Protection for the Recreational Property Landowner:

The Alabama Recreational Use Statutes

By George W. Royer, Jr.

The Alabama Recreational Use Statutes are contained in *Ala. Code* §§ 35-15-1, et seq. (Chapter 1), and 35-15-20, *et seq*. (Chapter 2). These two groups of Alabama statutes deal with the same subject matter, i.e., the level of conduct required for liability arising from the use of non-commercial recreational property and "are to be read complimentary [sic] to each other." *Grice v. City of Dothan,* 670 F. Supp. 318, 321 (M.D. Ala. 1983). As discussed in this article, the Recreational Use Statutes provide substantial protection to the owners of non-commercial recreational property for injuries sustained by users of such property. The policy behind the Recreational Use Statutes has been declared by the legislature in *Ala. Code* § 35-15-20 to be: "[T]hat it is in the public interest to encourage owners of land to make such areas available to the public for non-commercial purposes by limiting such owners' liability towards persons entering thereon for such purposes [and] that such limitation on liability would encourage owners of land to allow non-commercial public recreational use of land which would not otherwise be open to the public . . ."

The statutes have wide application to users of non-commercial recreational property. The statutes are specifically applicable to claims of minors as well as persons of full legal age. See Ala. Code § 35-15-21(4) defining "person" for the purposes of the statutes as: "Any individual, regardless of age, maturity or experience." See also *Grice*, 670 F. Supp at 322 ("It is obvious to this court that the Alabama legislature did not intend for minors to be treated any differently from adults relative to the duty owed to them by landowners under §§ 35-15-20 through 28."); *Ex parte City of Geneva,* 707 So. 2d 626 (Ala. 1997) (applying protections of the Recreational Use Statutes to claims brought on behalf of 11-year old minor plaintiff). Employees and "agents" of a non-commercial recreational property owner are also entitled to assert the protections of the Recreational Use Statutes. Independent contractors are, however, not covered. *Ala Code* § 35-15-21(1) states, in this regard, as follows: "For the purpose of this Article, an employee or agent of the owner, but not an independent contractor while conducting activities upon the outdoor recreational land, is deemed to be an owner." (emphasis added).

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Although the Recreational Use Statutes offer protections for landowners and their employees for non-commercial recreational use of property, the fact that the property owner may charge an admission or other fee for use of the property does not preclude application of the protections of the statutes. The issue is whether the facility is intended to be operated for the purpose of making a profit. *Ala. Code* § 35-15-26 states that "[t]he liability limitation provisions of this Article shall not apply in any cause of action arising from acts or omissions occurring on or connected with land upon which any commercial recreational enterprise is conducted." The Recreational Use Statutes define "commercial recreational use" as: "Any use of land for the purpose of receiving consideration for opening such land to commercial use where such use or activity is profit-motivated." *Ala. Code* § 35-15-21(5). (emphasis added). Construing these provisions of the Recreational Use Statutes, the supreme court has held that the property owner's intent, not its accounting, determines whether the usage of recreational property is profit-motivated. "Whether actual profit is derived from the acts imputed to the defendant . . . is not a material inquiry . . . the inquiry is, was it the purpose to derive profit?" *Owens v. Grant,* 569 So.2d 707, 711-12 (Ala. 1990).

Chapter 1 of the Recreational Use Statutes

Sections 35-35-1 through 5 "define and limit the duties of an owner of recreational land in relation to a person using the premises for recreational purposes." *Poole v. City of Gadsden,* 541 So.2d 510, 512-13 (Ala. 1989). Section 35-15-1 states as follows:

> An owner, lessee or occupant of premises owes no duty of care to keep such premises safe for entry and use by others for hunting, fishing, trapping, camping, water sports, hiking, boating, sightseeing, caving, climbing, repelling or other recreational purposes or to give any warning of hazardous conditions, use of structures or activities on such premises to persons entering for the above stated purposes, except as provided in § 35-15-3.

(emphasis added).

Section 35-15-3 provides as follows:

> This article does not limit the liability which otherwise exists for wilful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or for injury suffered in any case where permission to hunt, fish, trap, camp, hike, cave, climb, rappel, or sight-see was granted for commercial enterprise for profit; or for injury caused by acts of persons to whom permission to hunt, fish, trap, camp, hike, or sight-see was granted to third persons as to whom the person granting permission, or the owner, lessee, or occupant of the premises owned a duty to keep the premises safe or to warn of danger.

(emphasis added).

Federal and state courts in Alabama have interpreted § 35-15-3 of Chapter 1 to provide that liability against an owner, lessee or occupant of property used for recreational purposes may only be imposed in the event that there is a "willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity . . ." *Clark v. Tennessee Valley Authority,* 606 F. Supp. 130, 131 (N.D. Ala. 1985) (emphasis in original); *Poole,* 541 So.2d at 513-14 (Ala. 1989). ("An owner, whether public or private, owes no duty to users of the premises except for injury caused by willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.") (emphasis added). See also *Ex parte City of Geneva,* 707 So.2d 626, 628 (Ala. 1997) (same). Because of the limitation of liability contained in §§ 35-15-1 and 3, "an owner, whether public or private, owes no duty whatsoever to provide safe premises to users." *Clark,* 606 F. Supp. at 131.

Chapter 2 of the Recreational Use Statutes

Chapter 2 of the Recreational Use Statutes is contained in *Ala. Code* §§ 35-15-20 through 28. Although Chapter 1 does not contain a definition of what type of property comes within the protections of the Recreational Use Statutes, Chapter 2 does contain such a definition. Chapter 2 defines "Outdoor Recreational Land" for the purposes of the statutes as: "Land and water, as well as buildings, structures, machinery, and such other appurtenances used for or susceptible of recreational use."

The substantive provisions of Chapter 2 of the Recreational Use Statues providing protections to non-commercial landowners are as follows:

> § 35-15-22. Inspection and warning not required.
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> Except as specifically recognized by or provided in this article, an owner of outdoor recreational land who permits non-commercial public recreational use of such land owes no duty of care to inspect or keep such land safe for entry or use by any person for any recreational purpose, or to give warning of a dangerous condition, use, structure, or activity on such land to persons entering for such purposes.
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> § 35-15-23. Limitations on legal liability of owner.
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> Except as expressly provided in this article, an owner of outdoor recreational land who either invites or permits non-commercial public recreational use of such land does not by invitation or permission thereby:
>
> (1) Extend any assurance that the outdoor recreational land is safe for any purpose;
>
> (2) Assume responsibility for or incur legal liability for any injury to the person or property owned or controlled by a person as a result of the entry on or use of such land by such person for any recreational purpose; or
>
> (3) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.

(emphasis added).

The Alabama Supreme Court has recognized that the intent of the legislature in adopting Chapter 2 of the Recreational Use Statutes was to provide even greater protection than that afforded by Chapter 1. In *Poole,* 541 So. 2d at 513, the supreme court stated:

> Sections 35-15-20 through 28, adopted in 1981, apply to owners of noncommercial public

recreational land, such as the City here, and provide such landowners with even greater protections than §§ 35-15-1 through 5.

(emphasis added). See also *Ex Parte City of Geneva,* 707 So. 2d at 628. (Same).

Federal district courts sitting in Alabama and applying Alabama law have also recognized that §§ 35-15-20 through 28 of Chapter 2 were intended by the legislature to be applied in conjunction with the willful and malicious requirements of § 35-15-3 of Chapter 1 to provide greater protection to public and governmental landowners who make their premises available to the public for non-commercial recreational use. In *Clark v. Tennessee Valley Authority,* 606 F. Supp. 130 (N. D. Ala. 1985), the plaintiff alleged negligent and wanton misconduct in the maintenance, operation and supervision of a dam and reservoir. The defendants asserted that they were entitled to the protection afforded by both §§ 35-15-1 through 5 and 35-15-20 through 28. The plaintiff contended that the defendants could be liable absent an allegation or proof of willful and malicious conduct because 35-15-20 through 28 repealed §§ 35-15-1 through 5. The United States District Court for the Northern District of Alabama rejected the plaintiff's argument as follows:

> Sections 35-15-20 through 28, *Code of Alabama* (1975) (1984 Supp.) applies to noncommercial public recreational landowners such as defendants, and provides them with even tighter limitations than §§ 35-15-1 through 5, as to their exposure to liability to recreational users. This 1981 piece of legislation recognizes a public policy in Alabama to encourage public owners to allow the opening up and promotion of their facilities without exposing themselves to law suits. This court will not second guess this legislative intent.
>
> There is nothing among the undisputed facts of this case, nor, for that matter among the disputed facts, which provides Clark a way around this combination of Alabama statutory limitations on defendants' liability.
>
> Clark argues that the 1981 Act (§ 35-15-20 through 28) repealed the prior Act (§ 35-15-1 through 5) because of alleged inconsistencies between the two acts in light of the repealer clause included in the 1981 Act. The court disagrees and finds that while the two acts perhaps overlap, both provide limitations on defendants' liability under the facts of this case.

Clark, 606 F. Supp. at 131-32. In *Grice v. City of Dothan,* 670 F. Supp. 318 (M.D. Ala. 1987), the Court considered the applicability of the Recreational Use Statutes to a claim involving the death of a minor who drowned in a city park The Court in *Grice,* holding that the municipal defendant was shielded from liability under the Recreational Use Statutes, agreed with the Court's holding in *Clark v. Tennessee Valley Authority,* and also held that the enactment of Chapter 2 of the Recreational Use Statutes was not intended by the legislature to repeal §§ 35-15-1 through 5. The Court held that in the absence of facts which would indicate malicious or willful behavior, the defendant municipality could have no liability. The Court stated:

> There are no facts before this Court, submitted by the plaintiff, which would indicate malicious or willful behavior on the part of the defendant herein. Indeed, willful and/or malicious conduct has not been pleaded by the plaintiff in this case. (Citation omitted.) Further, §§ 35-15-20 through 28, *Code of Alabama* (1975) (1984 Supp.), further limits the liability of owners of land who dedicate their property for non-commercial recreational use. This Court is of the opinion that the defendant City of Dothan falls squarely into the coverage provided by §§ 35-15-20 through 28, supra. These sections declare that the public policy of Alabama is to encourage the donation of non-commercial recreational property without exposing the owners of such property to liability. As the Court stated in Clark, supra at 131, this Court will not question the clear expression of this legislative intent. (Citation omitted.) This Court finds, as did the Court in Clark, that Articles 1 and 2 of Chapter 15 are to be read complimentary to each other and that the provisions of Article 2 do not repeal the provisions contained in Article 1.

Grice, 670 F. Supp. at 321. See *Russell v. Tennessee Valley Authority,* 564 F. Supp. 1043, 1047 (N.D. Ala.

1983) (willful and malicious conduct is required to be shown by plaintiff to overcome the protections of the Alabama Recreational Use Statutes); *Poole,* 541 So.2d at 513 (citing *Grice* and *Clark* with approval and noting that "[a]n owner, whether public or private, owes no duty to users of the premises except for injury caused by a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.") (emphasis added). See also *Ex parte City of Geneva,* 707 So.2d at 628 (same).

Exceptions to the Protections of the Recreational Use Statutes

The Alabama Legislature has by statute "carve[d] out an exception to the liability limitations provided" under the Recreational Use Statutes. *Ex parte City of Geneva,* 707 So.2d at 629. This exception is contained in *Ala. Code* § 35-15-24(a). Section 35-15-24 provides as follows:

"(a) Nothing in this article limits in any way legal liability which otherwise might exist when such owner has actual knowledge:

"(1) That the outdoor recreational land is being used for non-commercial recreational purposes;

"(2) That a condition, use, structure, or activity exists which involves an unreasonable risk of death or serious bodily harm;

"(3) That the condition, use structure, or activity is not apparent to the person or persons using the outdoor recreational land; and

"(4) That having this knowledge, the owner chooses not to guard or warn, in disregard of the possible consequences.

"(b) The test set forth in subsection (a) of this section shall exclude constructive knowledge by the owner as a basis of liability and does not create a duty to inspect the outdoor recreational land."

(emphasis added).

…persons who have suffered injury on non-commercial recreational property frequently contend that the defect which caused injury to their client was an unreasonably dangerous defect which was "not apparent to the persons or persons using the outdoor recreational land…"

In attempting to come within the exception contained in § 35-15-24 to the protections afforded by the Recreational Use Statutes, persons who have suffered injury on non-commercial recreational property frequently contend that the defect which caused injury to their client was an unreasonably dangerous defect which was "not apparent to the persons or persons using the outdoor recreational land" and thus excluded from the protections of the statutes by §§ 35-15-24(a)(2) and (3). The supreme court has held that before a condition can constitute a condition which is "not apparent to the person or persons using the outdoor recreational land" under § 35-15-24(a)(3), the condition must constitute a "hidden danger, pitfall or trap . . . that a person could not avoid by the use of reasonable care and skill." *Ex parte City of Geneva,* 707 So.2d at 629-30.

In *Ex Parte City of Geneva,* the supreme court considered the meaning of the term "not apparent" as used in § 35-15-24(a)(3). In that case, an 11-year old girl accompanied by five girlfriends and an adult chaperone entered a municipal park in the late afternoon. 707 So.2d at 628. The minor plaintiff testified that when she entered the park there was still some daylight and that she saw and easily stepped over a

cable at the entrance to the park. *Id*. After watching some baseball games, the group decided to leave sometime around 8:30 to 9:00 p.m. *Id*. When the girls reached the park entrance they began to run toward the chaperone's car, which was parked on the other side of the cable. *Id*. As the group of girls approached the cable, the chaperone called out to remind the girls of the cable. Several girls successfully jumped over the cable, but the minor plaintiff and one of her friends hit the cable and fell. *Id*. The minor plaintiff suffered a broken leg as a result of her fall. *Id*. The minor plaintiff testified that while she did hear the chaperone's warning, she heard it only when she was right at the cable. *Id*. The minor plaintiff in *Ex Parte City of Geneva* claimed that she could not see the cable due to the darkness. The minor plaintiff stated that upon hearing the warning she did see the cable and tried to jump over it, "but she said that because of the darkness she had not seen the cable in time to stop or jump all the way over it." *Id*.

Based upon the foregoing facts, the supreme court in *Ex Parte City of Geneva* held that "the plaintiff failed to present substantial evidence that the condition that caused her injury was 'not apparent' within the meaning of § 35-15-24(a)(3) *Ala*. *Code* 1975." 707 So.2d at 631. This court stated that the plaintiff in that case "did not present substantial evidence indicating that the cable [the minor plaintiff] fell over was a condition that a person could not avoid by the use of reasonable care and skill." *Id*. at 630.

As noted above, an argument is sometimes made that the enactment of the exception contained in § 35-15-24 to the protections of the Recreational Use Statutes operated to repeal the requirement of proof of willful and malicious conduct contained in Chapter 1. There is a split of authority in the federal courts in Alabama on this issue. As noted above, in *Clark v. Tennessee Valley Authority*, 606 F. Supp. 130 (N.D. Ala. 1985), and *Grice v. City of Dothan,* 670 F. Supp. 318 (M.D. Ala. 1987), United States District Courts in the Northern and Middle Districts of Alabama have held the enactment of the exception to the limitation of liability provided in § 35-15-24 in Chapter 2 was not intended by the legislature to repeal §§ 35-15-1 through 5 of Chapter 1, and that in the absence of facts which would indicate malicious or willful behavior, a property owner could have no liability for injury to users of non-commercial recreational property.

…in the absence of facts which would indicate malicious or willful behavior, a property owner could have no liability for injury to users of non-commercial recreational property.

The contrary authority in support of the contention that the "willful and malicious" requirement of § 35-15-3 is inapplicable to the exception contained in § 35-15-24(a), is *George v. United States,* 735 F. Supp. 1524 (M.D. Ala. 1990). In *George,* the Court rejected the argument that the "willful and malicious" standard of Chapter 1 remained applicable following the enactment of § 35-15-24. 735 F. Supp. at 1535. The Court stated: "Despite language in Articles 1 and 2 that provides a land owner owes no duty to those using his land for noncommercial recreational purposes, the plain language of § 35-15-24 states that existing liability is not limited when the elements of this section are met. Accordingly, this Court finds that § 35-15-24 does not require a willful and malicious act on the part of the land owner in order for liability to attach." *Id*. The Court stated that it was of the belief "that the Legislature did not intend to further restrict the plain meaning of § 35-15-24 by imposing the willful or malicious standard upon this section." *Id*.

A good argument exists, however, that *George* is an outlier and was incorrectly decided. This is so for several reasons. First, no case other than *George* has reached this conclusion. Second, the Court in *George* specifically recognized the existence of a new duty created by § 35-15-24. The Court stated: "Defendant argues that, by enforcing § 35-15-24 as written, this Court is creating a duty of the land owner which otherwise would not exist. This Court cannot agree. The Alabama legislature created that duty by the passage of § 35-15-24, not this Court." 735 F. Supp. at 1535. However, *Ala. Code* § 35-15-24(c) expressly prohibits § 35-15-24 from having the field of operation found by the Court in *George*. Section 35-15-24(c) provides that: "Nothing in this Article shall be construed to create or expand any duty or ground of liability or cause of action for injury to persons on property." (emphasis added). Nevertheless, the Court in *George* appears to have completely ignored this limiting language of § 35-15-24(c) and held that the legislature did in fact create a new duty by its enactment of § 35-15-24(a).

The third reason that *George* seems to be incorrectly decided is that if the *George* court's reading of § 35-15-24 is correct, that *Code* section would completely cancel and annul the protections of § 35-15-3. This result would be completely at odds with the rule that Articles 1 and 2 of the Recreational Use Statutes are to be read "complimentary [sic] to each other," *Grice,* 670 F.Supp. at 321, as well as the rule recognized by the Supreme Court in *Ex Parte City of Geneva* and *Poole* that Article 2 of the Recreational Use Statutes "provide [recreational] landowners with even greater protections than § 35-15-1 through -5." In addition, the Alabama Supreme Court has observed that the provisions of Article 2 do not impair the protections of Article 1. See *Kennedy v.Graham,* 516 So. 2d 572, 575 (Ala. 1987) ("We see no reason why Article 2 should limit the application of Article 1").

The protections of the Alabama Recreational Use Statutes have been held to apply even though the injured person was not engaged in recreational activities at the time of his injury, as long as the injured person was on the premises for the purpose of recreation. This issue was considered in *Cooke v. City of Guntersville,* 583 So. 2d 1340 (Ala. 1991) in the following context: If a person is on noncommercial public recreational land for recreational purposes, but then enters another part of that land for ostensibly non-recreational purposes, is the property owner liable for any injury that results? In *Cooke,* a child was skateboarding outside of a city neighborhood center, but he injured himself inside the neighborhood center when he entered to get a drink of water. *Id*. at 1341-42. The plaintiff first argued that the child's skateboarding was not defined as a "recreational purpose" or "recreational use" of the facility under *Ala. Code* § 35-15-21(3). That *Code* provision defines "recreational purposes of recreational use" as "Participation in or viewing activities including, but not limited to, hunting, fishing, water sports, aerial sports, hiking, camping, picnicking, winter sports, animal or vehicular riding, or visiting, viewing or enjoying historical, archeological, scenic or scientific sites, and any related activity." The Court in *Cooke* rejected the plaintiff's limited reading of the statute, finding that the list of activities in § 35-15-21(3) was "clearly not exhaustive." *Id*. at 1342. Further, the Court disregarded the plaintiff's argument that the child's presence in the neighborhood center for a glass of water was non-recreational, noting that it was undisputed that the child was on the grounds of the neighborhood center to ride his skateboard. *Id*. On this basis, the court affirmed the trial court's grant of summary judgment in the city's favor. *Id*.

Ex Parte City of Guntersville

The most recent pronouncement from the supreme court regarding the Recreational Use Statutes is *Ex parte City of Guntersville,* So.3d, 2017 WL 2303161 (Ala. May 26, 2017). This case is significant for several reasons. The first important aspect of the decision is that the supreme court recognized for the first time that a denial of a motion for summary judgment asserted under the Recreational Use Statutes is interlocutorily reviewable as a matter of right by petition for writ of mandamus. Previously, the supreme court had recognized that immunities such as peace officer immunity and state-agent or, as it is frequently referred to, *Cranman* immunity, can be reviewed as a matter of right on a petition for writ of mandamus in the event of an unsuccessful motion for summary judgment. See, e.g., *Ex Parte Harris,* 216 So. 2d 1201, 1206 (Ala. 2005) (peace officer immunity under § 6-5-338

reviewable on petition for mandamus); *Ex parte Rizk,* 791 So.2d 911, 912 (Ala. 2000) (state-agent immunity reviewable by mandamus). However, prior to *Ex parte City of Guntersville,* no case had ever characterized the protections of the Recreational Use Statutes as an immunity entitling a party who was unsuccessful on a motion for summary judgment to immediate interlocutory review. In recognizing the right of immediate review by mandamus from an order denying summary judgment under the Recreational Use Statutes, the supreme court in *Ex parte City of Guntersville* stated:

> While the general rule is that the denial of a motion for summary judgment is not reviewable, the exception is that the denial of a motion for summary judgment grounded on a claim of immunity is reviewable by petition for writ of mandamus . . .
>
> This Court has stated that the recreational-use statutes provide immunity to qualifying land owners.

2017 WL 2303161 at * 2-3 (emphasis in original).

The second significant aspect of *Ex parte City of Guntersville* was the holding by the supreme court that actual knowledge by the landowner of the existence of the physical condition claimed to constitute a hidden danger under § 35-15-24, is insufficient to impose liability without proof of actual knowledge that the claimed defect actually posed a dangerous condition. *Ex parte City of Guntersville* involved a claim by a city park visitor who suffered injuries offer she tripped over a diagonal crossbar supporting a vertical pole which delineated the boundaries between a parking lot and the grassy area of a lakeside city park. At the edge of the parking lot were a number of vertical poles with holes at the top through which steel cabling had been previously run. Some of the poles were supported by diagonal crossbars. See 2017 WL 2303161 at * 1.

The plaintiff was injured when she was returning to her vehicle in the nighttime from the grassy area of the park where she had viewed the city's annual fireworks show. The plaintiff presented expert testimony claiming that the lighting in the park and the route of travel taken by the plaintiff was "unreasonably dangerous at the time of [the plaintiff's] fall." See 2017 WL 2303161 at * 2. The plaintiff's expert also testified that because the diagonal crossbar was painted a dark color, it was virtually invisible in the darkness. The city's parks and recreation maintenance supervisor testified that the poles and diagonal crossbars had been installed in the park for more than 19 years prior to the incident. He further testified that there had never been a complaint that the crossbars constituted a trip hazard and that nobody had ever claimed to have tripped over a pole either in the day or nighttime hours. *Id*.

The city moved for summary judgment based upon the Recreational Use Statutes. The city argued that because the testimony of the city's parks and recreation maintenance supervisor was undisputed that there had never been a complaint that the diagonal poles constituted a trip hazard nor had anyone ever fallen over them, the city had no "actual knowledge" as was required by § 35-15-24(a)(2) and (3) that a "condition . . . exist[ed] which involve[d] an unreasonable risk of death of serious bodily harm" and that "the condition, use, structure or activity is not apparent to [a] person or persons using the outdoor recreational land." See 2017 WL 2303161 at * 4.

In response, the plaintiff's counsel contended that since the crossbar was readily apparent in the parking lot, and that the plaintiff's expert had given testimony that the lighting was inadequate resulting in the crossbar being "practically invisible" in the nighttime hours, the requirements of § 35-15-24 were satisfied. The city countered by contending that the plaintiff's argument was, in effect, that the city should have known prior to the plaintiff's fall that the crossbar constituted an "unreasonable risk of death of serious bodily harm" in the darkness. See 2017 WL 2303161 at * 4. The city contended that this contention was insufficient to impose liability on the city because it was, in essence, an argument that the city had constructive knowledge of the alleged dangerous condition. The city contended that under § 35-15-24(b) any such contention was insufficient to establish liability on the part of the city. Section 35-15-24(b) provides: "The test set forth in subsection (a) of this section shall exclude constructive knowledge by the owner as a basis for liability and does not create a duty to inspect the outdoor recreational land." (emphasis added). *Id*.

The supreme court agreed with the city. The court

stated that: "[T]he City does not deny that it had actual knowledge of the existence of the diagonal crossbar over which [the plaintiff] allegedly tripped. Instead the City argues that [the plaintiff] failed to present substantial evidence that the City had actual knowledge that the diagonal crossbar presented a 'condition, use, structure or activity . . . which involves an unreasonable risk of death of serious bodily harm.'" 2017 WL 2303161 at * 4. The supreme court noted but dismissed the plaintiff's expert's opinion that "the light in question and the route of ingress/egress (including the pole and [diagonal crossbar]) were unreasonably dangerous." *Id*. at *2. The supreme court further noted that while "such evidence may be relevant to a showing that the City had constructive knowledge of 'a use, condition, structure or activity . . . which involves an unreasonable risk of death or serious bodily harm' § 35-15-24(b) specifically states that '[t]he test set forth in subsection (a) of this section shall exclude constructive knowledge by the owner as a basis of liability . . .'" *Id*. at *5. (emphasis in original). The court stated that nothing in the plaintiff's expert's "testimony rebuts [the maintenance supervisor's] testimony indicating that the City did not have actual knowledge that the diagonal crossbar presented a 'condition, use, structure or activity . . . which involves an unreasonable risk of death or serious bodily harm.'" *Id*. The court stated that, accordingly, it "conclude[d] that [the plaintiff] has failed to present substantial evidence in support of § 35-15-24(a)(2) and, thus, has not demonstrated that she is entitled to maintain her action against the City." *Id*.

First, as previously discussed, the fact that an entrance fee is charged at public recreational land will not remove the land from the protections of the Recreational Use Statutes unless the plaintiff can produce evidence showing that the operation of the activity on the land was intended to make a profit.

Conclusion

From the cases discussed above, several guidelines regarding the applicability of the Recreational Use Statutes can be gleaned. First, as previously discussed, the fact that an entrance fee is charged at public recreational land will not remove the land from the protections of the Recreational Use Statutes unless the plaintiff can produce evidence showing that the operation of the activity on the land was intended to make a profit. See *Ala. Code* § 35-15-21(5); See *Owens,* 369 So.2d at 711-12. Second, the scope of protection provided by the Recreational Use Statutes is broad, providing immunity even when a person is injured when performing non-recreational routine activities, i.e., getting a drink of water or going to the bathroom, as long as that person was present on the property for recreational purposes. See *Cooke,* 583 So. 2d at 1342. Third, if the plaintiff is unable to produce any evidence that the municipality or other public body has *actual knowledge* that a claimed defect constituted an unreasonable risk of death or serious bodily injury, the property owner will likely be entitled to summary judgment even if the property owner had actual knowledge of the physical existence of the defect. See *Ex Parte City of Guntersville,* 2017 WL 2303161 at *5.

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