

The Impact of *Koenig v. Koenig* on Premises Liability Law in Iowa

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I. *Koenig v. Koenig*, 766 N.W.2d 635 (Iowa 2009)

Valerie Koenig visited the home of her son, Marc Koenig, in order to care for him while he was ill. Unfortunately, while carrying laundry to a bedroom, Valerie fell on a carpet cleaner hose. Valerie's fall caused injury to her leg. Valerie sued Marc alleging he was negligent.

The case progressed to a trial, where Valerie sought a general negligence instruction rather than the uniform jury instruction on the duty of care applicable to licensees. The Court declined to give a general negligence instruction and instead gave the uniform jury instruction for licensees. (See next page for a copy of the uniform instruction). Marc won the trial, so Valerie filed a motion for new trial based on the district court's failure to give her proposed instruction. The district court denied the motion, and Valerie appealed.

The Iowa Supreme Court held that the advantages of abolishing the invitee-licensee distinction outweighed the value of the distinction's retention. In the Court's view, advantages of abolishing the distinction will include avoidance of confusion, consistency between premises liability law and other areas of law, recognition of a higher valuation of public safety over property rights, and a shift of more discretion to juries.

The Court adopted the "multifactor approach" advanced by the Nebraska Supreme Court. Pursuant to the "multifactor approach," "owners and occupiers of land have a duty to exercise reasonable care in maintaining their premises for the protection of lawful visitors." Factors to consider in determining whether the landowner or occupier exercised reasonable care are: 1) the foreseeability or possibility of harm; 2) the purpose for which the entrant entered the premises; 3) the time, manner, and circumstances under which the entrant entered the premises; 4) the use to which the premises are put or are expected to be put; 5) the reasonableness of the inspection, repair, or warning; 6) the opportunity and ease of repair or correction or giving of the warning; and 7) the burden on the land occupier and/or community in terms of inconvenience or cost in providing adequate protection.

The Court held it was improper to give the uniform jury instruction. The Court remanded for a new trial and directed the district court to develop a more "direct, simple instruction consistent with our adoption of the multi-pronged test to guide the jury in its deliberations."

II. Instructing the Jury in a Premises Liability Case Post-*Koenig*

The uniform civil jury instructions applicable to premises liability cases involving licensees and invitees can no longer be used. Instructions courts have used in post-*Koenig* cases vary. (See sample instructions.) The instruction used in any particular case will greatly depend on the judge assigned to the case. Whether the uniform civil jury instructions are applicable in cases involving trespassers is currently unknown.

Uniform Jury Instructions 900.1 (Invitees) and 900.2 (Licensees)
(Not to be used Post-Koenig)

900.1 Essentials For Recovery - Condition Of Premises - Duty To Invitees.

The plaintiff must prove all of the following propositions:

1. The defendant knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.
2. The defendant knew or in the exercise of reasonable care should have known:
 - a. the plaintiff would not discover the condition, or
 - b. the plaintiff would not realize the condition presented an unreasonable risk of injury, or
 - c. the plaintiff would not protect [himself] [herself] from the condition.
3. The defendant was negligent in (set forth the particulars of the claim of negligence in failing to protect the plaintiff).
4. The negligence was a proximate cause of the plaintiff's damage.
5. The nature and extent of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

900.2 Essentials for Recovery - Condition Of Premises - Duty to Licensees.

The Plaintiff must prove all of the following propositions:

1. The defendant knew or in the exercise of reasonable care should have known of a condition on the premises and that it involved an unreasonable risk of injury to a person in the plaintiff's position.
2. The condition was one that a person in the defendant's position should have expected would not have been discovered or realized by the plaintiff.
3. The plaintiff did not know or have reason to know of the condition and the risk involved.
4. The defendant was negligent in [set forth the particulars of the claim of negligence in failing to protect the plaintiff).
5. The negligence was a proximate cause of the plaintiff's damage.
6. The amount of damage.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.