STATE OF MICHIGAN

COURT OF APPEALS

STEVEN VANLOOZENORD

Plaintiff-Appellant

v

MICHAEL FREDERICKS and SANDRA FREDERICKS,

Defendants-Appellees.

UNPUBLISHED
October 11, 1996

No. 183072
LC No. 93-083734-NO

Before: Doctoroff, C.J., and Hood and Bandstra, JJ.

PER CURIAM.

This case arises out of an injury to plaintiff while he was on defendants' premises as a licensee. The injury occurred when plaintiff fell off a trampoline which defendants permitted their guests to use. Plaintiff sued, alleging that defendants were negligent and failed to use due care with respect to plaintiff's safety. The trial court granted defendants' motion for summary disposition, finding that the danger was open and obvious and that, because plaintiff was a licensee who was aware of the potential danger in using a trampoline, defendants owed no duty to him. Plaintiff now appeals as of right. We affirm.

The trial court found that "there was no duty on the part of the defendants to the plaintiff in this case and summary judgment must be granted for the defendants."[1] On appeal, plaintiff argues that the open and obvious rule did not bar plaintiff's claim that defendants were negligent. We find that, because plaintiff was a licensee who was aware of the danger a trampoline presented, defendants had no duty to protect plaintiff.

In a negligence action, the existence of a duty on the part of a defendant must be decided by the trial court as a matter of law, and if there is no duty, summary disposition is proper. *Eason v Coggins Memorial Methodist Church*, 210 Mich App 261, 263; 532 NW2d 882 (1995). On appeal, a summary disposition determination is reviewed de novo as a question of law. *Mieras v DeBona*, 204 Mich App 703, 706; 516 NW2d 154 (1994). In this case, plaintiff admits that he was a licensee on the property of defendants at the time of this incident. The Michigan Supreme Court has stated, "A

landowner only owes a licensee a duty to warn the licensee of any hidden dangers he knows or has reason to know of, if the licensee does not know or has no reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Wymer v Holmes*, 429 Mich 66, 71 n 1; 412 NW2d 213 (1987). In *Preston v Sleziak*, 383 Mich 442, 453; 175 NW2d 759 (1970), the Supreme Court adopted 2 Restatement Torts, 2d, §342, p 210, which states:

> A possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if:
>
> (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not discover or realize the danger, and
>
> (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and
>
> (c) the licensees do not know or have reason to know of the risk involved.

Similarly, SJI2d 19.06 requires that the licensee prove that he did not know or have reason to know of the condition or the risk involved. Because plaintiff, as a licensee, must prove the existence of a duty, it is plaintiff's burden to show that the danger was not open and obvious, and thus not known to him. In this case, when the trial court found that the danger was open and obvious, this was essentially a finding that plaintiff had not established that defendants owed him a duty. This is in contrast to a case involving an invitee where the open and obvious doctrine is used as an affirmative defense, and thus must be proven by the defendant. See *Riddle v McLouth Steel Products*, 440 Mich 85, 95-96; 485 NW2d 676 (1992). Throughout his appellate brief, plaintiff incorrectly relies on cases dealing with invitees, which are irrelevant to this claim involving a licensee.

In this case, plaintiff stated that he had used trampolines numerous times in his life and admitted to knowing the potential danger of a trampoline. Plaintiff further acknowledged that he had, on a previous occasion, fallen off a trampoline. This testimony shows that plaintiff knew or had reason to know of the risk involved in using the trampoline. In situations such as this one, where the licensee is an adult, the fact that the condition is obvious is usually sufficient to apprise the licensee, as fully as the possessor, of the full extent of the risk involved. *DeBoard v Fairwood Hills*, 193 Mich App 240, 242-243; 483 NW2d 422 (1992). Defendants owed no duty to warn plaintiff or protect him from a danger which was already known to him. *Preston*, *supra*; SJI2d 19.06. Accordingly, summary disposition was proper in this case.

Plaintiff also argues that summary disposition was improper because defendants' conduct was negligent in that they permitted plaintiff to use the trampoline without adequate warning at a party where alcohol was being consumed. This argument must fail. As stated above, plaintiff knew of the potential danger in using a trampoline, and thus, defendants owed no duty to plaintiff. Unless defendants owed a

duty to plaintiff, the negligence analysis could not proceed further. *Johnson v Bobbie's Store*, 189 Mich App 652, 659; 473 NW2d 796 (1991). Accordingly, the trial court properly granted defendants' motion for summary disposition.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Harold Hood
/s/ Richard A. Bandstra

[1] Although the trial court did not specify the court rule, because summary disposition was granted on the basis that defendants owed no duty to plaintiff, we assume the trial court granted the motion pursuant to MCR 2.116(C)(8) (failure to state a claim upon which relief can be granted).