

5939 - Premises Liability - The plaintiff tripped on a rotted step at a lake rental and sustained a shoulder injury – the jury found for the plaintiff and awarded medical bills, but rejected any award for pain and suffering

Caudill v. Villager Resort Properties,

20-375

Plaintiff: Justin W. Noble and Michael A. Johnson, *Law Offices of David Johnson*, Hazard

Defense: Bridget L. Dunaway, *Tooms Dunaway & Webster*, Louisville

Verdict: \$12,302 for plaintiff less 30% comparative fault

Court: Pulaski, J. Teresa Whitaker, 10-26-21

Jacqueline Caudill was a guest on 6-7-19 at a rental cabin on Lake Cumberland in Burnside. It was rented from Villager Resort Properties. Caudill had just arrived. As Caudill walked into the rental, she noticed a loose step was in poor condition.

A moment later Caudill walked back outside. She appreciated the loose step and took a step over it. As Caudill did so, she struck a second step which was also rotted and she fell through.

Caudill was treated and released at the local ER for apparent soft-tissue symptoms – she followed for several months with a chiropractor. She then complained of a rotator cuff injury and had a repair surgery a year later. Her medical bills were \$41,018 and she sought \$38,700 more for ongoing care and maintenance. Her treating physician linked the shoulder injury to this fall.

In this lawsuit Caudill sought damages from Villager Resort and alleged the premises were unsafe. She cited the rotted condition of the steps. Villager Resort denied knowledge of the condition. It also implicated Caudill's own comparative fault as she had just walked over the area a moment before the step caved in. Finally the defense contested causation regarding the shoulder injury and noted that Caudill made no mention of it at the ER. She had however discussed it with her chiropractor.

The jury's verdict found both parties at fault. That fault was then assessed 70% to Villager Resort and the remaining 30% to Caudill.

The jury moved to damages and Caudill took \$12,302 of her medicals but nothing for future care or her pain and suffering. [The \$12,302 was consistent with her initial ambulance run, ER visit and early chiropractic care, the jury implicitly rejecting causation regarding the shoulder injury.] A consistent judgment less comparative fault was entered for Caudill in the sum of \$8,611.

Caudill has since moved for a new trial. She argued improper and "salacious" argument by defense counsel that suggested plaintiff's lawyers had orchestrated the claim. The effect of this was to deny Caudill a fair trial as guaranteed by the Kentucky Constitution from 1891. The best evidence of this, the motion continued, was the jury rejecting any award of pain and suffering when her injury was not contradicted at trial. The motion is pending.

Case Documents:

[Plaintiff Motion for a New Trial](#)