty... to provide safety devices to hotel bathtubs. Id. at 476-77. Providing bathmats to other rooms does not create a duty to

provide bathmats to all rooms, and the failure to provide one does not necessarily constitute breach. An owner of a hotel is “not an insurer of a guest’s safety.” Id. at 477.

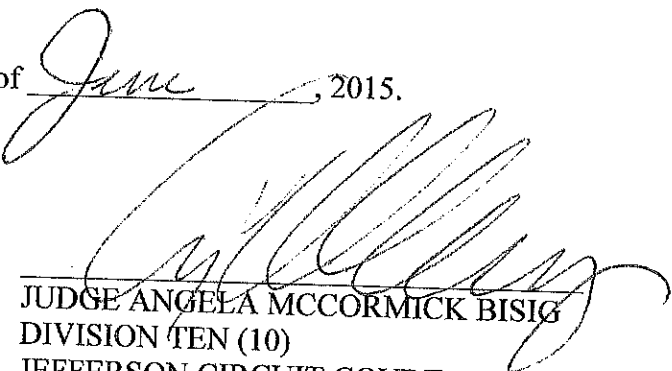
Although an open and obvious condition is not a complete defense to a premises liability claim, it is still a factor in the Court’s calculus as to whether a hotel provided reasonably safe conditions. See Shelton v. Kentucky Easter Seals Society, Inc., 413 S.W.3d 901, 908-09 (Ky. 2013). Examining the record, the Court concludes there is no evidence creating a question for a fact-finder regarding a breach of a duty owed by the Galt House. Summary judgment is therefore appropriate.

**ORDER**

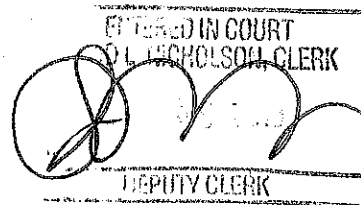
**WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED** that Motion of the Defendant, Al J. Schneider Company, d/b/a Galt House Hotel, for Summary Judgment, is hereby **GRANTED**.

This is a final and appealable Order and there is no just cause for delay in its entry or execution.

IT IS SO ORDERED this 29 day of June, 2015.

  
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JUDGE ANGELA MCCORMICK BISIG  
DIVISION TEN (10)  
JEFFERSON CIRCUIT COURT

cc: Matthew T. Lockaby  
Christine Gilliam  
Tad Thomas  
Lindsay Cordes  
Daniel H. Friedman

  
ENTERED IN COURT  
O.L. NICHOLSON, CLERK  
DEPUTY CLERK