

**Amusement Negligence - The plaintiff (a grandmother at her grandson's birthday party) suffered serious injuries including a TBI and broken ribs when she fell down the stairs of an emergency exit door in the middle of a dimly lit "laser tag" attraction – she alleged the door was poorly marked and when she opened the door, she believed it was all part of the fun – the attraction replied that the plaintiff had a flashlight and an illuminated vest and as importantly that she was warned of the hazard**

*Gore v Blazer's Fun Zone*, 19-458

Plaintiff: Cara W. Stigger and Jacob E. Levy, *Kaufman & Stigger*, Louisville

Defense: Melissa Thompson Richardson and Ryan M. Glass, *Walters Richardson*, Lexington

Verdict: Defense verdict on liability

Court: **Hardin**

Judge: Kelly Mark Easton

Date: 12-29-21

Karen Gore, age 60 and a retired welder/phlebotomist attended her grandson's birthday party at Blazer's Fun Zone in Radcliff. Blazer's features a laser tag attraction (Blazer Tag) as well as an arcade, inflatables and a climbing wall. Blazer Tag is lit by neon lights and has twists and turns as well as hidden areas. There area also several "fake danger" signs within the play zone.

Before entering the attraction, patrons are provided a briefing by the so-called Game Master that includes a safety video. The patrons are also given flashlights and an illuminated vest.

Gore, who purportedly signed a "waiver" document (she denied this) decided to enter the attraction. As she moved through the laser tag (she described it as very dark), she saw a door marked as an emergency exit. A fake green ooze dripped from the door which suggested it was part of

the attraction. It was not. The door led down a set of dark stairs to an actual emergency exit.

Gore while participating in the game opened the door and stepped inside. It was as she recalled "pitch black." She fell forward down the stairs and suffered several injuries including broken ribs, a cut to her head and most seriously, a traumatic brain injury. Gore would describe the emergency door as a hidden hazard – she believed it led up a flight of stairs and in fact when she took a step, it was into an abyss.

A plaintiff's IME, Dr. David Changari, Neurosurgery, confirmed the injury (Gore complains of dizziness which makes it impossible for her to drive) and noted that it increased Gore's risk for early onset Alzheimer's. In this lawsuit Gore alleged the premises were unsafe and pointed to the hidden hazard (within the dark play area) of the door leading to the descending steps. Her architect expert was Catherine Peterson cited the "candle illumination" suggested it was very dark in the gaming area, the measurement being 0.0 "foot-candles." Peterson also pointed to a building code violation that was incorporated in the jury instruction.

If Gore prevailed at trial she sought her medicals of \$20,173. The jury could also award her \$1,000,000 for her past suffering and \$1.5 million more for in the future.

Blazer's denied fault and conceded that while the lighting was low, Gore could see and the emergency door was clearly marked with a fluorescent light. [There were significant fact disputes about the extent of the lighting.] Just as importantly the Game Master had warned patrons about the emergency door. Blazer's also implicated Gore's own fault as when she opened the emergency door and saw by her own



*The Emergency Door at issue in the case*

description, a “pitch black” scenario, she still stepped inside.

There was also a key fact dispute as to whether a light at the bottom of the stairs was on. Blazer’s explained it was always on. Gore disputed this. Blazer’s further noted the facilities met the building code and had passed inspections without incident by the Fire Marshall. The defense experts were Herbert Goff, Engineer and Richard Edelson, Neuropsychology. Edelson did not believe Gore had suffered a brain injury and instead linked her complaints not to this fall but rather to a long pre-existing history of anxiety, depression and panic

attacks.

Because of Covid and the holiday season this case was tried over seven in-court days that stretched across three weeks. The jury’s verdict was for Blazer’s on liability (by an 11-1 count) and Gore took nothing. The instructions had asked if Blazer’s acted with ordinary care to maintain the premises in a reasonably safe condition including to comply with applicable building codes. Having so found the jury did not reach the plaintiff’s fault, apportionment or damages. A defense judgment was entered.

Gore has since moved for a new trial. She cited error

by the defendant’s repeated “reliance and reference” to the “waiver” Gore had purportedly signed – she denied ever seeing it at all or signing it. The error was compounded by the court’s own instruction (not tendered by either party by simply drafted by the court) that indicated the jury could consider the waiver for purposes of understanding the duties of the parties. Gore argued the effect of the instruction was to require the jury to consider the waiver, whether Gore agreed to it and its effect on liability, when in fact the instruction was contrary to Kentucky law. The motion is pending.

**Case Documents:**

[Complaint](#)

[Defense Summary Judgment Motion](#)

[Plaintiff Summary Judgment Reply](#)

[Plaintiff Motion for a New Trial](#)