



# MondayMonday

## Playing On The Slip And Slide

June 22, 2015

Yesterday was Father's Day, the least important day in the civil calendar. Which is as it should be, for to be a good father is to suffer silently. Your job is to watch the horizon for danger and keep your family safe. Safe from ne'er-do-well suitors who may attack your daughters and femme fatales who may attack your sons; safe from unscrupulous gardeners who may seek to compromise your wife's honor and free from your mother, who sees no honor in her under any circumstances.

Unlike Mother's Day, which celebrates the beatification of a saint, Father's Day is a holiday where the honoree is given the privilege of barbecuing his own meal and the meals of all other celebrants as well. Rather than strawberry-covered waffles in bed, the father is required to get up at dawn to get hot bagels while, at the same time, filling the specific bagel variety requests of everyone in the household, without daring to wake them to find out what those requests are. Finally, insofar as gifts are con-



cerned, the father is never allowed to complain about any gift. Unlike the mother, for whom no gift is too good, every gift the father receives is perfect. Indeed, this is so even if it is the same gift he has received for the last 17 years.

So, buck up bunky and appreciate the nobility of it all. Suffer in silence, taking comfort in the fact that you are doing everything wrong, which is to say, everything right.

Every lawyer knows that a waxed floor or a marble floor is inherently slippery and that barring some intervening negligent act, like over-waxing, no action lies for the unfortunate victim (which is everyone, at one time or another) who slips on that floor. Sure, it makes no sense. But what about the plaintiff who slips on a marble stair tread that is worn at its nose? Is such an edge an actionable defect? In a decision far too short for the damage it causes, the First Department says "no"

in *Carrion v. Faulkner*, 2015 NY Slip Op 05271 (1st Dep't, 6/18/15). The reasoning is quite scanty, as it should be, for it makes little sense, except historically.

Understand, we deal here with a "pure" marble step that is merely worn. There is no debris on the step which cause plaintiff's fall. In relying on cases such as its decision in *Richards v. Kahn's Realty Corp.*, 114 A.D.3d 475 (1st Dep't 2014), the court reminds us that "[t]he slippery condition of marble stairs due to their smoothness is not an actionable defect." *Richards'* citation for that principle is *Sims v. 3349 Hull Avenue Realty*, 106 A.D.3d 466 (1st Dep't 2013) which involved a "worn marble tread." In turn, *Sims* cites to *Murphy v. Conner*, 84 N.Y.2d 969 (1994), which states that where plaintiff offers no evidence of the reasons for her fall other than smooth floor tiles, such as that they were wet or over-polished, there is no liability. In other words, sure marble is inherently dangerous as a floor covering, but not in the enchanted world that we lawyers live in, where there is nothing more counter-intuitive than common sense.

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