

No. 1-09-3079

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

SECOND DIVISION  
April 26, 2011

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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GUILLERMO VEGA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 07 M1 302582
	)	
ADOLFO VEGA,	)	Honorable
	)	Elizabeth M. Budzinski,
Defendant-Appellee.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Justices Karnezis and Harris concurred in the judgment.

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**O R D E R**

*HELD:* The trial court properly granted summary judgment for defendant in a negligence action brought by plaintiff injured when his foot caught on the torn cover of a trampoline where the danger posed was open and obvious and the distraction exception did not apply. Judgment affirmed.

Plaintiff Guillermo Vega appeals from a circuit court order granting summary judgment in favor of defendant Adolfo Vega in

plaintiff's personal injury suit charging defendant with negligence in maintaining a defective trampoline on which plaintiff was injured. On appeal, plaintiff contends summary judgment was inappropriate where two issues of fact existed: whether the tear in the trampoline cover which caused his fall and injury was an open and obvious condition and whether defendant owed plaintiff a duty of care under the distraction exception. We affirm.

Defendant moved for summary judgment in his favor. In ruling on the motion, the circuit court was presented with the following facts contained in the pleadings, photographs, and plaintiff's deposition. On August 18, 2005, the 42-year-old plaintiff visited the home of defendant, his brother. Defendant had a trampoline in his back yard. Shortly after arriving, plaintiff went to the back yard where two boys were jumping on the trampoline. One of the boys got off and they invited plaintiff to take his place on the trampoline. Before doing so, plaintiff noticed holes or tears on the cover around the outside which covered the springs of the trampoline, but no holes in the middle part. Plaintiff understood that he was supposed to jump only in the middle of the trampoline, not on the outside cover.

Plaintiff boarded the trampoline and began jumping on the middle part. While he was jumping, the two boys were trading places with each other on the trampoline so that one boy was on

the trampoline with plaintiff at all times. No one spoke to plaintiff during that time and no music was playing. Because plaintiff had never jumped on a trampoline before, he could not balance very well. After jumping for about seven minutes, plaintiff came down near the edge of the trampoline and his left foot encountered a hole in the cover, throwing him off the trampoline. Plaintiff landed on the ground on his feet and immediately felt pain in his left knee. When plaintiff's foot caught in the tear on the edge cover, the boy then jumping with him on the trampoline was not close to him and was not engaged in switching places with the other boy. Plaintiff subsequently had surgery to repair a torn anterior cruciate ligament (ACL).

The circuit court granted summary judgment in defendant's favor, denied plaintiff's motion to reconsider, and dismissed the action with prejudice.

On appeal, plaintiff contends that the circuit court erred in entering summary judgment for defendant because the condition of the negligently maintained trampoline was not open and obvious where he did not know about the tear in the cover until He was injured.

A cause of action for negligence requires a plaintiff to establish that the defendant owed a duty of care and breached that duty, resulting in an injury. *Bonner v. City of Chicago*, 334 Ill. App. 3d 481, 483 (2002). Whether a duty of care exists

is a question of law which may be determined on a motion for summary judgment. *Bonner*, 334 Ill. App. 3d at 483. Summary judgment is properly granted if the pleadings, depositions, and admissions on file, together with any affidavits, indicate there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2008); *Pritza v. Village of Lansing*, 405 Ill. App. 3d 634, 641 (2010). A motion for summary judgment must be construed strictly against the movant and liberally in favor of the nonmoving party. *Jackson v. TLC Associates, Inc.*, 185 Ill. 2d 418, 423-24 (1998). While summary judgment is a drastic means of disposing of litigation, it is nonetheless an appropriate measure to expeditiously dispose of a lawsuit when the moving party's right to a judgment in its favor is clear and free from doubt. *Madigan v. Yballe*, 397 Ill. App. 3d 481, 493 (2009). Summary judgment orders are reviewed *de novo*. *Pritza*, 405 Ill. App. 3d at 634.

Illinois law holds that "persons who own, occupy or control and maintain land are not ordinarily required to foresee and protect against injuries from potentially dangerous conditions that are open and obvious." *Jackson*, 185 Ill. 2d at 424-25. In the instant case, the facts presented to the circuit court revealed that the condition was open and obvious. Plaintiff contends he was not aware of the tear in the cover until his foot

caught in it and he was injured. However, plaintiff's deposition reveals that before he mounted the trampoline, he observed and was aware of holes or tears in the cover over the springs along the edges of the trampoline. He was also aware he was supposed to jump only in the central area of the trampoline, not along the edges. A defendant generally has no duty to warn his invitees of known and obviously dangerous conditions on his premises. *Ward v. K Mart Corp.*, 136 Ill. 2d 132, 142 (1990). Here, as defendant points out, no liability existed where plaintiff knew of the generally torn condition of the cover, even though he may not have seen the specific tear in which he caught his foot. See *Postran v. City of Chicago*, 349 Ill. App. 3d 81, 88-89 (2004).

Plaintiff also asserts the distraction exception applies, creating in defendant a duty of care despite the open and obvious condition, because plaintiff "was jumping on the trampoline with children continuously getting on and off."

An open and obvious danger is not *per se* a legal bar to a finding of a legal duty to warn or protect, and one exception to the open-and-obvious bar is the "distraction exception." *Buchelares v. Chicago Park District*, 171 Ill. 2d 435, 449 (1996). Under that exception, a defendant property owner owes a duty of care despite an open and obvious condition if he has reason to expect that the plaintiff's "attention might be distracted so that she would not discover, or may forget that she had

previously discovered, the obvious condition." *Sandoval v. City of Chicago*, 357 Ill. App. 3d 1023, 1028 (2005). In *Sandoval*, the plaintiff was consciously and deliberately walking in the area of a defect in the sidewalk, fell, and broke her ankle. Plaintiff claimed she was distracted by a young child who was in her care. This court ruled that, rather than being "distracted," the plaintiff was focused on looking for the child rather than on where she was walking. *Sandoval*, 357 Ill. App. 3d at 1029.

When Illinois courts have applied the distraction exception to impose a duty upon a landowner, the facts were clear that "the landowner created, contributed to, or was responsible in some way for the distraction which diverted the plaintiff's attention from the open and obvious condition and, thus, was charged with reasonable foreseeability that an injury might occur." *Sandoval*, 357 Ill. App. 3d at 1030 (2005). In the case at bar, however, the record contains no facts that a distraction existed. Defendant merely alludes to the fact that a child was sharing the trampoline with him when he fell off. There are no facts indicating that the child who was sharing the trampoline with him at that time was very close to him or otherwise distracting him, or that the child was trading places on the trampoline with the second child at that moment. In fact, defendant does not contend the child actually distracted him. Moreover, there was no conversation or music or other stimulus to distract him. Rather,

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defendant revealed in his deposition that he moved to the side of the trampoline and caught his foot in the tear because it was the first time he had ventured onto a trampoline and he simply lost his balance.

The circuit court did not err in granting summary judgment where the condition was open and obvious and the distraction exception did not apply. For the above reasons, the judgment of the circuit court is affirmed.

Affirmed.