

LEGAL NOTICES

Estate of Jeanetta M. Samsell, late of Greene Township, Franklin County, Pennsylvania.

Personal representative:
Glennis Garnes
759 Pine Stump Road
Chambersburg, PA 17201
Attorney:
Joel R. Zullinger
14 N. Main St., Suite 200
Chambersburg, PA 17201

6/29,7/6,7/13/2001

Estate of Sylvia A. Smith, late of Washington Township, Franklin County, Pennsylvania.

Personal representative:
Melvin F. Smith
c/o Patterson and Kiersz
239B E. Main St.
Waynesboro, PA 17268-1681
Attorney:
Patterson and Kiersz
239B E. Main St.
Waynesboro, PA 17268-1681

6/29,7/6,7/13/2001

Third Publication

Estate of Hazel E. Angle, late of Montgomery Township, Franklin County, Pennsylvania.

Personal representative:
Sentry Trust Co.
40 Center Square
Greencastle, PA 17225
Attorney:
LeRoy S. Maxwell Jr.
Maxwell Law Offices
Wayne Building
92 W. Main St.
Waynesboro, PA 17268

6/22,6/29,7/6/2001

Estate of Genevieve H. Chamberlin, late of Chambersburg Borough, Franklin County, Pennsylvania.

Personal representative:
Nancy A. Miller
10433 Fish and Game Road
Waynesboro, PA 17268
Attorney:
Thomas M. Painter
Ullman and Painter
10 E. Main St.
Waynesboro, PA 17268

6/22,6/29,7/6/2001

Estate of Allen R. Frisby, late of Mercersburg Borough, Franklin County, Pennsylvania.

Personal representative:
Mary L. Frisby
206 S. Fayette St.
Mercersburg, PA 17236
Attorney:
Steiger, Steiger and Meyers
120 N. Main St.
Mercersburg, PA 17236

6/22,6/29,7/6/2001

Estate of Harry E. Gahagan Jr., late of Chambersburg Borough, Franklin County, Pennsylvania.

Personal representative:
Farmers and Merchants Trust Co. of Chambersburg
20 S. Main St.
P.O. Box 6010
Chambersburg, PA 17201
Attorney:
David C. Wertime
Wertime & Guyer
50 Eastern Ave.
Greencastle, PA 17225

6/22,6/29,7/6/2001

Estate of Ralph K. Harrison, late of Guilford Township, Franklin County, Pennsylvania.

Personal representative:
Martin M. Krasovic
c/o Redding Law Office
19 N. Main St.
Chambersburg, PA 17201
Attorney:
Patrick J. Redding
Redding Law Office
19 N. Main St.
Chambersburg, PA 17201

6/22,6/29,7/6/2001

Estate of Vernon Wayne Karn, a/k/a Vernon W. Karn Sr., late of Mercersburg Borough, Franklin County, Pennsylvania.

Personal representatives:
Vernon W. Karn Jr.
129 Beech Lane
Mercersburg, PA 17236
and
Dawn M. Karn
14539 Mercersburg Road
Greencastle, PA 17225
Attorney:
J. Dennis Guyer
Wertime & Guyer
50 Eastern Ave.
Greencastle, PA 17225

6/22,6/29,7/6/2001

Estate of Mildred Floe Osborne, late of Antrim Township, Franklin County, Pennsylvania.

Personal representative:
Megan M. Osborne
1600 Buchanan Trail East
Greencastle, PA 17225
Attorney:
Thomas J. Finucane
Finucane Law Office
14 N. Main St., Suite 500
Chambersburg, PA 17201

6/22,6/29,7/6/2001

Estate of Mary Jane Wilson, late of Guilford Township, Franklin County, Pennsylvania.

Personal representative:
Owen E. Wilson
c/o Patterson and Kiersz
20 W. Baltimore St.
Greencastle, PA 17225-1408
Attorney:
Patterson and Kiersz
20 W. Baltimore St.
Greencastle, PA 17225-1408

6/22,6/29,7/6/2001

ELMER L. HUMMER, Plaintiff, v. COUNTY OF FRANKLIN,
Defendant, C.P. Franklin County Branch, Civil Action A.D. 1997-478

Personal injury — Expert testimony — Evidence

1. Expert testimony may be introduced only if it concerns scientific, technical or specialized information beyond that possessed by a layperson which will assist the trier of fact.
2. Expert testimony regarding the "dangerousness" of a stairway is not admissible because laypersons may rely on their own personal experiences to resolve the issue.

Appearances:

Bradley R. Bolinger, Esq.
C. Kent Price, Esq.

OPINION

Walker, P.J., January 31, 2001

Introduction

The instant controversy is a personal injury action for injuries sustained by Plaintiff Elmer L. Hummer on the property of Defendant County of Franklin. Plaintiff filed his complaint on October 6, 1997, alleging that his injuries were the result of defendant's negligent failure to properly maintain a staircase inside one of its buildings. The instant motion in limine, brought by defendant, was argued before the court on January 4, 2001.

Discussion

At trial, plaintiff intends to present the expert testimony of Richard T. Hughes, P.E., who is expected to state that the stairway and handrail in question are (1) dangerous and (2) not compliant with the Building Officials and Code Administrators National Building Code (hereinafter "BOCA") and other industry standards. Defendant has filed the instant motion to exclude the testimony of Mr. Hughes because the testimony he intends to present about the "dangerousness" is common knowledge and not beyond the knowledge of a layperson. Defendant also seeks to exclude Mr. Hughes' testimony concerning the applicability of the Americans with Disabilities Act (hereinafter "ADA") to the facts at bar because plaintiff is not defined as a disabled person under the ADA.

Rule 702 of the Pennsylvania Rules of Evidence provides as follows:

Rule 702. Testimony by Experts

If scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine the fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

Pa.R.E. 702.

To qualify one to testify as an expert, the court must determine whether the potential expert witness has a reasonable pretension to *specialized knowledge* on the subject under investigation. *Diller v. Brass Rail Tavern*, 541 Pa. 474, 480–81, 664 A.2d 525, 528 (1995) [emphasis and italics added]. Defendant has directed the court's attention to two cases on all fours with the instant issue. First, in *Burton v. Horn & Hardart Baking Co.*, the Supreme Court of Pennsylvania reviewed and upheld a lower court's decision to exclude expert testimony as to the improper construction of steps and the hazardous and slippery nature of terrazzo steps when wet, because the jury could evaluate the condition without expert assistance. *Burton v. Horn & Hardart Baking Co.*, 371 Pa. 60, 65, 88 A.2d 873, 875 (1952). In *Kiehner v. School District of Philadelphia*, the Commonwealth Court reviewed and upheld a lower court's decision to exclude expert testimony involving a stairway's non-compliance with BOCA. *Kiehner v. School District of Philadelphia*, 712 A.2d 830 (1998). Again in *Kiehner*, the appellate court determined that "the factual circumstances underlying the condition of the stairway landing in this matter are well within the common knowledge of the layperson." *Id.* at 832.

Plaintiff, conversely, has presented the court with no cases so squarely on point as those listed above. The cases cited in plaintiff's brief contain quite broad and general language concerning expert testimony. Essentially, plaintiff asserts that the court should be "flexible" and allow the testimony to be presented to the court because it will be a bench trial. Thus, it is argued that the court may decipher the testimony in toto and decide which of it was relevant/helpful and which was an attempt to unduly influence the trier of fact. Plaintiff's proposal is well taken, but in the face of *Kiehner* and *Burton*, the court is faced with very persuasive precedent.

The instant dispute surrounds a staircase, a common apparatus encountered by most citizens on a daily basis. Were the subject matter of the action a space shuttle, for example, expert testimony would be very beneficial. However, fact-finders are quite qualified to listen to a description

of a stairway and its design or condition and, based upon their own experience, identify whether it is dangerous. Moreover, because the locale of defendant's staircase had not adopted BOCA to establish a standard of care for defendant's staircase, any mention of it is wholly irrelevant. Finally, any mention of the ADA is likewise extraneous because plaintiff admits that he is not a disabled person as defined by the Act.

ORDER OF COURT

January 30, 2001, the court having considered Defendant County of Franklin's motion in limine, Plaintiff Elmer L. Hummer's response thereto, the oral arguments presented and applicable legal standards, it is hereby ordered that defendant's motion in limine is granted, as plaintiff's witness Richard E. Hughes' testimony concerning the dangerous condition of the steps or any applicability of BOCA or the ADA to the instant action are excluded.