STATE OF MICHIGAN

COURT OF APPEALS

MARY ANN SIEH and MERRILL G. SIEH,

Plaintiffs-Appellants,

v

HAUS OF TRAILERS, INC.,

Defendant-Appellee,

and

JAYCO, INC.

Defendant.

UNPUBLISHED
August 15, 1997

No. 190832
Oakland Circuit Court
LC No. 94-476891

Before: Saad, P.J., and Neff and Reilly, JJ.

PER CURIAM.

In this negligence and breach of implied warranty action, plaintiffs, Mary Ann and Merrill Sieh[1], appeal as of right from the trial court's order granting summary disposition to defendant Haus of Trailers, Inc. We affirm.

I

Plaintiffs' negligence claim is based on a failure to warn theory. Mary Ann Sieh was injured while she descended the back steps of a used motor home that Merrill Sieh purchased from defendant. Plaintiffs contend that defendant should have warned them that the step was too small to use safely when exiting from the motor home and that it had no handhold to assist in descending the step. We disagree.

The steps that allegedly caused the injury are a simple tool. See *Viscogliosi v Montgomery Elevator Co*, 208 Mich App 188; 526 NW2d 599 (1994) (the moving walkway at Detroit's Metropolitan Airport qualifies as a simple tool). With respect to simple tools, the Supreme Court has stated:

> A manufacturer or seller has no duty to warn of open and obvious dangers connected with an otherwise nondefective product. A manufacturer has no duty to warn if it reasonably perceives that the potentially dangerous condition of the product is readily apparent or may be disclosed by a mere casual inspection, and it cannot be said that only persons of special experience will realize that the product's condition or characteristic carries with it a potential danger. [*Glittenberg v Doughboy (On Rehearing)*, 441 Mich 379, 390-1; 491 NW2d 208 (1992) (citations omitted).]

Here, defendant could "reasonably perceive that the potentially dangerous condition of the product" e.g. size of the step and the absence of a handhold convenient to use for egress, was "readily apparent or may be disclosed by a mere casual inspection." *Id.* In addition, "it cannot be said that only persons of special experience would realize that the product's condition or characteristic carrie[d] with it a potential danger." *Id.* Thus, defendant had no duty to warn.

II

Plaintiffs next argue that the trial court improperly granted summary disposition on their breach of implied warranty claim. We disagree. The purchase agreement which Merrill Sieh signed had an exclusion of all warranties on its back side. The exclusion was printed in all capital letters, unlike most of the writing on the back side of the agreement:

> 9. EXCLUSION OF WARRANTIES. I UNDERSTAND THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED ARE EXCLUDED BY YOU FROM THIS TRANSACTION AND SHALL NOT APPLY TO THE GOODS SOLD. I UNDERSTAND THAT YOU MAKE NO WARRANTY WHATSOEVER REGARDING THE UNIT OR ANY APPLIANCE OR COMPONENT CONTAINED THEREIN, EXCEPT AS MAY BE REQUIRED UNDER APPLICABLE STATE LAW.

MCL 440.2316(2); MSA 19.2316(2) provides:

> Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantablity and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. . .

This writing is conspicuous and conforms to § 2316(2). See for example, *Michigan Mutual Liability Ins Co v Freuhauf*, 63 Mich App 109, 117; 234 NW2d 424 (1975) and *McGhee v General Motors Corp*, 98 Mich App 495; 296 NW2d 286 (1980). Therefore, this is a valid disclaimer of implied warranties. This disclaimer applied to Mary Ann Sieh as well. Plaintiffs' argument that the warranty exclusion does not apply to Mary Ann Sieh based on MCL 440.2318; MSA 19.2318 is incorrect.

> A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of warranty. A seller may not exclude or limit the operation of this section. [MCL 440.2318; MSA 19.2318.]

This section allows for a given warranty to cover all members of a household such that they can maintain a cause of action for breach of warranty if they are injured. Here, where no warranty was extends to the purchaser, there is also no warranty to cover Mary Ann Sieh and thus, she has no warranty upon which she can base her claim. The comment to § 2318[2] is very clear that this section does not preclude a disclaimer of warranty under § 2316 and that any valid disclaimer under § 2316 applies to all beneficiaries of warranties under § 2318. The trial court properly granted summary disposition in favor of defendant with respect to the breach of warranty claim.

III

Finally plaintiffs incorrectly contend that defendant's summary disposition motion should not have been considered by the trial court because it was heard after the deadline set forth in the scheduling order. A trial court has discretion to enter a scheduling order. MCR 2.410(B)(2). A trial court may amend its scheduling order in order to maintain control over its docket. The trial court in this case agreed to hear the motion notwithstanding plaintiffs' complaint that it was untimely. This was not an abuse of discretion under the circumstances. To hold otherwise would amount to forcing the trial court to proceed with an unnecessary trial, which is a waste of judicial time and resources.

We also note that all of plaintiffs' remaining arguments with regard to the negligence and breach of warranty claims are unsupported by authority and therefore, are deemed abandoned by this Court. *Magee v Magee,* 218 Mich App 158, 161; 553 NW2d 363 (1996).

Affirmed.

/s/ Henry W. Saad
/s/ Janet T. Neff
/s/ Maureen Pulte Reilly

1 Merrill Sieh's claims are for loss of consortium only and are derivative of Mary Ann Sieh's claims.

2 The Uniform Commercial Code Comment to § 2318 states in part:

> 1. The last sentence of this section does not mean that a seller is precluded from excluding or disclaiming a warranty which might otherwise arise in connection with the sale provided such exclusion or modification is permitted by Section 2-316 [MCL 440.2316; MSA 19.2316]. . . . *To the extent that the contract of sale contains*

provisions under which warranties are excluded or modified, or remedies for breach are limited, such provisions are equally operative against beneficiaries of warranties under this section. . . .

2. The purpose of this section is to give the certain beneficiaries the benefit of *the same warranty which the buyer received* in the contract of sale. . . .