Michael Leonard v The Loch Lomond and The Trossachs National Park Authority

Case Report: [2014] CSOH 38

Decision dated 25th February 2014

This was an Outer House case in the Court of Session (Lord Uist).

Facts: The claimant, Michael Leonard, had been walking on a stretch of the West Highland Way above the east shore of Loch Lomond when he was injured in an accident. He was aged 12 at the time. He had walked ahead of his family and was out of sight when the accident happened. He was found unconscious and injured on a road below the path on which he was last seen walking. He did not remember what had happened and there were no witnesses of the accident. It was claimed that the NPA was in breach of its common law duty of care and its statutory duty of care under the Occupiers' Liability (Scotland) Act 1960 because there were uneven steps on the path and tripping hazards as a result of which the claimant must have tripped and fallen down the steep slope by the side of the path to the road below. There was no handrail and no barrier to prevent him from falling onto the road.

Decision: Lord Uist said that the mechanics of the accident had not been proved. It was up to the claimant to establish the circumstances of the accident on the balance of probabilities, but he had failed to do so in this case. There was no evidence about where any trip or fall had occurred, or even whether it had occurred on the path, or what caused any such trip or fall. There were other possibilities that could account for him being found injured on the road. His claim, therefore, failed on this basis.

However, the Judge said that even if the circumstances of the accident had been established, the NPA would not have been in breach of its duty of care because:- the path had been constructed using a method (stone pitching) that was accepted practice for paths in such a location, and it had

been constructed to acceptable standards.
- previous court decisions had shown that there is no duty to protect against obvious or familiar natural features. The fact that the path was not a natural feature made no difference. It was enough that it had become an obvious part of the landscape and use of the path didn't involve exposure to any special or unfamiliar hazard. People venturing onto the hill must be taken to have accepted the risk of using the path.
- there was no need to provide a handrail or barrier because there was no need to fence off an obvious danger.

The full report is available on the Scottish Courts Service website.