

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

JASON ANTHONY,	:	
Plaintiff	:	
	:	
v.	:	No. 04-01,194
	:	
LYCOMING COLLEGE,	:	
Defendant	:	

OPINION and ORDER

This is a slip-and-fall case in which the defendant fell down steps located on the property of Lycoming College while walking his bicycle through the campus. The defendant had no connection to Lycoming College, and was merely taking a short cut through campus on his way from downtown Williamsport to the Puffs store on Washington Boulevard.

The defendant, Lycoming College, has filed a Motion for Summary Judgment on two grounds. The first focuses on the design of the steps, which have an elevated concrete block adjacent to both sides. The defendant alleges that in the absence of an expert report, the plaintiff cannot sustain his burden of proof showing the college was negligent in having such steps erected on its property. The court finds no expert report is necessary, because the formation of an opinion on the issue does not require knowledge, information, or skills beyond what is possessed by the ordinary juror. *See Ovitsky v. Capital City Economic Development Corp.*, 846 A.2d 124 (Pa. Super. 2004)

Next, Lycoming College alleges the evidence shows plaintiff was a trespasser, and the plaintiff cannot sustain his burden of proof as to negligence in regard to a trespasser. The court disagrees. While the plaintiff did admit he had no connection to Lycoming College, and had not specifically been invited upon the college's property, that does not automatically render him a trespasser. If the defendant knew of such use by members of the public, and tolerated such use, the plaintiff could well be a licensee,

to which the defendant owes a duty. *See* Slobodzian v. Beighley, 401 Pa. 520, 164 A.2d 923 (1960). Similarly, the plaintiff may be a known trespasser, in which case the defendant owes a different duty. Franc v. Pennsylvania Railroad, 225 A.2d 528 (Pa. 1967). And finally, even if the plaintiff is nothing more than a trespasser, the defendant still has a duty to refrain from wanton or willful negligence or misconduct. Rossino v. Kovacs, 718 A.2d 755 (Pa. 1998). *See also* Restatement, 2d, Torts, §328(E) et seq. Whether such negligence or misconduct exists is a jury question.

In conclusion, the plaintiff's status, as well as whether Lycoming College breached its duty to the plaintiff, are issues for the jury to decide.

ORDER

AND NOW, this _____ day of October, 2005, for the reasons stated in the foregoing opinion, the Motion for Summary Judgment filed by the defendant is denied. A pre-trial conference is set for November 8, 2005, at 9:00 a.m., in Courtroom #5, Lycoming County Courthouse, Williamsport, Pennsylvania.

BY THE COURT,

Richard A. Gray, J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Richard A. Gray
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