

STATE OF MICHIGAN
COURT OF APPEALS

MAZIN MICHAEL and KIMBERLY MICHAEL,

Plaintiffs-Appellants,

v

G & M HOME BUILDERS, INC.,

Defendant-Appellee.

UNPUBLISHED

July 10, 2003

No. 236420

Macomb Circuit Court

LC No. 00-000152-NO

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Mazin Michael stepped on a closet shelf while trying to access the attic through a hatch in the closet ceiling. The shelf could not support his weight and he fell and was injured. Plaintiffs filed what appears to be a products liability action against defendant. The trial court granted defendant's motion for summary disposition, finding that defendant did not owe a duty to the plaintiffs because the risk of harm was not foreseeable. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

Plaintiffs first contend that the trial court erred in ruling that defendant did not owe them a duty of care when defendant admitted that it did owe a duty. We disagree that defendant's admission required the court to rule that a duty existed. Whether a duty exists is a question of law for the court to decide. *Graves v Warner Bros*, 253 Mich App 486, 492; 656 NW2d 195 (2002). An admission by an attorney as to a point of law as opposed to a statement of fact is not binding on a court. *Michigan Health Care, Inc v Flagg Industries, Inc*, 67 Mich App 125, 130; 240 NW2d 295 (1976).

"[A] manufacturer has a duty to design its product to eliminate any unreasonable risk of foreseeable injury." *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 55; 649 NW2d 783 (2002). "The intended use of a product can be taken into account in a determination whether an alleged defect in the design of the product created an unreasonable risk of foreseeable injury." *Bazinaw v Mackinac Island Carriage Tours*, 233 Mich App 743, 758; 593 NW2d 219 (1999). A manufacturer also has "a duty to warn purchasers or users of dangers associated with the

intended use or reasonably foreseeable misuse of [its] products,” but does not have a duty to warn of open and obvious dangers. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 387, 396; 491 NW2d 208 (1992).

This was an ordinary closet shelf designed for the purpose of storing clothing and other household items. There is no claim that it was not properly designed for that purpose. The only alleged defect is that it was not strong enough to support a man’s weight, but it was not designed to provide a foothold for persons accessing the attic. Given the purpose and manner of construction of the shelf, it was not reasonably foreseeable that a person would try to stand on it. Thus it did not pose an unreasonable risk of foreseeable injury. Accordingly, while defendant may have owed a duty to plaintiff, there is no evidence that defendant violated this duty. The trial court’s ruling therefore must be affirmed. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Bill Schuette