

June 1, 2009

Homeowner Held Not Negligent For Bookcase Falling on Child Because It Was Not Foreseeable That A Three-Year Old Guest Would Attempt to Climb The Bookcase

In *Foss v. Kincade*, -- N.W.2d --, 2009 WL 1324106 the Minnesota Supreme Court held a homeowner did not have duty to secure an empty bookcase to a wall to prevent it from tipping because it was not reasonably foreseeable a three-year old guest would injure himself by attempting to climb the bookcase.

On October 15, 2003 David Foss, Jr. and his mother, Peggy Foss, visited Stephanie Kincade at her home. The Kincades were friends of the Fosses and had recently moved into the neighborhood. While Peggy Foss and Stephanie Kincade were talking, David climbed on a bookcase in a nearby bedroom. They heard a crash and discovered David under the bookcase severely injured. David later underwent multiple surgeries and suffered irreparable damage to his face.

David Foss, Sr., on behalf of himself and his son, brought an action against the Kincades alleging they were negligent in failing to secure the bookcase to a wall. The Kincades moved for summary judgment and the district court granted the motion. The Court of Appeals affirmed, holding that because of the presence of Peggy Foss, the harm was not foreseeable, and thus the Kincades did not owe a legal duty.

The Supreme Court affirmed the holding, however, on different grounds. The Court did not rely on Peggy Foss' presence as the basis for a lack of duty. Moreover, the Court declined to adopt either a minimum standard of care for a child entrant or to extinguish the duty of one person because of the presence of another. Instead, the Court held a landowner has a duty to use reasonable care for all persons invited upon the premises, regardless of the status of individuals, and looked at whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility. In most cases foreseeability is an issue for the jury; however, the foreseeability of harm can be decided by the court when the issue is clear.

As such, the Court found it was not objectively reasonable to expect a homeowner to foresee that a guest—even a child—would climb on a bookcase, nor was it objectively reasonable to expect the homeowner to guard against that possibility. Consequently, the Court of Appeals and District Court's decisions were affirmed.

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THE JOHNSON & CONDON, P.A., LIABILITY PRACTICE GROUP

Mark J. Condon	Timothy J. Leer	Dale O. Thornsjo	B. Jon Lilleberg
Robert E. Kuderer	Paul S. Hopewell	Shamus P. O'Meara	Christopher E. Celichowski
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