

CANADA / JUDGMENT

Leweke v. Saanich School District No. 63

2004 BCSC 1251

COURT

Supreme Court of British Columbia

DECIDED

24 September 2004

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2004 BCSC 1251 Leweke v. Board of School Trustees (No. 63)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Leweke v. Board of School Trustees (No. 63)

2004 BCSC 1251

Date: 20040924

Docket: 01 5416

Registry: Victoria

Between:

Paula Lynn Leweke

Plaintiff

And

Board of School Trustees of School

District No. 63 (Saanich)

Defendant

Before: The Honourable Mr. Justice Meiklem

Reasons for Judgment

Counsel for the plaintiff:

A. Sheane

Counsel for the defendant:

D.C. McKay and K.T. Bhandar

Date and Place of Trial:

March 8 - 12, 15, 2004

Victoria, B.C.

NATURE OF THE CLAIM

- [1] The plaintiff seeks damages for injuries sustained when she fell from the second level of telescopic wooden bleachers at a high school gymnasium while attending a "Meet the Teacher Night" in September 2001. She sustained severe multiple fractures of her left ankle which she claims will significantly impact her future earnings as a nursing instructor.
- [2] Liability is disputed. Ms. Leweke claims that the defendant breached its duties under the Occupier's Liability Act R.S.B.C. 1996 377 (the "Act") by failing to take reasonable care that she would be reasonably safe in using the seating for parents in the school gymnasium, and failing to warn her of the dangerous condition of the premises.
- [3] The defendant maintains that the premises were reasonably safe and that it did not fail in its duty under the Act. The defendant alternatively argues that the plaintiff's fall and consequent injuries were caused wholly or in part by the plaintiff's negligence in failing to take reasonable care for her own safety, in wearing inappropriate footwear, and in failing to watch where she was placing her foot when exiting off the bleachers.

AGREED FACTS PERTAINING TO THE LIABILITY ISSUE

- [4] The parties agreed to the following facts relevant to the liability issue:
 - 1. A Meet the Teacher Night was held on Wednesday, September 19, 2001, commencing at 7:00 p.m., at Claremont Secondary School (the "School").
 - 2. At the material time, a Meet the Teacher Night was held twice each year at the School.
 - 3. At the September 19, 2001 Meet the Teacher Night, the parents were directed to the School theatre for introductory comments and to meet with School administration.
 - 4. After Meet the Teacher introductory comments were completed, parents, to include the plaintiff, were directed to pick up their child's student timetable in the hallway and to follow the timetable of classes and to meet with the teachers of those classes at the location designated on the timetable.
 - 5. A buzzer would ring which would signal to the parent groups that the time for meeting with a particular teacher was concluded and the parents were to proceed to the next class on their child's timetable at the location set out in the timetable.

6. On the September 19, 2001 Meet the Teacher Night, Pamela Moore, the P.E. Teacher of the Plaintiff's daughter (the "Teacher") met the parents of her students in the large gymnasium of the School.
7. The Teacher had been employed by the School since 1983.
8. At all material times, the Teacher was aware that some of her students would have parents who worked outside of the home, and that some of her students came from single parent families.
9. At all material times, the Teacher was aware that the parents of students came in all shapes and sizes, had different levels of fitness, and ranged in age from the 30's through to the 50's. The Teacher had seen grandparents around the School as well.
10. At all material times, the Teacher was aware that some parents would be attending the Meet the Teacher Night in office or business attire.
11. On September 19, 2001, when the parents arrived in the large gymnasium to meet the Teacher, the Teacher directed the parents to be seated in wooden telescopic bleachers (the "Bleachers").
12. The Teacher had a very short time - ten to fifteen minutes - to be with her parent groups. The Teacher would get the core of the parents in and seated, wait a few minutes, and then begin speaking. She would have about ten minutes to go through a hand-out with each parent group.
13. The Teacher would stand on the gym floor facing the Bleachers. She would be located at the middle of the Bleachers, facing the parent group, while going through the handout with the parent groups.
14. On September 19, 2001, the Teacher had met with one parent group (the "First Parent Group") before she met with the plaintiff's parent group (the "Second Parent Group").
15. With the First Parent Group, the Teacher observed that parents came in to the gym and took seats close to where the Teacher was, the middle of the Bleachers, on the first, second and third rows of the Bleachers.
16. With the First Parent Group, the Teacher observed that there was room to sit in the front row of the Bleachers and, in spite of that, some parents went up to the second and third row of the Bleachers.
17. The Teacher did not watch parents from the First Parent Group climbing down from the Bleachers.
18. In prior years at Meet the Teacher Night, the Teacher observed that parents would come in to the large gymnasium and not know where to sit. They would climb up the Bleachers to the fourth row, or up to the top of the Bleachers.

19. In the plaintiff's daughter's P.E. class there were 26 students. The Teacher was aware that it was possible that 52 parents could attend for her talk.
20. When the plaintiff entered the large gymnasium, people from the Second Parent Group were already seated in the Bleachers.
21. When the plaintiff entered the large gymnasium, the Teacher had already started talking to the Second Parent Group.
22. Because the plaintiff had come in late, the Teacher did not have any handouts right there so she told the plaintiff that she could share a handout with another parent. The Teacher heard several parents offer to share their handout with the plaintiff. The Teacher asked the plaintiff to sit down.
23. The Teacher stopped her presentation for a minute and probably talked to the people in front of her while the plaintiff got situated. She did not watch the plaintiff climb up the bleachers.
24. The Teacher did not warn the plaintiff, or any parent, about any risks associated with the Bleachers, or make any attempt to stop the plaintiff, or any parent, from climbing up the Bleachers.
25. When the Teacher finished her talk to the Second Parent Group, she did not give any warning of risks associated with climbing down the Bleachers, or offer or ensure assistance to parents climbing down the Bleachers.
26. The only document given by the Claremont Secondary School Physical Education Department to parents, to include the plaintiff, in advance of and pertaining to the September 19, 2001 Meet the Teacher Night was a document entitled, "Claremont Secondary School Physical Education Department - P.E. 9/10 Program Guidelines & Policies".
27. The only document given to parents by Claremont Secondary School, to include the plaintiff, in advance of and pertaining to the September 19, 2001 Meet the Teacher Night was dated September 13, 2001 and entitled: "Update: Wednesday, September 19, 2001 MEET THE TEACHER NIGHT, 7 PM".
28. At the material times, there were no signs in the gymnasium warning that the Bleachers could be slippery or hazardous, or warning that rubber soled shoes were required on the Bleachers.
29. At all material times, the Teacher did not advise parents not to climb up to the third or fourth row of the Bleacher, or give any instruction as to where to sit on the Bleachers.
30. At all material times, in addition to the Bleachers, there were metal bleachers in the large gymnasium which were not in use.

31. At all material times, the metal bleachers were not used because the Bleachers were easier to set up and closer to the doors.
32. At all material times, there was nothing preventing the Teacher from using the metal bleachers.
33. At all material times, there were at least six to eight low benches available to the large and small gymnasiums and which were located in the large and small gymnasiums. The benches could be moved back and forth between the large and small gymnasiums.
34. At all material times, there was nothing preventing the Teacher from using some of the low benches.
35. At other School events, chairs are set up in the gymnasium. To use chairs in the gymnasium, the Teacher calls maintenance, maintenance staff bring the chairs to the gym, School students place mats on the gym floor, and the Teacher sets up the chairs.
36. Chairs are set out in the School large gymnasium for the athletic banquet and for the one-to-one parent teacher interviews.
37. At all material times, there was nothing preventing the Teacher from setting out chairs for parents.
38. Assuming the Bleachers were not in the gymnasium at the material times, or were "off limits", the Teacher could have arranged for other seating in the gymnasium. The Teacher could have seated the parent groups on a bench, on chairs, on the floor, or they could stand.
39. There was probably classroom space available at the School at the time the Teacher met with her parent groups in the gymnasium.
40. The defendant and the School do not know the name brand of the Bleachers from which the plaintiff fell.
41. The defendant and the School do not know when the Bleachers were installed in the gymnasium.
42. The defendant and the School do not know where or from whom the School obtained the Bleachers.
43. The defendant and the School have no manufacturer's literature, catalogues or plans for the Bleachers.
44. The defendant and the School have no records or knowledge regarding whether the Bleachers were ever assessed to ensure adherence to the Building Code.
45. The defendant and the School have no reports or records regarding any inspection or maintenance program for the Bleachers.

46. Records of incidents occurring at the School since 1983 are kept on file at the School. There are no records of incidents involving the Bleachers located in the incident file.
47. The Bleachers contain "raised cleats" measuring 3/4" x 3/4" x 8" located on the outside end of the "footstep" of each bleacher.
48. The Bleachers contain brackets designed to support handrails. The defendant does not use handrails. There are no handrails located at the School.
49. The Teacher did not use handrails, nor had seen handrails used, in all of the years she had been a teacher at the School.

NARRATIVE AND FURTHER EVIDENCE RELATING TO LIABILITY

- [5] Ms. Leweke is a single parent, a nursing instructor, aged 47 at the time of the accident slip, who attended in her work attire, which included dress shoes with plastic soles and 1-1/2 inches heels also made of plastic. Ms. Leweke had attended at the same bleachers on many prior occasions to watch her two children play basketball. On those occasions she "typically" wore running shoes or rubber-soled shoes.
- [6] On this Meet the Teacher Night Ms. Leweke had first attended the school theatre, then a science classroom before entering the gymnasium. She was one of the last parents to enter the gymnasium to join the group of parents being addressed by Ms. Moore. She climbed to the third bleacher seat in order to accept another parent's (Ms. Russell) offer to share the teacher's handout. Ms. Russell was on the second bleacher seat. Ms. Leweke did not recall anyone else being seated on the third row, Ms. Lucy, a witness who saw Ms. Leweke fall, and her husband were also seated on the third level.
- [7] Following the teacher's remarks, which took approximately 15 minutes, and were punctuated by the school bell ringing to signal a move on to another location, Ms. Leweke stood up and waited for the lower two levels to clear. She placed her right foot on the second level bleacher seat, (actually 5-3/4 inches higher than the foot well that her left foot would have been standing on, between the second and third level seats) and her foot slipped. Her impression was that her foot slipped forward because of the smoothness of the second level bleacher seat. She fell to the floor and somehow in the course of her fall her left foot was "jammed" behind or under the bottom level bleacher, fracturing her ankle.
- [8] Ms. Leweke testified that she did not put her mind to the fact that she was wearing her footwear from work. She attributed this in part to the "hectic" pace of the "Meet the Teacher Night" event.

THE EXPERT EVIDENCE

- [9] The plaintiff's expert, forensic engineer, Mr. Granville Airton, P. Eng. of Consulco Forensic Engineering Inc. attended the scene in June 2002, and examined and measured the bleachers and tested the slip resistance of the second level bleacher seat in the area where

Ms. Leweke slipped. He utilized a part of the sole and the whole heel of Ms. Leweke's right shoe in the testing device, as well as friction blocks made of rubber, neolite, and leather for comparison. The coefficient of friction between the varnished wooden seat and Ms. Leweke's shoe heel was .27 and for the sole of her shoe it was .31. These coefficients of friction compare to the leather friction block's coefficient of .30, the neolite's coefficient of .64 and the coefficient with the rubber friction block of .66.

- [10] Mr. Airton's report cites a direction from a generally recognized expert Dr. Robert Brungraber that coefficients of friction produced by the Slip Test Mark II of lower than .35 are not acceptably slip resistant. Mr. Airton's report includes this passage:

These results indicate that although the coefficient of friction is satisfactory for rubber and Neolite on the subject varnished seating, it is lower than .35 for leather and the subject sole and heel materials and this is not reasonably slip resistant. This would explain why Ms. Leweke's right foot slipped out when she placed it on the second seat in the course of moving down to the floor of the gym.

- [11] Mr. Airton also makes reference to the primary thrust of provincial and national building codes with regard to getting people out of buildings safely in times of emergencies such as fires or earthquakes. He suggests that surfaces that occupants walk on or climb down must be safe for all kinds of footwear that could realistically be expected to be used at the time of an emergency, which he suggests includes the plastic sole and heel materials used on Ms. Leweke's shoes.
- [12] Mr. Airton's report also stated the opinion that the bleachers did not comply with the requirements of the applicable building code in that, by his measurements, the vertical distance between the seats exceeded the allowable 280 mm. (about 11 inches). Mr. Airton measured the vertical distance between the first and second level at 11-1/8 inches and between the second and third level at 11-1/4 inches. (I will refer later to contradictory evidence from the defendant's engineer.)
- [13] The applicable code requires an intermediate step to be provided in aisles where the vertical distance between seats exceeds the stated limit. There are no aisles in these bleachers, which causes Mr. Airton to conclude that the whole of the bleachers constitutes an aisle for the purposes of the code. It is unclear to me how it would be possible to install an intermediate step in the foot well of the bleachers themselves, as these bleachers are designed, because the horizontal width of the foot well is only 13 inches, and an intermediate step would preclude the use of the foot well.
- [14] In any event, Ms. Leweke's slip did not occur as she was stepping from seat to seat. She was stepping up to the seat platform immediately in front of the foot well that her feet occupied while she was seated. If there was a non-compliance with the building code it played no role in her slip and fall.

- [15] Mr. Airton pointed out that the bleachers had sleeves for installation of removable guardrails and the building code required guardrail protection for bleacher seats more than 1.2 m. above the floor. Although Ms. Leweke was sitting lower than 1.2 m. above the floor, Mr. Airton's opinion is that if a guardrail was installed to comply with the code it would probably have utilized the sleeves at the lower levels below the legal requirement, and would have been available to assist Ms. Leweke if she had moved closer to the end of the bleachers as she began to leave.
- [16] While I agree that Ms. Leweke may well have utilized a guardrail or handrail if one was installed in excess of the code requirement, the non-compliance with guarding requirements of the code for the seats above 1.2 m. played no role in her accident and it is speculative to conclude that a compliant occupier would have installed a guard below the required limit.
- [17] The defendant countered Mr. Airton's report with a report from Craig Brown P. Eng. of MacInnes Engineering Associates Ltd.
- [18] Mr. Brown's measurements of vertical distances between seating differ from Mr. Airton's. Mr. Brown measured the elevations of the respective seat levels relative to the floor at three points on each level and determined an average vertical distance of 265 mm. with a maximum of 271 mm. This appears to be a more accurate methodology than Mr. Airton's. Mr. Airton used a spirit level to measure seat-to-seat levels.
- [19] Mr. Brown used a different device, known as an English Variable Incident Tribometer (VIT) to test the coefficient of friction of the bleacher seats in October 2003. This device uses a friction disk of neolite, and tests were done at two positions on each of the four lower seats. The average coefficient of friction was .60 with a range of .54 to .70. This result is comparable to Mr. Airton's finding of .64 neolite with the different testing device.
- [20] Mr. Brown's report provides comparable coefficients of friction for several other walking surfaces tested, such as .62 for exposed aggregate concrete, .63 for 2-year old heavily used textured vinyl sheet linoleum, .70 for polished marble, and .71 for painted ceramic tile on stairs. He also makes reference to Dr. Brungraber's discussion paper referring to a coefficient of friction of .5 as a generally safe criterion for shoes and walkway surfaces, but pointing out that slightly lower levels of friction may be acceptable on stairs. (Due to a person's body geometry while using stairs, which does not involve striking the heel first.)
- [21] Mr. Brown tested Ms. Leweke's left shoe material on various floor surfaces, including maple and oak, both as-purchased and scuffed with steel wool to simulate wear, and on vinyl composition tile. In the case of as-purchased maple, her sole was equivalent to vegetable tanned sole leather with a coefficient of friction of .33, which he described as "low and could be hazardous if unexpected". On the other surfaces her sole provided friction that was only 53 to 72% of the friction provided by leather on the same surface. On as-purchased oak, the coefficient of friction was .31 -.33, whereas leather was .43 -.47. On vinyl composition tile it was .32 compared to .60 for leather.

[22] Mr. Brown's friction test results on Ms. Leweke's sole material are consistent with Mr. Airton's. Mr. Brown did not test the friction of the heel material, which Mr. Airton found provided even less friction than the sole. He testified that he did not do so because he understood Ms. Leweke was stepping down and the heel would not be a factor. His understanding was in error on this point, because Ms. Leweke was, in fact, stepping up with her right foot to the second level seat, which was, as I have noted, 5-3/4 inches higher than the foot well where her feet had been.

[23] Mr. Brown concluded:

Comparing these friction values to the Brungraber criterion of .5 indicates that [Ms. Leweke's] sole material can be hazardous on many surfaces.

[24] I note that Mr. Airton's report speaks of Dr. Brungraber's direction or criterion of a .35 coefficient of friction and Mr. Brown's spoke of Dr. Brungraber's criterion of .5. The discussion paper referred by Mr. Brown indicates that Dr. Brungraber refers to the two criteria in different contexts. Dr. Brungraber refers to Sidney James of Underwriters Laboratories as setting a standard coefficient of .5 for floor polishes that was first adopted by the U.S. Federal Trade Commission in 1953 and finally by ASTM D2047 about 1960. He then says:

When setting the standard of .5 that appears in ASTM D2047, James doubtless used test results made with his device on floors that had given satisfactory service. Later anthropometric and kineseologic studies have shown that for most people, wearing heels of modest height, and taking normal strides, a minimum value of .3 to .4 is needed just to prevent slip. Thus the .5 value includes a factor of safety of 1.3 to 1.7.

[25] Mr. Brown's report contains the following reasoning:

A reference by Brungraber et al is a discussion paper regarding walking surfaces. The authors discuss a coefficient of friction of .5 as a generally safe criterion for shoes and walking surfaces. The paper points out, however, that slightly lower levels of friction may be acceptable on stairs.

It follows that the average friction value measured by the English VIT of 0.60 for the bleacher seats indicates a surface that should provide adequate slip resistance for ascending or descending.

[26] This reasoning depends to some extent on the erroneous understanding that Ms. Leweke was stepping down the bleachers as if descending stairs, that is, using primarily the sole and not the heel for weight bearing. In fact, while her intended subsequent movement would obviously have been a step down, she was, at the time she slipped, obviously applying weight to her right foot on the seat platform in front of, and higher than, the level of the foot well in order to be standing on the second level seat platform before descending to the first level. If she were doing so as the first upward step in an ascent of stairs, she naturally would have used her sole for weight bearing. However, in the circumstances she would have been intending to either bring her left foot up to the same platform and stand on both feet briefly

before stepping down with either her right foot or her left foot or use her right footing as a balance point as she raised her left foot up and over the second level seat platform and down to the first level seat platform. I think that it is more likely that she was intending the former, since common sense indicates that the latter is a more difficult movement, requiring balance to be maintained as the body is first lifted up and then down while standing on one leg. In either case, she was much more likely to involve her heel in the weight bearing in order to maintain balance than would a person continuously ascending or descending stairs.

- [27] It is also noteworthy that the bleachers were not ordinary stairs. Not only was the vertical distance between them near the maximum 11 inches, but there was a 13 inch horizontal distance between the leading edge of each seat platform and the trailing edge of the next one. The platforms were 9-1/4 inches wide. Therefore, a person's horizontal movement for each step taken if the seat platforms were used as stairs would be 22-1/4 inches. Common sense suggests this would, even for someone descending the seating platforms as stairs on the balls of their feet, increase the horizontal forces at the point of contact over those that would occur on ordinary stairs.
- [28] Thus the opinion that slightly lower levels of friction may be acceptable on stairs is probably not applicable in the circumstances of this case, in my view.
- [29] On the other hand there is no expert evidence that suggests these bleachers should have a higher coefficient of friction than a floor in order to be acceptably safe. Mr. Brown's report indicates that there is no directly applicable test standard to determine the required friction characteristics of these bleachers, and he said: "Since the bleachers are not a means of egress from a building, building codes regarding exits do not apply".
- [30] The two expert reports, taken together, support the following additional conclusions:
- 1) The coefficient of friction of Ms. Leweke's right shoe sole on the bleacher seat surface was .31, as compared to .30 for leather and .64 for neolite;
 - 2) The coefficient of friction of Ms. Leweke's right shoe heel on the bleacher seat surface was .27;
 - 3) The coefficient of friction of the bleacher seat surface and neolite was marginally less than exposed aggregate concrete and textured vinyl sheet linoleum;
 - 4) The coefficient of friction of Ms. Leweke's sole and the bleacher seat surface (.31) was approximately equivalent to the coefficient of friction between her sole and as-purchased pre-finished solid maple (.33) and oak parquet flooring (.31-.33) and as-purchased vinyl composition tile (.32);
 - 5) I infer that Ms. Leweke's heel would have a coefficient of friction on the maple, oak and vinyl composition tile roughly equivalent to its .27 coefficient on the bleacher seat surface.

ANALYSIS OF THE LIABILITY ISSUE

The Standard of Care Required of Occupiers

[31] Sub-sections 3(1) and 3(2) of the Occupier's Liability Act R.S.B.C. 1996 Chapter 337 set out both the duty of care and the standard of care owed by an occupier to persons entering on premises:

3(1) An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, . . . will be reasonably safe in using the premises.

(2) The duty of care referred to in subsection (1) applies in relation to the

- (a) condition of the premises,
- (b) activities on the premises, or
- (c) conduct of third parties on the premises.

[32] The law is clear that there need not be an unusual danger, and that the focus of the standard of care is to the safety of the visitor: see *Weiss v. YMCA of Greater Vancouver*, [1979] B.C.J. No., 966 (B.C.C.A.). It is now equally clear that the visitors' familiarity with the premises and awareness of their condition, while always a factor to be considered in relation to voluntary assumption of risk or contributory negligence, does not absolve an occupier who has failed to meet the standard of care and that failure has caused injury; only a consent to the legal risk, in effect a waiver of legal rights, will absolve the occupier of unsafe premises: see *Waldick v. Malcolm*, [1991] 2 S.C.R. 456, interpreting "risks willingly assumed", the phrase contained in the Occupiers Liability Act of our province and in similar statutes in other jurisdictions.

The Arguments

[33] There is no suggestion in this case of the plaintiff willingly assuming any risk in the sense that the law recognizes as absolving the occupier of liability.

[34] The plaintiff argued that the defendant was negligent in seating the plaintiff on the bleachers at Meet the Teacher Night, and should have used an alternative meeting room or different seating, considering the absence of guardrails or slip-resistant paint or strips on the bleacher seats which rendered them unsafe, and also negligent in failing to provide a warning of risk or requiring rubber-soled shoes on the bleachers. It is argued that nothing more than common sense was needed to foresee the risks of harm posed by the bleachers for the seating of parents of unknown physical capabilities who might foreseeably be attending in office clothing.

[35] The defendant denies the premises were unsafe or that the defendant failed to meet the standard of care and the defendant takes issue with the reasonableness of the plaintiff's explanation of how she fell.

Discussion

- [36] The only independent witness called by the plaintiff as to her fall was Ms. Josephson. She was sitting on the second row of bleacher seats and she heard a commotion, turned to her right and saw Ms. Leweke in mid-fall, falling forward.
- [37] The defendant called Ms. Lucy, a parent in the third or fourth row of seats in an adjacent set of bleachers. She said she saw Ms. Leweke going from vertical, then falling, and she saw the course of the fall, but did not see her catch her foot during the fall. In examination-in-chief she said she saw Ms. Leweke falling forward and to her left, but in cross-examination she agreed she pitched backwards and to the left. This seems consistent with Ms. Leweke's evidence of her right foot slipping.
- [38] The defendant also called the physical education teacher, Ms. Moore. After concluding her speech to the group, she was speaking to an individual parent on the floor and "out of the corner of her eye" saw Ms. Leweke wavering on the second level and then fall to the floor. She demonstrated the wavering as a forward and backward tilting motion.
- [39] The defendant also called Ms. MacNeil, a former friend of the plaintiff and wife of a teacher that Ms. Leweke had complained about in writing to his principal. She denied suggestions of bias against the plaintiff and testified about Ms. Leweke's frequency of attending at the gymnasium and sitting in the wooden bleachers. She also testified that she and Ms. Leweke occasionally sat together on the bleacher seat where the plaintiff's fall occurred, and she had noted that Ms. Leweke sometimes struggled to maintain balance. Ms. MacNeil had seen her waiver at times and put out a hand to steady her. On one occasion she said: "Paula, why do you do this to yourself?" and received the response that Ms. Leweke wanted to sit up higher.
- [40] Ms. Leweke is a relatively large woman who stated upon hospitalization that she weighed 208 pounds. She stated she was 5'10" in height, but Dr. Morton reported her as 5'9-1/2" and Dr. Yoneda reported her as 5'8-1/2".
- [41] The defendant agreed that the plaintiff's evidence on the mechanics of her fall is inconceivable because if her left foot remained in the foot well between the third and second bleacher seats when her right foot slipped, it would be impossible for her left foot to end up in the foot well between the first and second seat, as she indicated. The defendant's theory in cross-examining the plaintiff was that she stood up on the second bleacher, lost her balance and fell forward.
- [42] In fairness to Ms. Leweke as a witness, she was unable to explain where her left foot was when she slipped. She was not cross-examined in minute detail as to her perceptions of her body position at very phase of her slip and fall. It would probably have been a non-persuasive endeavour, perhaps even futile, because no one can be expected to do much more than reconstruct the sequence of such an unexpected and rapid occurrence from a small number of discrete reliable recollections. Clearly, in order for slippage of her right

foot to cause her to fall, she must have by the time of the slip transferred a good deal of her weight, perhaps all of it, to that foot. Her evidence was not so specific as to state that she was still standing on her left foot in the foot well and it is very unlikely that she was. She may have raised her left foot sufficiently that when her right foot slipped forward and she pitched backwards as stated by Ms. Lucy, her left foot cleared the second bleacher seat and came forward into the lower foot well and was caught, as she fell downward.

- [43] We will never know the full mechanical details of Ms. Leweke's mishap, but I find her recollection of her right foot slipping forward is probably reliable. The only evidence supporting the defendant's theory is that of Ms. Moore, together with inferences from Ms. MacNeil. Ms. Moore's evidence, however, is not necessarily inconsistent with the plaintiff's and was not a direct observation. Her evidence that the plaintiff had both feet in the foot well at the time is most improbable. I do find, however, that lack of proper balance probably played a role in her losing her footing in conjunction with her size and her footwear, which was clearly inappropriate and hazardous for negotiating wooden bleachers.
- [44] The plaintiff must prove not only a breach of the standard of care, in other words, negligence, but also that the negligence was the cause of her fall.
- [45] The plaintiff's argument is basically that the defendant, with positive inquiry and assessment should have known the bleachers were unsafe for the purposes of seating the parents and should have provided alternative seating or an alternative meeting place, or at the very least should have warned the attendees of the poor slip-resistance of the bleachers. This argument is wholly dependent on first establishing that the bleachers were unsafe for the purposes of seating the parents. The unsafe nature is said to be the low coefficient of friction between the bleachers and plastic or leather-soled footwear, that is, its degree of slip-resistance to such footwear.
- [46] The expert evidence establishes that the slip-resistance of the bleachers to Ms. Leweke's plastic soles was effectively equivalent to that of new hardwood or vinyl tile flooring. Looking at the polished hardwood floors depicted in the photographic evidence of the bleachers in the gymnasium, one would expect the bleachers to be of a similar slipperiness.
- [47] Ms. Leweke had been in the gymnasium and on the bleachers many times, "typically" in running shoes, she testified. I expect her choice of footwear on those occasions when she knew in advance that she was attending the gymnasium was partly a matter of respect for the flooring as well as for her own comfort. Although on this occasion she clearly did not anticipate in advance having to go to the gymnasium, she fully knew what to expect when that need became apparent.
- [48] Any adult with common sense knows that smooth, hard-soled shoes such as those made of leather or plastic are not slip-resistant on many surfaces and require special care when walking or moving about. Common sense also suggests that bleachers require careful "negotiation", (to use Ms. MacNeil's apt description), something that in Ms. Leweke's case was verified by her frequent prior use. By her own admission, Ms. Leweke was oblivious to

the fact she was wearing her dress shoes. The obvious inference is that she would not, therefore, have been taking the required extra care.

- [49] An occupier does not have a duty to warn adults of the ordinary risks of everyday life: see *Malcolm v. British Columbia Transit*, [1988] B.C.J. 1945 (B.C.C.A.) and *Choromanski v. Malaspina University College*, [2002] B.C.J. 2398 (B.C.S.C.). In my view the bleachers themselves have not been proven unsafe and constituted an ordinary risk. It is significant that with an estimated 10,000 users per year over at least 20 years, the school had not recorded a single incident of injury on the bleachers.

CONCLUSION ON LIABILITY

- [50] The plaintiff has not established that the bleachers were deficient in design or maintenance or contravened any applicable building code standards that had any causal relationship to the mishap. There are no slip-resistance standards applicable to bleachers and the slip-resistance of the bleachers has not been demonstrated to be unsafe, provided that the user exercises the extra care and attention that the ordinary risks associated with bleachers requires.
- [51] Ms. Leweke failed to exercise the required care and attention by not turning her mind to her relatively slippery footwear and then subsequently not exercising the appropriate caution on the bleachers. In my view, her own negligence was the sole cause of the slip and fall and I find no departure from the required standard of care on the part of the defendant. The plaintiff's action is dismissed, with costs.
- [52] In the event that I had found the defendant negligent on the basis that the appropriate standard of care would have required some sort of warning to parents not to climb the bleachers in smooth hard-soled dress shoes, I would have apportioned liability 80% to the plaintiff and 20% to the defendant. I would have assessed the following damages, before apportionment:

Non pecuniary Damages

\$ 50,000.00

Loss of Earning Capacity

\$ 300,000.00

Cost of Future Care

\$ 114,700.00

Part Wage Loss (agreed)

\$ 77,844.00

Special Damages (agreed)

\$ 6,472.28

TOTAL:

\$ 549,016.28

"I.C. Meiklem, J."

The Honourable Mr. Justice I.C. Meiklem

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/04/12/2004bcsc1251.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/leweke-v-saanich-school-district-no-63-2004>

Prepared on 29 October 2026 · Esheria