STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: FEBRUARY 16, 2012)

STEVEN BURTON	:	
	:	**C.A. No. 2006-0681**
v.	:	
	:	
STATE OF RHODE ISLAND	:	

DECISION

STERN, J. Before this Court is Steven Burton's ("Burton") negligence action against the State of Rhode Island and related entities ("State"), which owned or controlled the Ladd Center Property. After hearing evidence during this non-jury trial, considering the arguments of counsel and the legal memoranda submitted this Court finds:

I

FACTS AND TRAVEL

On November 27, 2005, Plaintiff Steven Burton was seventeen (17) years old. He had completed his sophomore year of high school and was pursuing a Graduate Equivalency Diploma (GED). Burton was friends with Taylor Delvecchio ("Delvecchio"), and in the afternoon he decided to pay a visit to his friend in order to "hang out" and watch television. When he arrived at Delvecchio's house he found that his other friends, Christopher Arkwright ("Arkwright"), Harold Cooper ("Cooper") and Leif Veness ("Veness") were already present at the house. While at Delvecchio's house, Burton consumed a couple of beers. The friends made a group decision to take a trip to the Ladd Center in Exeter and explore the property. The Ladd Center interested the group because of its haunted reputation. Between 5:00 and 6:00 p.m. Burton and his friends piled into Arkwright's car and drove to Exeter. They parked near

Williams Reynolds Road and walked for about ten minutes through a field until they reached the Ladd Center property.

The friends were ill-equipped for this adventure; while they were armed with their youthful courage, they neglected to bring even basic exploration tools like flashlights. Instead, they used their cell phones for illumination and went to the large, circular hospital building, one of three connected buildings. There were neither lights to ward them off nor fences to bar their advance. The first and second stories of the building were secured, and there were no trespassing signs. Windows were covered with half-inch plywood sheets held in place by large screws. Metal doors leading into the building were welded shut. The friends walked around the building in search of possible entryways and located an accessible third-floor window. Veness spotted a nearby pipe and climbed up about twenty feet, thereby reaching the window. The others followed in a similar fashion.

Once inside the building, the friends decided to explore the premises and they "checked everything out." The group went from room to room and building to building. They passed open, flooded elevator shafts, strewn shards of shattered glass and broken staircases. The boys found an assortment of items of varying interest during their hour and a half inside the building, including patient information, toe tags, x-rays, tools, wood and large amounts of garbage strewn from room to room. Eventually, they came upon a locker. Inside the locker they discovered a styrofoam box which they promptly removed and opened. Inside the box were four gallon-sized glass bottles filled with a liquid substance. The labels on the bottles were not decipherable. Veness opened one of the bottles and poured some of the liquid onto a table. Based on the consistency of the liquid it became clear to them that the substance was not water. In fact,

Burton testified that at that point he had reason to believe that the liquid was a hazardous substance. Veness grabbed two of the bottles and Cooper carried the other two.

At this point in time, the friends could not locate the window that had allowed them access, so they were forced to look for other means of egress. They eventually found an exit on the first floor, and they approached a plywood-covered window and kicked the sheet repeatedly until some of the screws had dislocated, allowing them to push the sheet outwards enough to squeeze through. Veness went first, still carrying the two bottles. He then held the plywood sheet away from the window to make it easier for the others to exit. Delvecchio and Arkwright went next. At this point, Arkwright held open the plywood. Burton exited, holding one of the bottles which he took from Cooper who was to exit last. Burton assisted Arkwright in bending back the plywood. As Cooper squeezed through, the plywood slipped out of their hands and smashed one of the bottles. The ominous liquid splattered on Cooper and Burton. Approximately thirty seconds later, Burton felt a burning sensation. His legs felt warm and he rubbed them with his hands, only to find that his hands began to feel warm, too. Soon, he started to feel extreme pain and began screaming. Burton frantically stripped off his clothing, dropped his garments to the ground, and ran to Arkwright's car.

Arkwright decided to take Burton and Cooper to Kent Hospital after making an emergency stop for cigarettes and dropping off one of the friends. They arrived at the hospital around 10:00 p.m., approximately thirty minutes after the incident occurred. The hospital staff started treatment and transferred Burton by ambulance to Rhode Island Hospital's Burn Center, where he arrived at 11:00 p.m., and immediately began further treatment. The liquid was identified as sulfuric acid. He was administered morphine, his burns were washed and Silvadene

was applied, in addition to other treatments. He was discharged and continued treatment at the Burn Center for several months.

After suffering these injuries, Burton filed a lawsuit against the State of Rhode Island and the related entities that owned or controlled the Ladd Center property. In his complaint, Burton alleges that the State negligently maintained its property and that, as a result, Burton suffered injuries. Burton claims he suffered economic damages, including past medical expenses, future medical expenses and lost wages. In addition, he claims he suffered non-economic damages, including past and future pain and suffering. The State asserts that it owed no duty to Burton under the circumstances because he was a trespasser on its property. Burton contends that Defendant had a duty under the attractive nuisance doctrine.

II

ANALYSIS

The Ladd Center

The Ladd Center, *locus in quo* for the case at bar, was founded in 1907 as the "Rhode Island School for the Feeble-Minded" and was later renamed the Dr. Joseph H. Ladd Center after its first superintendent.[1] The Ladd Center was closed permanently in 1994. In 1977, the Providence Journal Evening Bulletin exposed several instances in which patients at the Ladd Center had apparently died due to medical neglect.[2] These incidents became a basis for a

[1] This Court notes that this information is provided only for background and context. The background information was not presented at trial, and the Court does not rely upon the Ladd Center's history in rendering its decision in this case.

[2] See Bruce D. Butterfield, 'Back ward' conditions spark Ladd suggestions, The Providence Journal Evening Bulletin, September 30, 1976, at A1. In the article, Butterfield wrote: "In the Evergreen Building, Healey maintained, conditions are substandard. He said none of the toilets have seats, there is no toilet paper, no sinks and no water fountains, adding twice he saw residents drinking from toilet bowls . . . . Healey said on one visit to Evergreen he saw a young woman "indicating with gestures and some verbal communication" she had a toothache and wanted to see her father. An attendant gently removed her from his presence, claiming that she would see a dentist on September 13. On a return visit, exactly a week later, the same young woman made the same claim, he said. He said the attendant made the same promise. Healey said he saw another women [sic] with bandages on her

multitude of stories of hauntings at the Ladd Center, turning the derelict buildings into a prime attraction for children on the hunt for supernatural experiences.[3]

A

Negligence

In order for a Plaintiff to succeed on a negligence claim, a Plaintiff must establish a duty of care, a breach of that duty by the defendant, that the defendant's breach was the proximate cause of plaintiff's injury, and that there was actual loss. See Berman v. Sitrin, 991 A.2d 1038, 1047 (R.I. 2010) (citing Haley v. Town of Lincoln, 611 A.2d 845, 848 (R.I. 1992)). Premises liability "imposes an affirmative duty upon owners and possessors of property: to exercise reasonable care for the safety of persons reasonably expected to be on the premises." Lucier v. Impact Recreation, Ltd., 864 A.2d 635, 639 (R.I. 2005) (internal quotation and citation omitted). This duty includes "'an obligation to protect against the risks of a dangerous condition existing on the premises, provided the landowner knows of, or by the exercise of reasonable care would have discovered, the dangerous condition.'" Id. (quoting Kurczy v. St. Joseph's Veterans Ass'n,

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head and two socks taped to her wrists, punching herself in the face. He said he was told "there's not much that can be done to stop her."" Id. See also Peter Perl, 'Deplorable' situation closes Ladd Clinic, The Providence Journal Evening Bulletin, September 28, 1977, at A1. Perl wrote: "The dental clinic serving more than 750 retarded persons at the Ladd School in Exeter has been ordered closed following confidential reports by state medical consultants citing "extremely dangerous" and even life-threatening conditions, the Journal-Bulletin learned today. A Brown University doctor warned of unsanitary procedures, poor-quality dental equipment and lack of training on the part of the Ladd dentists. He told state officials conditions are so bad 'a major catastrophe or a death" could result.' Id. "The short-acting local anesthetic that was being used was in a rusty can was at least five or six years outdated." Id. "There were no provisions for a surgical scrub or cold sterilization. There was, however, a bar of soap I picked up off the floor." Id. See also Bruce DeSilva and Peter Pearl, Deaths of five patients at Ladd linked to medical care neglect, The Providence Journal Evening Bulletin, November 15, 1977, at A1. "A top state Department of Health official, who declined to be named, said the information uncovered by the Journal-Bulletin indicated Ladd residents died as a result of neglect. He termed one of the five deaths "euthanasia," meaning mercy killing…. Picard was brought to the Fogarty clinic from the Howe building on Friday in the early summer of 1971 with pelvic and leg pains. An employe [sic] familiar with the case said Picard had peculiar burns on his buttocks 'as if he had been forced to sit on a barbeque grill.' Gerard J. Picard, 25, contracted a dangerous blood infection during a week-end, and a doctor filling for the regular medical staff at Ladd began intensive treatment. When the regular medical staff returned, however, they discontinued treatment. Picard died several days later, on June 17, 1971. A medical staff member familiar with the case said the regular physicians told her they do not take such 'extraordinary measures' to save the lives of the retarded." Id.

[3] The Court wishes to express its gratitude to Margaret Chevian, Providence Public Library librarian, for her assistance in locating newspaper articles that provided pertinent background information.

Inc., 820 A.2d 929, 935 (R.I. 2003) (quoting Tancrelle v. Friendly Ice Cream Corp., 756 A.2d 744, 752 (R.I. 2000))).

In Rhode Island, however, it is well-established that a landowner owes a trespasser no duty except to refrain from willfully or wantonly injuring the trespasser. See Cain v. Johnson, 755 A.2d 156, 160 (R.I. 2000) (citing Bennett v. Napolitano, 746 A.2d 138, 142 (R.I. 2000); Brindamour v. City of Warwick, 697 A.2d 1075, 1077 (R.I. 1997); Tantimonico v. Allendale Mut. Ins. Co., 637 A.2d 1056, 1061 (R.I. 1994)). Furthermore, our Supreme Court has held that such a duty arises only after a trespasser is actually discovered in a position of danger. See Cain, 755 A.2d at 160 (citing Wolf v. Nat'l R.R. Passenger Corp., 697 A.2d 1082, 1086 (R.I. 1997); Zoubra v. New York, New Haven & Nat'l R.R. Passenger Corp., 89 R.I. 41, 45, 150 A.2d 643, 645 (1959); and New England Pretzel Co. v. Palmer, 75 R.I. 387, 394, 67 A.2d 39, 43 (1949))). In Cain, the Court rejected the plaintiff's urgings to discard the discovered versus undiscovered trespasser standard in favor of a test focused more on the use of the land. Instead, the Cain Court emphasized its prior holding in Zoubra that "the law does not impose upon a landowner any duty toward a trespasser unless it has first discovered him or her in a position of peril, even though, there was an allegation that the defendant knew or should have known of the presence of people" in the area. See id. at 161 (discussing Zoubra, 89 R.I. at 45, 150 A.2d at 645). See also Wolf v. Nat'l R.R. Passenger Corp., 697 A.2d 1082, 1086 (R.I. 1997); Previte v. Wanskuck Co., 80 R.I. 1, 3, 90 A.2d 769, 770 (1952) (overruled in part by Haddad v. First Nat'l Stores, Inc., 109 R.I. 59, 280 A.2d 93 (1971)). A landowner also has no duty to keep a lookout for trespassers. See Cain, 755 A.2d at 161 (citations omitted).

This Court must therefore first determine whether Burton was a trespasser at the time the incident at the Ladd Center occurred. In Rhode Island, "[a] trespasser is 'one who intentionally

and without consent or privilege enters another's property." Bennett, 746 A.2d at 141 (citing Ferreira v. Strack, 652 A.2d 965, 969 (R.I. 1995) (quoting Black's Law Dictionary 1504 (6th ed. 1990))). A trespasser is further defined as "one who enters upon the property of another without any right, lawful authority, or express or implied invitation, permission or license, not in performance of any duties to the owner, but merely for his own purpose, pleasure or convenience." Ferreira, 652 A.2d at 969 (quoting Mendoza v. City of Corpus Christi, 700 S.W.2d 652, 654 (Tex. App. 1985)). Here, Burton and his friends decided to explore the Ladd Center property owned by the State without its consent or invitation. According to the evidence presented at trial, they did so to satisfy their curiosity regarding rumored hauntings and as a way to pass time. Burton admitted during his testimony that he knew that the land was the property of another and that he remained on that land without permission. This Court finds that Burton was a trespasser at the time of the incident.

Based upon the testimony at trial, it is clear that the State had knowledge that people often trespassed on the Ladd Center grounds. The State also had knowledge that people broke in to the old hospital building because portions of the plywood needed to be replaced almost weekly. The State was also aware or should have been aware that certain people believed that the Ladd Center property, including the hospital building, was haunted. No evidence was presented that the State had knowledge that there was sulfuric or hydrochloric acid in the hospital building. In fact, Carl Abbruzzese, the building and grounds supervisor from the Rhode Island Department of Administration, testified that he had no knowledge of the existence of any acid on the property. After considering all the testimony, however, it is undisputed that Burton was never discovered in a position of peril by any representative of the Defendant while he was trespassing on the Ladd Center property. Thus, this Court need not determine whether the

State's conduct was willful or wanton. Even though the State was indeed aware that trespassers were previously present on the property, this awareness does not impose a duty of care on the State in favor of future trespassers who might encounter similar hazards.[4] The State did not owe Burton any duty.

B

Attractive Nuisance Doctrine

Absent a duty, negligence cannot lie; therefore this Court must next determine whether Burton can nevertheless recover under the exception provided by the attractive nuisance doctrine. In Haddad v. First Nat'l Stores, Inc., 109 R.I. 59, 280 A.2d 93 (1971), our Supreme Court adopted § 339 of the Restatement (Second) Torts. In Haddad, a young child was injured while playing in a defendant-supermarket's parking lot when she was pushed around in a shopping cart that had been left unsecured after the store had closed. The Restatement (Second) Torts § 339 provides:

> A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if:
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> (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and
>
> (b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will involve an unreasonable risk of death or serious bodily harm to such children, and
>
> (c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and

[4] See Cain v. Johnson, 755 A.2d 156, 165 (R.I. 2000) (Flanders, J., concurring): "Mere knowledge from past experience that trespassers may be present on the property at any given time after closing hours does not, of itself, impose a duty of care on the property owner running in favor of trespassers, even when the property owner is aware or should be aware of certain obvious hazards that such trespassers may encounter if they are present on the property at night and then put themselves in certain dangerous places there."

> (d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and
>
> (e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children.

Restatement (Second) of Torts § 339 at 197 (1965). It is undisputed that the Ladd Center and the various dangers housed within it are an artificial condition upon the land. Therefore, this Court will address whether the Plaintiff has met its burden of proof on each of the elements necessary to establish that the Ladd Center was an attractive nuisance.

Knowledge of Likely Trespassers

The testimony at trial clearly demonstrates that the State knew that young children are likely to trespass on the Ladd Center property, including the hospital building. Abbruzzese had been responsible for the overseeing of the Ladd Center property for four to five years prior to the incident at bar. He testified that trespassers frequented the Ladd Center. In fact, he requested repairs to the plywood on the hospital building as often as a couple of times each week because trespassers broke or removed the sheets in order to gain access. He also witnessed that the State increased the level of protection to the building over the years, including welding steel doors to the building. Abbruzzese was also familiar with the ghost stories associated with the Ladd Center; he testified that these stories were one of the reasons that so many people try to access the building. This corroborates Burton's testimony, in which he stated that he had heard stories about the Ladd Center hauntings from other students at school and had even watched videos on YouTube.

Unreasonable Risk

Regarding the condition, Abbruzzese testified that the inside of the hospital building is dangerous. There is an exposed elevator shaft filled with water, and broken glass is scattered on the floor. Abbruzzese testified that, even as early as 2005, the structure was no longer stable. Burton testified that while walking through the hospital building he found old medical records, x-rays, garbage and, of course, the bottles containing sulfuric acid that are at the center of this incident. The Ladd Center buildings posed an obvious danger, and the State of Rhode Island knew or had reason to know that a dangerous condition existed at the time of this incident. At a minimum, the State must have or should have realized that broken glass, broken elevator shafts and other dangerous elements inside the buildings might result in serious bodily injury or even death to minor trespassers.

Furthermore, this Court finds it unreasonable and even irresponsible that extremely dangerous items like gallon-sized bottles filled with acid could still to be found in lockers inside the building. One would imagine that the State would have at least engaged in a sweep of the building to identify any easily removable hazardous substances and subsequently take action to remove them. While it is debatable whether or not structural deficiencies in the building or conditions like broken elevator shafts should be attended to at this point, since the buildings are not in use, it is nevertheless clear that the relative ease of removing dangerous substances, like the styrofoam box packed with acid bottles that was discovered by the friends in this case, stands in no relation to the potential life-threatening injuries that may occur by leaving these substances easily accessible. Thus, this Court finds that the condition is known to the State and that the State should have realized that it would involve an unreasonable risk of death or serious bodily harm to the children trespassing.

Realization of the Risk

Next, this Court has to determine whether an average teenager like Burton should have been aware of the risks associated with entering a building on the Ladd School premises and with the taking of bottles filled with an unknown liquid, and whether his relatively 'advanced' age should preclude him from any kind of recovery under this doctrine. At the time of the incident, Burton was seventeen (17) years old. Based on his testimony and demeanor, this Court finds him to be an average teenager. Traditionally, courts have found that the attractive nuisance doctrine should only apply to those of "tender years".[5] However, many courts have shifted away from this restrictive view and allowed recovery by older children, especially when the dangerous condition is somewhat obscure and would therefore be difficult to discover even by a teenaged child.[6]

Here, the dangerous conditions on the property combine to pose, as this Court has already noted, an unreasonable risk. First, there is the Ladd Center property and its abandoned buildings which are an artificial condition upon the land. But then there is the fact that, obscured within these buildings, further hazardous conditions lurk, patiently awaiting the arrival of children trespassers. These conditions turned out to be equally as dangerous as the buildings themselves. Nevertheless, Burton and his fellow adventurers entered the abandoned building in search of excitement and glimpses of ghosts just like many others did before them. And while this Court is quite aware that youthful vigor, recklessness and courage in numbers seem to trump parlous pitfalls like broken elevator shafts lying in wait in pitch black darkness, this Court is also convinced that these boys, nearly young men, should have realized that venturing into these abandoned buildings was a perilous idea to say the least. While ghosts may be impervious to

[5] See William L. Prosser, Trespassing Children, 47 Cal. L. Rev. 427, 440 (1959).
[6] See id. at 441.

dangers like syringes, broken glass and empty elevator shafts, mere mortals like Burton are not. Thus, Burton must have realized the risk associated with entering the building.

However, this Court does not believe that justice would be well served if the inquiry into Burton's mindset, and whether or not he had had the capacity to understand the potential danger of the hazards at hand, centers only on entering the Ladd School building. Instead, this Court will also examine whether or not an average seventeen (17) year old should have realized that a styrofoam box holding gallon sized bottles of clear liquid might have been hazardous. It is difficult to determine if it should be obvious to minors whether fully intact bottles, marked with unreadable labels and filled, albeit unbeknownst to them, with acid can be hazardous to their health. At the very least, this Court would expect that a healthy dose of suspicion would be triggered in the mind of a boy of Burton's age. And apparently it was so, given that the friends opened one of the bottles and tested some of its contents out onto a table. Burton testified that he was aware at that point that the bottles contained a hazardous substance. Nevertheless, the bottles were looted and carried away even though the friends were aware that the clear liquid was probably dangerous. Burton and his friends realized the risk of taking the bottles with them and they did so anyway, an action that resulted in Burton's injuries. Thus, the attractive nuisance doctrine is inapplicable in this case.

While this court is sympathetic to Burton's plight, it is tasked with interpreting the law according to precedent and public policy and cannot rule based on sympathy alone. Although this case presents a close call, given the inapplicability of the attractive nuisance doctrine and the well-established predicate that a landowner owes no duty to an undiscovered trespasser, the State will not be held liable in *this* matter.

It would not surprise this Court at all if recovery were to be allowed in a future case with only slightly more favorable facts for a plaintiff. It does not seem far-fetched, especially with the frequency with which trespassing occurs at the Ladd Center, that a child of more tender years than Burton may fall prey to the dangers that lurk in these abandoned buildings. Although this Court did not hear testimony regarding the current state of the Ladd Center, or the frequency of its trespassers today, neither did it hear evidence of anything more being done to prevent injury. Instead, this Court notes that as recently as 2005, on a weekly basis, children trespass in search of ghosts and adventure. Instead they find pitfalls; syringes, broken glass and bottles of sulfuric acid left behind by much more mundane, yet highly irresponsible humans. It is feasible to imagine that such a child could sustain serious injury or even perish. The situation at hand requires decisive action by the State to prevent similar incidents from ever happening again - by the time these cases reach the Courts, the damage is already done. As Justice Clarke said, the attractive nuisance doctrine was created to make members of society "more reasonably considerate of the safety of the children of their neighbors." United Zinc & Chem. Co. v. Britt, 258 U.S. 268, 280 (1922) (Clarke, J., dissenting). And although this Court finds no liability in the instant case, this Court strongly encourages the State to reconsider whether or not the measures taken at the Ladd Center property to prevent injury to children trespassers are adequate and effective and whether budgetary concerns[7] provide enough of an excuse to risk injury to the weakest members of society - our children. Let this not be an oversight that will come back to haunt us.

[7] Abbruzzese testified that budgetary concerns played a role in the decisions made to board the windows and other actions taken to keep people from accessing the Ladd Center, as well as the decision not to raze the buildings.

III

CONCLUSION

Based upon the foregoing, this Court finds in favor of the Defendant, the State of Rhode Island. The State shall submit an appropriate judgment.