

# Can A Visitor Sue A Healthcare Facility For An Injury Sustained When Visiting A Patient/Resident?

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Health care facilities owe a duty of care to visitors who come into the facility to see their family member or friend. This duty of care is part of a facility's obligation to prevent unreasonable and foreseeable risks of harm to visitors under a negligence analysis. In the following case, however, the nursing home did not breach its duty when a visitor tripped over a fan in her sister's room at the nursing home.<sup>1</sup>

V.T. went to visit her sister in the nursing home where she resided. When V.T. arrived at her sister's room, her sister was not there but she did notice a fan located on the floor near the foot of her sister's bed. V.T. walked past the fan, placed her purse on the bed, and turned to walk out of the room. When doing so, she tripped over the fan and fell to the floor, sliding across the floor and hitting her head on the door.<sup>2</sup>

A nurse at the nursing home found V.T. lying on the floor with a large hematoma on her head. V.T. filed a suit against the nursing home due to her "severe injuries to her head and body" due to the negligent condition of her sister's room.

The trial court returned a verdict in V.T.'s favor in the amount of \$57,600.00. The jury also found V.T. to have 50% negligent (under a contributory negligence theory) and therefore reduced her jury award to \$28,000.00.

The nursing home filed a motion asking the trial court for a judgment notwithstanding the verdict (NOV). The nursing home's argument was based on the fact that the fan was an "open and obvious" condition and therefore it did not owe her a duty under negligence theory.

After a hearing, the nursing home's motion was denied. The nursing home filed an appeal.

The appellate court carefully reviewed the testimony during the trial. In addition to the nurse who found V.T. after her fall, other nurses testified. One stated that the fan, which she thought was about two to three feet wide, was not on at the time of the accident.

She also testified that it was possible that the fan could have been moved from the foot of the resident's bed when not in use. The nurse also saw a fan lying in the middle of the room when she entered the room after the accident.

The Director of Nursing attested that the fan was placed there about 10 days prior to the accident due to the resident's congestive heart failure, which caused her to be "uncomfortably warm".

V.T.'s niece, Lela, testified that she frequently visited V.T.'s sister at the nursing home, noticed the fan in the room each time she visited, and its position was up against the resident's dresser. Lela stated that she never had any problem seeing the fan or walking past it.<sup>3</sup>

Last, V.T., on cross examination by the nursing home's attorney, testified that nothing obstructed her view of the fan and that she did not look down when she turned to leave her sister's room on the day of the accident.

Applying applicable law to the situation, the appellate court opined that V.T.'s injury was not reasonably foreseeable; that the fan was an open and obvious condition [in the room] and therefore injury from it was slight; and that moving the fan out of the room when the resident was not in the room and not using the fan would be impractical, not only for a fan but for "any other type of medical equipment or similar objects with which inattentive visitors might collide".<sup>3</sup>

The appellate court reversed the trial court's jury verdict in favor of V.T.

If the circumstances of this case were different, the jury verdict might have been upheld. The testimony of the nursing staff, though, clearly indicated no breach of their duty and therefore no breach of the nursing home's duty under the theory of vicarious liability (employees' breached duties become the vicarious breach of the employer's duty).

Nursing staff must be certain that no unreasonable or foreseeable risks of harm to visitors exist. In maintaining that duty, some guidelines include:

1. Not leaving any object in a pathway where visitors (and residents) walk and could trip or fall;
2. Wiping up standing water wherever it is located or, if a large amount, notifying Housekeeping immediately and block the area off in some way;
3. Not place any object on the floor in a way that a portion of the object (e.g., the leg of an IV pole) sticks out onto a pathway;
4. When an object or medical piece of equipment is no longer needed by the resident/patient, remove it and store it in its proper place; and,
5. Remember that you carry the employer's potential liability on your shoulders, in addition to your own potential personal liability, under the theory of vicarious liability.

## FOOTNOTES

1. True v. Greenwood Manor West, Inc., Appellate Court of Illinois, Fourth District, October 4, 2000, No. 4-00-0222.
2. Id., at 1.

3. , at 3.

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