

Legal Implications of Disney's Alligator Attack

By Charles R. Gallagher III

The tragic news of the death of a toddler on the beach at Disney's Grand Floridian Resort and Spa gripped the nation after the equally tragic nightclub shooting in Orlando. On June 14, 2016, a two-year-old Lane Graves from Nebraska was dragged into the Seven Seas Lagoon at 9:15 PM by an alligator after he and his family attended a movie night on the beach. The boy's body was found the following afternoon. The medical examiner found that the child died of "drowning and traumatic injuries." In the search for the child, five alligators were found in the lagoon waters and euthanized.

Along with the prayers and thoughts for the loss of the Graves family, the news media has begun to examine the many legal issues associated with this tragedy. This attack has implicated a multitude of legal issues, issues that can hopefully prevent such an occurrence in the future.

Premises Liability and Duty

Was Disney negligent relative to the conditions on the shore of the Grand Floridian Resort?

Florida negligence law requires a duty of the offending party. That duty can be expanded by prior notice to the property owner of the harmful condition. Recent reports are surfacing which contend that Disney had actual notice of this risk. It was reported that a custodian employed by Disney told management that he saw alligators on the beach and urged that they erect fencing. Additionally, a San Diego attorney recounted how his son was chased by an alligator at a Disney Resort recently. Finally, reports of a prior alligator attack have now come to light. This prior notice is legally determinative and would seem to create a duty for Disney in connection with the presence of alligators.

Under premises liability claims, the claimant must prove that the injury or death resulted from the property owner's failure to make or keep the property safe per se. To prevail in such a claim under Florida law, the claimant must prove that

- The property owner knew or should have known of the dangerous condition.
- The property owner failed to repair and/or warn of this dangerous condition.
- That the claimant was injured or killed by the dangerous condition.

Generally speaking, property owners cannot be held liable for injuries caused by unknown conditions on their property. However, a property owner must exercise reasonable care for the safety of their guests.

While a property owner can have a duty to all those on their property, they have the greatest quantum of duty to a class of visitors called business invitees. This includes those who enter a property for business purposes, including guests in a hotel. This duty requires that property owners must keep the property in a safe condition and must repair or provide notice of any known dangers on the premises. This duty includes inspection of property for dangerous conditions. It can also go so far as to include unknown dangers that should have been known to a diligent and prudent owner.

With reports of prior notice and Disney's knowledge of alligators present in areas frequented by guests, it appears that Disney may have liability grounded in premises liability and negligence.

Attractive Nuisance

Reports on the facts of the alligator attack recount that the two year old toddler Lane Graves was wading in one foot of water on a beach that was part of the Grand Floridian Hotel. While reports confirm that “No Swimming” signs were present, it is undisputed that any signs warned of the presence of alligators. Also, photographs of the area in question tend to confirm that it was meant for use by the hotel guests.

Under Florida law an attractive nuisance claim protects a child who wanders on the property of another and is then injured by a dangerous condition. This claim can fit within either a negligence action or a premises liability action. A property owner will be liable for the injury or death to a child where the property owner knows or has reason to know that the place where a dangerous condition exists is one where a child may trespass, the dangerous condition is known to or should be known to cause unreasonable risk of harm to a child, and the property owner fails to act with reasonable care to remove the danger or protect the child from the risk of danger.

Subsequent Remedial Measures

While Disney was quick to install fencing and warning signs, they did so with the protection of Florida’s Evidence Code. Under Florida law, no jury in any legal action against Disney for the attack will ever hear of the repairs or signs. They will be excluded from evidence as a subsequent remedial measure. The policy considerations under this rule are meant to encourage remedial measures that mitigate risks and make unsafe conditions safe. Disney knew this and it was likely a large part of their quick decision to install the fencing.

Suing the Mouse

For those who have sued the mouse, it is well known that they are a worthy adversary opting to try cases as opposed to settling out of court. While Disney publically touts that it settles lawsuits out of court, they are not afraid to go to the mat.

Reports have noted that Disney was sued thousands of times and at any given time there are about a hundred active cases pending. Of the cases filed in Orange County, Disney is reported to have won 80% of the lawsuits. Another report estimates a 4% chance of the lawsuit making it to trial with a win for the Plaintiff. In this case, the facts are unprecedented and there is marginal value to a pre-suit settlement given the worldwide media attention. The entire world has learned of the tragic attack. That said, most legal commentators feel that Disney will pursue an early pre-suit settlement.

Any case against Disney for the horrific alligator attack would be uncharted territory given the intersection of the above legal issues and tragic facts. It is hoped that this tragedy can trigger property owners to take special precautions to mitigate the risk of alligator attacks upon their property.

About G&A: Gallagher & Associates Law Firm, P.A. is a boutique consumer law firm in offering concierge legal services to individuals, consumers and small businesses where clients have 24/7 access to their attorney. For more information call 727-344-LAWS or visit www.attorneyoffices.org on the web. You can also follow G&A on Twitter at @GallagherLaw or Facebook/GallagherLaw.