

1 Aquatics & Lifeguard Liability

2 LIFEGUARD
DUTY & LIABILITY
S&C Co. v. HORNE
Va. 1977

3 Lifeguard Standard: two-fold duty

4 P's decedent, 14yrs, drowned in D's pool

5-6 swimmers, 50 ft x60 ft,
8 ft 'deep max.,

5 swimmer:
"someone on bottom"
lifeguard at shallow end

eating ice cream with friends
P judgment \$30.7K.

6 Lifeguard Standard: two-fold duty:

(1) observe swimmers
for signs for distress &

(2) when distress discovered, attempt rescue.

7 Whether lifeguard should have discovered distress.

City Regs: lifeguard on duty, elevated chair,
water clarity 30', 6" disc.

- 8 Reasonable lifeguard need NOT continuously occupy post
may properly give attention to other duties

Which do NOT materially interfere with lifeguard duties.

- 9 No other duties prevented guard from occupying stand.
10 Jury could find

conversation preoccupation,
water clarity,
improper position of chair

- 11 prevented observation of distress;
did not see what qualified lifeguard

reasonably should have seen under circumstances.

AFFIRMED.

- 12 **CORDA v.**
BROOK VALLEY ENTERPRISES, INC.
N.C.App. 1983
Lifeguard Tending to Other Duties

- 13 P's husband drowned in D's pool;
lifeguard moved chairs & umbrellas approaching storm

decedent last seen

standing in 4 ft.

- 14 Bluish-gray object under water

"gentleman under water longer than I think he should have"

Directed verdict for D.

- 15 Reasonably prudent person as lifeguard

observe pool for swimmers in distress
& alert to aid swimmers in distress.

- 16 D: reasonable to secure chairs & umbrellas

responsible for entire area, not just pool.

- 17 Sufficient evidence for jury to find
lifeguard did NOT act reasonably

when left station to retrieve chairs & umbrellas.

- 18 WILLIAMS v.
UNITED STATES
U.S. Dist. Ct. E.D.Ark. 1987

Lifeguard Standards

Emergency

Chain of Command

19 P's son, 16, drowned in D's pool,
80-100 patrons,

3 guards, other diver alerted guard

20 Guard 1 month experience
failed to clear airway increased delay.

21 Lifeguards' negligence clearly established

no adequate training, supervision, CPR...

22 Observation?
Inattentive to duties, conversation,

NOT observing diving area
lost observation unreasonable period of time;

23 Rescue?

no whistle to stop activity in deep end.

24 Did NOT observe to see if diver resurfaced,

2 more divers;
did not enforce own pool rules re diving;

25 Lifeguard should moderate use of diving area

observe each person entering diving area,
make sure diver surfaces before another dives.

- 26 Lifeguard should always blow the whistle when leaving station
unless being relieved by another guard.
- 27 Inexperience of lifeguard
& lack of required
chain of command among lifeguards
- 28 to diminish adverse impact of inexperience
increased time decedent without effective C.P.R.
- 29 LIFEGUARDS HAD NO TRAINING OR POLICY FOR DIALING "911"

Cater v. City of Cleveland
(Ohio, 1998)
- 30 alleging city acted negligently and/or recklessly in operating the
swimming pool
- 31 four Red Cross certified lifeguards on duty
- 32 Damon Carter, recently certified as lifeguard in May 1993,

beginning his first day as a lifeguard.
- 33 Hutson and Hodge left their posts

took an unauthorized lunch break.

34 against pool policy to take lunch breaks during open swim periods,

35 Hutson, who was nearly nine months pregnant, asked Hodge to buy them lunch.

ate lunch in the lobby

36 Rookie guard Carter sat in the high lifeguard chair at the deep end,

37 folding chair that was located at the deep end,

previously been occupied by one of the other guards, left empty.

38 swimmers notified McDougall and Carter

there was a boy at the bottom of the pool.

39 five to fifteen feet from the previously occupied folding guard chair.

40 had not seen Darrall in distress

because glare interfered with his visibility.

41 City employees, including the aquatics manager for the city of Cleveland,

aware of the glare problem at pool

- 42 no training on how to deal with glare.
- 43 at least three city employees attempted to dial 911,
but were unable to get an outside phone line.
- 44 Carter said that he tried to dial 911 five or six times but could not get through.
- 45 Hutson and custodian made several attempts to dial 911,
but they, too, did not know how to use the phone system.
- 46 These employees were never instructed on the use of 911
were never told it was necessary to dial nine to get outside line.
- 47 asked about the lack of training, center manager McKeller testified
he just assumed that the guards had been briefed how to get an
outside line to dial 911.
- 48 Paramedics nearly thirty minutes after Darrall's body was discovered
- 49 deprived of oxygen for at least five minutes
died as a result of the near drowning...
- 50 internal investigation found

violated several city policies by failing to ensure that the pool was properly staffed at all times;

51 wantonly or willfully neglecting performance of assigned duties;

leaving the job or work area during regular working hours without authorization;

52 whether the city was not entitled to governmental immunity

because the city acted in a reckless or wanton manner.

53 fact that the city had no policy in place or training regarding 911 is appalling.

54 something as basic and important as dialing 911

was not within the city employees' grasp.

55 two of the senior lifeguards created a dangerous situation by leaving the pool area during an open swim session,

56 city admitted failure to train its employees on the use of 911,

left them without the knowledge necessary to handle the emergency as it arose.

57 MAGANELLO
v. PERMASTONE, INC.
N.C. 1987

Duty of Preventive Supervision "Horseplay"

- 58 P injured at D's lake, standing base of slide to catch child

struck by 3p thrown from shoulders
- 59 Proprietor place of amusement liable
negligent or malicious third party horseplay causing injury, IF...
- 60 If sufficient notice to stop activity
exist long enough to discover
and either remove or warn of danger
- 61 No notice,
No liability

but here, horseplay at least 20 min.
- 62 Swim facilities:

water imposes inherent dangers
lifeguards to keep lookout
sufficient number to supervise
& rescue those in danger
- 63 Includes guarding swim facility & surrounding area
for dangerous activities.

64 PREVENTIVE SUPERVISION

Boisterous play not dangerous in itself

65 hazardous consequences reasonably foreseeable

if unattended, unrestricted

66 If permitted at all,
closely guarded restricted area

67 not unreasonably impair attractiveness of establishment for customers

but duty for permitted activities reasonably safe manner.

68 LIFEGUARD SUPERVISION OF POOL "DIVING STICKS"

BLOHM v. CLARK
(N.C. App. 2007)

69 after the second whistle was blown, plaintiff was hit in the face causing
injury to his eye by a diving stick

70 no evidence presented that lifeguard was inattentive or distracted.
diving sticks were not prohibited by pool rules

71 actions of the boys could not be classified as boisterous, hazardous or
horseplay

72 lifeguard restricted activity to a certain area and closely watched

actions of
boys to ensure compliance

- 73 Volcanic Garden Mgmt, Inc.
v. Beck

Failure to Supervise Potentially
"Rough Activity"

- 74 P rode down waterslide with daughter on lap

first visit, first ride
broke back in collision

- 75 No instruction re proper use
of inner tube

or possible consequences
re losing tube during ride

- 76 No instruction re proper spacing between tubes

not advised not to go down with daughter in lap

- 77 Although tubes required,
no effort to require patrons
to keep inner tube during ride

- 78 No effort to separate patrons by intervals

so they would not collide with each other

79 Lifeguards testified guard at top of slide

required to make sure patrons not coming down together

80 testimony guards frequently saw patrons

losing tubes during ride

81 When D knows, or should know, condition on premises

poses unreasonable risk of harm to patrons...

82 D has legal duty

to take whatever action reasonably prudent under circumstances

to eliminate or reduce foreseeable risk of injury

83 Sufficient evidence D negligent in failing to instruct P

on proper & safe use of waterslide

by NOT controlling intervals between riders

& improper supervision

84 McAULLIFE v.

TOWN OF WINDSOR

N.Y.A.D. 1991

No Duty to Maintain Constant Supervision

85 P,16, struck by lightning

on supervised public swimming beach

86 Rain & thunder, lifeguard announced everybody out of the water

87 beach director: leave water & beach area & take cover.

Issue: whether D required to make certain P took proper shelter from potential lightning hazard.

88 Municipality NOT required to maintain constant surveillance of patron movement

to prevent self-evident, risky & dangerous activities.

89 Danger admittedly apparent to P

no duty to warn against condition readily observable by reasonable use of one's senses.

90 P observed lightning, fully aware of danger being outside during possibility of lightning

elected to go on hill with friends.

91 CIMINO v.
TOWN OF HEMPSTEAD
N.Y.App. 1985

Risk & Danger:

What You See Is What You Get?

92 P bodysurfing, knocked down by wave leaving ocean to D's beach

high waves 8-10', turbulent water.

P told water "really rough".

93 Here, water conditions readily observable to all at beach

including P & experienced by P.

94 Value of warning particularly questionable

where P knew or should have reasonably known of dangers posed.

95 There is NO duty to warn against a condition

that can be readily observed by reasonable use of the senses.

96 D had NO duty to close beach merely because of the wave activity.

97 Waves had been worse for two days preceding injury

No evidence of similar accidents
on those days or prior occasions.

98 Therefore, D was not on notice of an unreasonable risk of danger

which would require it to close beach to bathers.

99 Freak accident does NOT prove risk of unreasonable danger.

D no duty to warn or close beach.

100 MOSHER v. STATE

P quadriplegic, running dive into swim area,

gradual slope, 18-24" deep at D's state park;

P's head hit something hard;

101 lifeguard search, no obstructions on sand-bottom lake.

P: D did not maintain area in safe condition

102 by failing to post sign prohibiting shallow water dives;
failing to train guards to prevent such dives

given notice such dives more dangerous than public realizes.

103 Claims Ct. DISMISSED,
no breach of any duty owed.

104 P's conduct rather than alleged negligence of D caused accident.

105 P's running dive caused force necessary for catastrophic injury.

106 P acknowledged seeing sign prohibiting running,
splashing or jousting in water.

107 Lifeguards would reprimand
those seen sprinting into water.

- 108 Given P's failure to comply with existing sign,

doubtful additional signs or more uniform reaction by lifeguards would
have prevented P's conduct.
- 109 P admitted knowing diving in shallow water was dangerous

& water depth should be ascertained before diving.
- 110 P's failure to obey existing rules
& disregard for his own common sense re water depth when diving
- 111 were proximate cause of his tragic misfortune. AFFIRMED.
- 112 Carr v.
San-Tan, Inc.
543 N.W.2d 303
(Iowa App. 1995)
- 113 running dives common, despite obvious danger

P: negligent not to warn lake customers not to dive
or to have had water-depth markers
- 114 Trial overturned jury verdict
no duty: danger posed by shallow water "open and obvious"
- 115 Whether duty to anticipate harm even though open and obvious
- 116 exception where P unable to protect self even though open & obvious

117 As a matter of law conclude:

unreasonable
to perform head first dive into water
while running from a beach

118 Although common, danger is obvious & ascertainable by a reasonable person

exercising ordinary perception, intelligence, and judgment

119 ROBBINS v.
DEPARTMENT OF NATURAL RESOURCES
(Fla.App. 1 Dist. 1985)

Known Diving Problems
"nose scrapes"

120 P, 18, paralyzed, shallow dive
from concrete platform at D's state park

spring-fed swim area; first visit; depth in front of platform varied 2'-4';

121 mostly sand, but some large rocks 10-15";

water clear, but splashing, glare affected depth determination.

122 P did not see bottom or rocks.

P Expert: configuration invited diving,
preventive measures rail or signs re diving danger.

123 Prior to injury, retaining wall renovated,

supt. & guards knew of diving problems, "nose scrapes"

124 Discussed need for "no diving" signs, but no signs or rail erected;

guards told to enforce no diving policy.

125 Trial Ct. D summary judgment,
assumption of risk.

126 Assumption of risk applies if P fully aware of depth & rocks,

able to see bottom clearly from platform,

127 subjectively recognized risk, but proceeded anyway.

Record did not conclusively est. P actually knew danger
of executing dive in area.

128 Jury could find D negligent
in failing to take appropriate action

129 Such as placing warning signs appropriate locations,

advise swimmers of dangerous condition NOT apparent to them.

130 Summary judgment for D reversed, remanded for jury trial.

131 LEARUE BY LEARUE
v. STATE
(Tenn.App. 1987)

Failure to Warn
of Depth
Not Proximate Cause

132 P, 14, dive from concrete retaining wall

between beach & swim area in D's state park;

133 Water 2-3' near wall; no depth or no diving signs;

P checked depth, observed guards diving from wall;

134 P swam 2x/day for wk including diving from wall;

no rules or guard instructions to prohibit diving from wall;

135 20yrs no injuries.
Claims Com. for D.

136 D negligent maintained hazardous condition, allowing diving in a rea;

137 D duty to identify & eliminate obvious hazards

or identify & prohibit practices obviously hazardous.

138 Reasonable lifeguards would appreciate danger diving from wall into 2-3';

139 negligent not to eliminate hazard or prohibit diving.

P contributory negligence,

140 departure from standard of reasonable conduct, not make shallow dives;

141 obvious P dove too deep; may not fully appreciated dire consequences,

surely knew would injure self entering water at angle.

142 P general knowledge re safe swimming & swimming ability indicate failure care for own safety.

143 Failure to warn of depth NOT proximate cause,

P had determined depth, fully informed of condition.

144 Child over 14, presume capable of care for own safety same as grown person

145 P experienced swimmer had checked depth;

proximate cause failure to make shallow dive. AFFIRMED.

146 HAGY v.

McHENRY COUNTY CONSERVATION DISTRICT
(Ill.App. 1989)

Diving Presents Obvious Risks
Water & Heights

- 147 P, 15, broke neck, dive into "swimming hole,

moderate flow stream, 5-6' to 10-12' deep, embankment 8-12'
- 148 D acquired in 1980, natural state,
no rec. development.
- 149 P saw no signs or fences, "like a park, visited many times,

swam & dove in past, 2x/wk last summer;
- 150 P experienced swimmer & diver,
straight dive, 1st visit of yr.;
- 151 Did not occur to P to check depth of creek before diving

because he dove there before,
struck creek bed, quadriplegic.
- 152 P: D permitted existence of "dangerous condition";

muddy condition gave appearance of uniform depth.
- 153 P: D knew public frequented area for public rec. use,

negligent failure to warn or prohibit swimming & diving.

154 P: D negligent in failing to inspect bottom of creek,

negligent maintenance of land in unsafe condition for public.

155 D: no duty to P to remedy condition which presented obvious risk.

Trial: summary judgment for D.

156 P's aquatics expert: dangerous condition not obvious,

effect of ongoing erosion hidden, concealed by muddy stream flow.

157 Customary rules of negligence - foreseeability of harm

determines landowner liability for injuries to children entering land.

158 No duty to remedy dangerous condition which presents obvious risk

which children would be expected to appreciate and avoid.

159 3 obvious risks:

fire, water, falling from height.

160 Restatement 2d Torts § 339: if obvious, no liability, unless special risk

child will not discover, appreciate & avoid, hidden, not readily visible

161 Whether obvious dangers (fire, water, heights)

includes diving into water as dangerous obvious to children.

162 P, 15, mature enough to appreciate danger of diving from 8-12' cliff into muddy creek;

obvious risks water & falling from height.

163 Consideration of minor P's knowledge appropriate

where minor greater understanding than typical minor same age of alleged dangerous condition

164 P's diving experience, P's knowledge of condition at least equal to D's,

able to appreciate risk but chose to undertake it.

165 Sec. 339 recognizes many dangers reasonably expect any child of age to be allowed at large expected to understand & appreciate. (not just 3)

166 If risk of falling from height obvious, vertical dive from height into muddy water also obvious risk

expected to be understood & appreciated.

167 Nothing unusual or deceptive about moving creek presenting special or indiscernible danger

which could not be appreciated by 15yr old P.

168 P: cannot assume diving obvious danger

given large number of cases involving teenage boys & diving accidents.

169 Lack of mature judgment

does not negate ability to recognize or appreciate obvious risk.

170 Rather, suggests obvious risks nonetheless may be undertaken.

171 Important fact, minor can appreciate risk, not that he will in fact avoid it.

172 If standard for determining obviousness of risks to children measured by frequency of cases,

would eliminate water, fire, & falls from heights as obvious.

173 LIMITED LIABILITY FOR DROWNING IN NON-SWIMMING AREA OF PARK

174 OPEN & OBVIOUS DANGER DOCTRINE

Casper v.

Charles F. Smith & Son, INC.

(Md. 1989)

175 owner or occupier of land is generally NOT under any legal duty to

warn invitees of dangerous bodies of water

- 176 because "water in the form of a stream or pond constitutes an open, obvious, and patent danger."
- 177 Whether natural or artificial, streams and ponds will have shallow areas and deep areas, and that fact of life must be anticipated...
- 178 doctrine of open and obvious danger applicable to bodies of water knowledge of perils, including sudden or unexpected depths, charged to children of sufficient age to be permitted to go abroad without supervision...
- 179 necessity, or at least desirability, of maintaining such bodies of water, coupled with known inherent dangers and the difficulty of effectively protecting against those dangers,
- 180 danger of drowning in it is an apparent open danger, the knowledge of which is common to all;
- 181 property owner with land on which water, stands or flows not required to fill it up, or surround it with an impenetrable wall.
- 182 INTENDED RECREATIONAL BODY OF WATER?

Mostafa v. City of Hickory Hills
Ill. App. (1997)

- 183 if dangerous condition on land poses an obvious risk of danger that children would be expected to appreciate and avoid,

owner is under no duty to remedy condition.

184 Specifically, owners or occupiers of land generally do not owe a duty to protect children

from falling into bodies of water and drowning or potentially drowning.

185 where a child is permitted to be at large, beyond the watchful eye of his parent,

reasonable to expect that that child can appreciate certain particular dangers.

186 when children are on the premises, an owner or occupier

has no duty to protect against blatantly obvious dangers.

187 no duty to protect the youngsters from the lagoon

because Park District did not intend for lagoon to serve as a recreational body of water, such as a swimming pool or lake.

188 DISCRETION TO DESIGNATE SWIM AREA

Warren

v. Palm Beach County

(Fla.App. 4 Dist. 1988)

189 private owner of a natural or artificial body of water, not held out as a

swimming facility,

not liable for dangerous conditions therein.

190 government unit has the discretionary authority to operate or not operate swimming facilities

immune from suit on that discretionary question.

191 once unit decides to operate swimming facility,

assumes duty to operate facility safely, just as a private individual is obligated under like circumstances.

192 SWIMMING ACCEPTED PARK ACTIVITY

Andrews

v. Department of Natural Resources (Fla.App. 1990)

193 government may have unknowingly created a designated swimming area

when it removed signage in a state park and a park brochure indicated swimming was an accepted activity in the park.

194 state had also removed signs indicating the designated swimming

area as well as that designation on the brochure's map illustration;

195 instead, the brochure merely indicated that swimming was an

accepted activity in the park.

196 While park was under the city's control, signs erected at Dog Beach warning of a strong undertow, prohibiting swimming in that area,

197 directing the public to swim in the designated swimming area only, which was generally known as Dunedin Beach.“

198 may have "led the public to believe that Dog Beach was a designated swimming area."

199 brochure issued months prior to the accident is distributed by the state upon entry into the island,

does not mention any designated swimming areas at Honeymoon Island,

200 but states: "The clear Gulf waters are enjoyed for swimming and sun bathing.“

201 UNGUARDED BEACH APPEARED TO BE DESIGNATED SWIMMING AREA

Breaux v. City of Miami Beach
(Fla. 2005)

202 whether City of Miami Beach was operating a swimming area on public beach.

203 City "held 29th Street beach area out to public as a swimming area or led public to believe area was a designated swimming area.”

204 legal duty of operator of a swimming area to maintain premises in a reasonably safe condition applies only to extent premises are improved or maintained by operator.

205 operator cannot be charged with keeping an unaltered natural body of water "safe" because a natural body of water contains inherent natural hazards.

206 natural character of a hazard does not relieve operator of duty to warn if it knew or should have known hazard was present."

207 transient nature of rip currents would not necessarily relieve City of its legal duty to warn.

208 jury to consider question of City's actual or imputed knowledge regarding rip currents at 29th Street beach area at time of drownings.

209 ENTRAPMENT HAZARD IN POOL DRAINS

March 2005 CPSC report "Guidelines for Entrapment Hazards: Making Pools and Spas Safe"

210 children, typically 2 to 6 years of age, suffered non-fatal debilitating "rectal lacerations and partial and nearly complete eviscerations "

after being "sucked into" drain sumps.

- 211 2005 Guidelines report was “not intended as a CPSC standard or mandatory federal requirement.
- 212 report simply reflected “changes in codes and voluntary standards” since original guidelines were issued in 1998.
- 213 new standards for SVRS [safety vacuum release systems] have been developed” for pools and spas.
- 214 January 1990 to August 2004,
- CPSC report also cited 43 incidents of hair entrapment or entanglement in pools, spas, and hot tubs.
- 215 design of a drain cover in association with the flow rate through it found to relate to the cover’s ability to entrap hair.
- 216 victims’ ages between 4 and 42, median age of 9 years – 92.5% were under the age of 15.
- 217 March 2005 report, during the period January 1990 through August 2004, the CPSC received reports of 13 confirmed deaths by drowning
- 218 caused by a body or limb becoming entrapped against the drain of a pool or spa.
- 219 most notorious death residential spa June 2002

7 year-old granddaughter of James Baker (former Secretary of State in Reagan administration) drowned in residential spa.

220 “Virginia Graeme Baker Pool and Spa Safety Act”

mandatory federal safety standard

221 swimming pool or spa drain cover manufactured, distributed, or entered in United States shall conform to the entrapment protection standards of the ASME/ANSI

A112.19.8 performance standard,

222