2018 IL App (1st) 171989-U

No. 1-17-1989

Order filed May 11, 2018

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Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SHAWN SCHROEDER,	)	
	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. 14 L 10959
GORDON/JOHNSON LIMITED PARTNERSHIP and	)	
JOHNSON BROTHERS METAL FORMING	)	Honorable
COMPANY,	)	Patricia O'Brien Sheahan,
	)	Judge, presiding.
Defendants-Appellees.	)	

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

O R D E R

¶ 1 *HELD*: Summary judgment was proper where plaintiff failed to establish defendants had a duty to protect him against the open and obvious danger of roof skylights while he performed a roofing project on defendants' buildings.

¶ 2 Plaintiff, Shawn Schroeder, filed a negligence action against defendants, Gordon/Johnson Limited Partnership (Gordon/Johnson) and Johnson Brothers Metal Forming Co. (Johnson Brothers), after he tripped, fell through a skylight, and was injured while performing a roofing project on defendants' buildings. Defendants moved for summary judgment, arguing, in relevant part, that they were under no duty to protect plaintiff from the skylight because it was an "open and obvious" condition. The trial court granted summary judgment. On appeal, plaintiff contends defendants owed him a duty of care to provide a safe work environment. Plaintiff additionally contends both the distraction and the deliberate encounter exceptions applied to the open and obvious rule; therefore, defendants owed him a duty of care despite the "open and obvious" nature of the skylight. Based on the following, we affirm.

¶ 3 FACTS

¶ 4 Plaintiff was a roofer employed by McAuley Building Maintenance Inc. (McAuley). In 2012, McAuley was hired by defendants to install a membrane onto the shared roof of two buildings[1] located in Berkeley, Illinois. The roof contained between 16 and 18 skylights. On October 24, 2012, plaintiff was working with three other men on the roofing project. While walking on the roof and pulling a cart full of work materials, plaintiff tripped and fell through one of the skylights. Plaintiff landed on the floor of the interior of the building and sustained injuries. None of the other men on the roof witnessed plaintiff's fall.

¶ 5 On October 22, 2014, plaintiff filed a negligence complaint against defendants. Plaintiff alleged defendants were negligent in: (1) failing to reasonably inspect the premises despite having known, or in the exercise of ordinary care should have known, that an inspection was

[1] Gordon/Johnson Limited Partnership owned a one-story industrial factory and Johnson Brothers Metal Forming Company operated a metal forming business.

necessary to prevent injury to plaintiff; (2) failing to replace the building's rooftop skylights; (3) failing to erect barriers, internal and external screens, safety netting or other protective devices to prevent persons working on the roof from coming in contact with, falling upon, or falling through the skylights; (4) failing to provide plaintiff with a safe work place; (5) failing to warn plaintiff of the dangerous condition of the skylights; (6) failing to comply with building codes and industry standards; and (7) allowing workers to access and work on the building's roof while they knew or, should have known, that it was dangerous to do so.

¶ 6 In their motion for summary judgment, defendants argued, *inter alia*, that the skylight was an open and obvious condition and, therefore, they did not owe plaintiff a duty to protect him from the apparent and recognized risks associated with the skylight.

¶ 7 Deposition testimony established the roof of defendants' buildings was flat, visible, not slippery, and dry. The roof did not contain debris, rubbish, garbage, tools, or other materials that would have impeded a person's ability to walk or work on the roof.

¶ 8 Plaintiff testified at his deposition that he was a general laborer for McAuley. Prior to working with McAuley, plaintiff had worked in construction for approximately 10 years, working both as a union laborer and carpenter. Plaintiff began working with McAuley in 2010 as a roofer. In the two years that he worked for McAuley prior to the date in question, plaintiff had worked on "hundreds" of buildings that contained skylights. Some of those skylights were not covered or barricaded. Plaintiff knew he should always be aware of his surroundings when working on a roof. He was trained to be cautious around skylights. Plaintiff knew that a skylight was not a hard surface like a roof and could not bear his weight. He was aware that a skylight

without a barricade posed a risk and the he should avoid walking on or placing his weight on a skylight. Plaintiff further knew to look forward when walking to avoid the skylights.

¶ 9 Plaintiff additionally testified that he had been working on defendants' roofing project for six or seven days before the accident. Plaintiff had observed the skylight involved in the accident every day during the project. According to plaintiff, he and the three other members of the McAuley crew worked together. They used materials supplied by McAuley to complete the job. No individuals from defendants' companies were on the roof on the date in question. On that date, plaintiff and the McAuley crew were repairing a section of the roof with a roll of material and then planned to move to another section on the other side of the roof. The crew had worked all morning, took a break for lunch, and returned to the roof for an hour or two prior to the incident. Plaintiff explained that, at the time, he was pulling a cart with his left hand behind him and looking straight ahead as he walked forward on the roof. He pulled the cart ten to fifteen feet all the while looking forward and down to inspect for any debris, tools, or materials that could have impeded his path. Plaintiff was wearing work boots with treads at the time. Plaintiff did not observe any tripping hazards. He did observe the skylight in the distance. The skylight was raised off the roof, not flush with the roof. Plaintiff described looking "pretty much directly at" the skylight while moving the cart out of the way so the crew could finish one more roll of the roofing material. Plaintiff testified that, when he was approximately seven or eight feet away from the skylight, he felt "something" but did not know what he "ran into" or whether he was feeling anything other than his feet. Plaintiff tripped, but did not know what he tripped on. He fell forward and to his right. Plaintiff could not recall what part of his body contacted the skylight. After falling, plaintiff had no memory of what transpired.

¶ 10 Plaintiff further testified that he was present for two conversations between the owner of McAuley and defendants in which defendants were encouraged to install safety barricades around the skylights. Defendants, however, refused. Plaintiff was asked why he proceeded with the roofing project without expressing concern over the safety of the roof and he responded, "I needed a job."

¶ 11 The deposition testimony of Jeff McAuley, owner of McAuley, demonstrated that he was familiar with Johnson Brothers, having provided twice-yearly maintenance to defendants' roof. During his twice-yearly inspections, Jeff assessed defendants' roof and made any minor repairs that were necessary. Jeff used his own ladder and equipment. Prior to the roof project, Jeff observed that two skylights, neither of which was involved in plaintiff's fall, were leaking and needed to be replaced. Jeff discussed the matter with Edwin Johnson, the owner and former president of Johnson Brothers and one of the owners of Gordon/Johnson. Jeff said he was the contact person between his company and Johnson. According to Jeff, neither plaintiff nor any of defendants' employees were ever present during his conversations with Johnson. According to Jeff, he never discussed or offered Johnson a quote to place safety cages over defendants' skylights. Jeff further testified that he never discussed with Johnson OSHA requirements regarding safety guards around skylights.

¶ 12 On the date in question, Jeff was installing a Duro-Last single-ply thermoplastic membrane on defendants' existing roof. All of the tools and equipment used on the project were provided and owned by McAuley. No employees from defendants' company were on the roof during the project. According to Jeff, plaintiff was moving a four-wheeled cart when the accident occurred. Jeff did not observe plaintiff fall and did not know what caused plaintiff to fall. When

Jeff heard the skylight break, he saw a hole in the plexiglass and observed the handle of the four-wheeled cart resting on top of the skylight frame. The handle extended over the skylight frame by one and one-half feet.

¶ 13 According to Jeff, the skylight was raised off the flat roof surface, was out in the open, was a different color from the roof, and was obvious. Jeff testified that the purpose of a skylight was not to support the weight of a person. Jeff noted that an individual should know not to step on a skylight. In his experience as a roofer, Jeff approximated that at least 50% of the McAuley customers' buildings had skylights and 90% of those buildings with skylights did not have guards or barricades around them. Jeff added that perimeter flags were installed on the roof for the project, but there were no temporary guard devices installed around the skylights.

¶ 14 John Bajalis testified at his deposition that he was a maintenance worker for Johnson Brothers. Bajalis stated McAuley, using all McAuley crewmembers and tools, ran the roofing job in question. None of defendants' employees worked on the roofing project. According to Bajalis, the roof skylights were out in the open and visible. The dome and height of the skylights were open and obvious to anyone looking at them. After the accident in question, Bajalis proceeded onto the roof and observed two McAuley workers and a maintenance cart. Bajalis additionally observed broken plexiglass and the cart's handle over the broken hole in the skylight. Bajalis added that, after the incident, defendants fabricated and installed protective screens around all of the skylights on the roof.

¶ 15 In an affidavit, Christopher Miner attested that he was employed by McAuley on the date in question and had been one of the four workers completing defendants' roofing project. Miner stated that, as part of his duties with McAuley, he installed metal guards on the skylights of

commercial buildings when repairing or replacing roofs. According to Miner, he was present when plaintiff fell through the skylight. The skylight was not guarded with a metal cage or other safety device. Miner attested that he and plaintiff were told to meet at defendants' building one week prior to beginning the roofing project. According to Miner, the McAuley crew typically met at a job site prior to beginning the given job in order to evaluate the need for equipment, to address the roof access, and to estimate the time required to complete the job. Miner attested that he, plaintiff, and Jeff met with two individuals from Johnson Brothers, Johnson and "John." Miner described "John" as wearing "work type clothing." In the presence of all of the men, Jeff advised Johnson that OSHA regulations required that safety guards be installed over the skylights prior to the roof repair. Johnson responded that he did not want to spend the money and "if OSHA inspectors were to visit the building and ticket him he would then be forced to have them installed." According to Miner, Jeff repeated that they had routinely installed guards on most of McAuley's roofing projects where skylights were present. Johnson continued to refuse to install the skylight guards. Miner further attested that, during the course of defendants' roofing project, "John" would "climb upon the roof and observe the progress of the work."

¶ 16 In an affidavit attached to defendants' motion for summary judgment, Norman Golinkin, a licensed architect and structural engineer, attested that he reviewed photographs of the skylight involved in plaintiff's incident and also reviewed the applicable building codes. Golinkin opined that there was "[n]o provision in the applicable building codes requiring the installation of screens on the plastic skylights located at the subject property."

¶ 17 Following oral argument on the motion, the trial court granted summary judgment in favor of defendants. In so doing, the court explained:

> "The Court finds that plaintiff's testimony is significant, in that he had worked—he testified that he had worked on a roof with skylights hundreds of times before his fall. As plaintiff's counsel concedes, he's an experienced roofer, and in those hundreds of times, as he testified, he took precautions to not place his weight on a skylight so that he would not fall through the skylight.
>
> The dangerous nature of these skylights was undoubtedly open and obvious and the deliberate encounter exception does not apply. This accident, very unfortunate accident, that plaintiff [an] experienced roofer would be walking near a skylight and trip over something identifiable [*sic*] when there was no evidence of any debris on the grounds was not foreseeable, so defendant had no duty to guard against it."

¶ 18 This appeal followed.

¶ 19 ANALYSIS

¶ 20 Plaintiff contends the trial court erred in granting summary judgment.

¶ 21 Summary judgment is a drastic means of disposing of litigation that is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that 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 2012). The purpose of summary judgment is not to try an issue of fact but, rather, to determine whether a triable issue of fact exists. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 335 (2002). To establish a negligence action, the plaintiff must plead and prove the existence of a duty owed by the defendant to the plaintiff, a breach of that duty, and an injury proximately resulting from the breach. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12. We review the granting of summary judgment *de novo*,

meaning we perform the same analysis that the circuit court performed. *Bowman v. Chicago Park District*, 2014 IL App (1st) 132122, ¶ 45.

¶ 22 The underlying facts in this case are not in dispute. The only issue before this court is whether, under those facts, defendants owed a duty to plaintiff. Whether a duty exists is a question of law for the court to determine. *Bruns*, 2014 IL 116998, ¶ 13. " 'In the absence of a showing from which the court could infer the existence of a duty, no recovery by the plaintiff is possible as a matter of law and summary judgment in favor of the defendant is proper.' " *Id.* (quoting *Vesey v. Chicago Housing Authority*, 145 Ill. 2d 404, 411 (1991)). In a duty analysis, our courts are asked whether the plaintiff and the defendant stood in such a relationship to one another that the law imposed upon the defendant an obligation of reasonable conduct for the benefit of the plaintiff. *Simpkins v. CSX Transportation, Inc.*, 2012 IL 110662, ¶ 18. There are four factors to consider in determining whether the relationship established a duty: (1) the reasonable foreseeability of the injury; (2) the likelihood of the injury; (3) the magnitude of the burden of guarding against the injury; and (4) the consequences of placing that burden on the defendant. *Id.* The weight to be given the four factors depends on the circumstances of the case. *Id.*

¶ 23 The "open and obvious" doctrine, however, provides that " 'a party who owns or controls land is not required to foresee and protect against an injury if the potentially dangerous condition is open and obvious.' " *Bruns*, 2014 IL 116998, ¶ 16 (quoting *Rexroad v. City of Springfield*, 207 Ill. 2d 33, 44 (2003)). Section 343A of the Restatement (Second) of Torts, which has been adopted by this court, provides that a "possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious

to them." Restatement (Second) of Torts § 343A, at 218 (1965); see *Deibert v. Bauer Brothers Construction Co.*, 141 Ill. 2d 430, 434-36 (1990) (adopting sections 343 and 343A of the Restatement (Second) of Torts). "Obvious" means "both the condition and the risk are apparent to and would be recognized by a reasonable man, in the position of a visitor, exercising ordinary perception, intelligence, and judgment." Restatement (Second) of Torts § 343A cmt. b., at 219 (1965). "[T]he requirement of an open and obvious danger is not merely a matter of the plaintiff's contributory negligence, or the parties' comparative fault, but rather a lack of the defendant's duty owed to the [plaintiff.]" *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 34. The open and obvious doctrine affects the first two factors of the duty analysis, namely, the foreseeability of the injury and the likelihood of the injury. *Bruns*, 2014 IL 116998, ¶ 19. "Where the condition is open and obvious, the foreseeability of harm and the likelihood of injury will be slight, thus weighing against the imposition of a duty." *Id.*

¶ 24 The question of whether a dangerous condition is open and obvious could present a question of fact. *Id.* ¶ 18. However, where there is no dispute regarding the physical nature of the condition at issue, determining whether a danger is open and obvious is a question of law. *Choate*, 2012 IL 112948, ¶ 34.

¶ 25 Plaintiff contends defendants had a duty to him and others to exercise due care in the protection of persons that may come in contact with the skylights on their roof. Plaintiff argues that defendants were aware of the unreasonable danger of allowing individuals to access their roof without installing protective barriers around the skylights. Plaintiff maintains it was foreseeable that defendants' refusal to erect protective barriers around the skylights would result in injury to plaintiff or another individual on the roof. Plaintiff insists it was likely that an

individual would trip and fall while on the roof. Plaintiff further argues that a duty was established because the burden on defendants for guarding against a skylight-related injury was small and had minimal consequences, as demonstrated by defendants' decision to fabricate and install their own skylight screens after the incident. Finally, plaintiff argues that any open and obvious nature of the skylight at issue was negated because the distraction and deliberate encounter exceptions to the rule applied under the circumstances.

¶ 26 In response, defendants argue plaintiff failed to establish they owed him a duty of care. Defendants maintain plaintiff presented no evidence demonstrating that the skylight in question was defective or that its unguarded condition violated any building codes or substantive statutes. Instead, defendants contend roof skylights, some barricaded and some not, are an ordinary and common component of industrial buildings in the area in question. Defendants further argue the skylights were an open and obvious condition as a matter of law, thereby negating any duty of care to protect plaintiff therefrom.

¶ 27 The record established that plaintiff was an experienced roofer. In that capacity, he had encountered "hundreds" of buildings with skylights. Many times, McAuley "upsold" a client by installing barricades on the skylights prior to proceeding with a given roofing project; however, plaintiff acknowledged that not all roofs had guarded skylights. Plaintiff knew the dangers of skylights, knew to be aware of his surroundings while on a roof with skylights, and knew that a skylight could not bear his weight if he stepped on it. Moreover, plaintiff does not challenge the fact that the skylight at issue was open and obvious. The condition of the skylight was well documented and was not in dispute. The skylight was described as domed and clearly visible above the flat roof. Based on the nature of the skylight, the trial court held it was open and

obvious as a matter of law. Where there was no dispute as to the physical condition of the skylight, we too find that, as a matter of law, the skylight was open and obvious. See *id*. The open and obvious nature of the skylight itself required caution and provided plaintiff notice to appreciate and avoid the obvious risk associated therewith, which plaintiff acknowledged. Plaintiff testified not only that he observed the skylights on the six or seven days prior to the date in question, but that he was looking directly at the skylight involved in the incident as he approached it. He had a clear pathway to walk and nothing impeded his view or understanding of the danger of the skylight.

¶ 28 Turning our attention to the duty analysis, because we have found the skylight was an open and obvious condition, the foreseeability of harm and the likelihood of injury were slight under the facts of this case. *Bruns*, 2014 IL 116998, ¶ 19. Notwithstanding, plaintiff insists the distraction and deliberate encounter exceptions apply, thereby making the foreseeability and likelihood of injury great.

¶ 29 An open and obvious danger is not an automatic or *per se* bar to the finding that the defendant owed the plaintiff a legal duty. *Id*. There are two recognized exceptions to the open and obvious doctrine, *i.e.*, the distraction exception and the deliberate encounter exception. *Id*. ¶ 20. The distraction exception applies where a defendant " 'has reason to expect the invitee's attention might be distracted, so that he will not discover what is obvious, or will forget what he has discovered, or fail to protect himself against it.' " *Id*. (quoting Restatement (Second) of Torts § 343A cmt. f., at 220 (1965)). The distraction exception will apply only where the evidence allows the court to infer that the plaintiff actually was distracted. *Id*. ¶ 22. The deliberate encounter exception applies where the defendant " 'has reason to expect that the invitee will

proceed to encounter the known or obvious danger because to a reasonable man in his position the advantages of doing so would outweigh the apparent risk.' " *Id.* ¶ 20 (quoting Restatement (Second) of Torts § 343A cmt. f., at 220 (1965)).

¶ 30 We first address the distraction exception. Defendants argue plaintiff forfeited review of the distraction exception by failing to raise the argument before the trial court. Generally, a party that fails to raise an issue in the trial court forfeits the issue and may not raise it for the first time on appeal. *Johnson v. Fuller Family Holdings, LLC*, 2017 IL App (1st) 162130, ¶ 27. The record demonstrates that plaintiff did not explicitly raise the matter of the distraction exception in the trial court. Forfeiture aside, we find the distraction exception does not apply to the facts of this case. See *Great American Insurance Co. of New York v. Heneghan Wrecking & Excavating Co.*, 2015 IL App (1st) 122276, ¶ 81 (forfeiture is a limitation on the parties, not the court).

¶ 31 Our supreme court advised, "[p]reliminarily, we note that the distraction exception will only apply where evidence exists from which a court can infer that plaintiff was actually distracted." *Bruns*, 2014 IL 116998, ¶ 22; (citing *Bucheleres v. Chicago Park District*, 171 Ill. 2d 435, 452-53 (1996) (finding the distraction exception did not apply where the "record does not indicate that plaintiffs in the instant cases were distracted or forgetful of the lake's existence when they decided to dive off the seawalls")). Here, the only "distraction" identified by plaintiff was that he tripped immediately prior to falling and crashing through the skylight. Plaintiff could not identify what, if anything, he tripped on. Plaintiff testified that he was looking at the skylight and the roof as he approached. There was no testimony establishing the presence of a circumstance requiring him to divert his attention from the skylight. See *id.* ¶ 30. Notwithstanding, plaintiff insists that tripping on the roof was foreseeable and, therefore, the

exception should apply. Our supreme court, however, has provided that "the concept of foreseeability is not boundless." *Id.* ¶ 34. Instead, "something is foreseeable only if it is 'objectively reasonable to expect.' " *Id.* (quoting *Hills v. Bridgeview Little League Ass'n*, 195 Ill. 2d 210, 238 (2000)). Without evidence of an actual distraction, we find it was not objectively reasonable for defendants to expect that an experienced roofer, generally exercising reasonable care for his safety, would trip on an unobstructed portion of the roof, fall, and crash through the open and obvious skylight. See *id.* Moreover, contrary to plaintiff's attempt to fall within the exception despite the absence of an actual distraction, we find the existence of the unguarded skylight did not otherwise prevent him from avoiding the risk. *Cf. id.* ¶ 28 (discussing cases where the distraction exception was applied because the plaintiff was distracted and limited in his or her ability to avoid the obvious danger). We, therefore, conclude the distraction exception does not apply to this case.

¶ 32 Plaintiff next contends the deliberate encounter exception applies because it was foreseeable that he would deliberately encounter the risk of working on defendants' roof with the unguarded skylights where the benefit of his employment outweighed the risk of his injury. Plaintiff adds that defendants knew the skylights presented a dangerous condition, in that plaintiff had to avoid the unguarded skylights located all over the roof throughout the course of the project in order to complete the work.

¶ 33 The deliberate encounter exception focuses on the landowner's knowledge and what the owner reasonably anticipates or should reasonably anticipate the invitee would do in face of the hazard. *LaFever v. Kemlite Co.*, 185 Ill. 2d 380, 392 (1998). The exception most often applies "in cases involving some economic compulsion," like when the invitee is compelled to encounter

the dangerous condition as part of his or her job; however, it is not limited to such situations. *Sollami v. Eaton*, 201 Ill. 2d 1, 16 (2002); see *LaFever*, 185 Ill. 2d at 392.

¶ 34 We find the deliberate encounter exception did not apply here. We cannot conclude that it was foreseeable that a reasonable person would perceive the benefit of placing his weight on a roof skylight in order to install a roof membrane outweighed the risk of falling through the skylight. The *LaFever* plaintiff, a driver of an industrial waste truck, could not perform his job without encountering the dangerous condition; he had to walk through slippery debris in order to remove the garbage container on the defendant's premises. *LaFever*, 185 Ill. 2d at 394. Here, in contrast, plaintiff was not required to encounter the dangerous condition of the unguarded skylights in order to perform his job duties. The roofing project required plaintiff to work *around* the skylights, but completion of the project did not require him to do anything with the skylights, *i.e.*, repair, remove, or replace. Instead, plaintiff testified that he made every effort to avoid the skylights while performing his work on defendants' roof. Accordingly, plaintiff did not deliberately encounter the dangerous condition in this case. *Cf. Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill. App. 3d 711, 728 (2010) (foreseeable that jockeys would ride horses on a portion of slippery asphalt despite safer alternatives because the exit was closest to the horse stables and training track); *Ralls v. Glendale Heights*, 233 Ill. App. 3d 147, 155-56 (1992) (reasonably foreseeable that construction workers would use the "shortest path" to the door of the building on a work site, even though the path was snow-covered and slippery).

¶ 35 Although we have found the exceptions to the open and obvious doctrine did not apply in this case, we still must complete the duty analysis. *Bruns*, 2014 IL 116998, ¶ 35. The first two factors, namely, the foreseeability of harm and the likelihood of injury, were slight because

defendants were not required to foresee the injury from the open and obvious skylight and the likelihood of harm was minimal because " 'it is assumed that persons encountering the potentially dangerous condition of the land will appreciate and avoid the risks.' " *Id.* ¶ 36 (quoting *Sollami*, 201 Ill. 2d at 17).

¶ 36 The third and fourth factors in the analysis ask about the magnitude of the burden of guarding against the injury and the consequences of placing that burden on the defendant. *Id.* The record does not reflect the financial burden of installing protective barriers on the skylights. There is testimony that McAuley "upsold" other roofing clients with the installation of protective barriers and that Johnson did not want to invest in them in conjunction with the underlying roofing project. However, defendants ultimately did fabricate and install guards around their skylights after plaintiff's accident. That said, the record does not establish the expense involved in doing so. As a result, we find the magnitude of the burden of guarding against the injury does not weigh heavily in favor or against the imposition of a duty. The final factor, the consequence of placing that burden on defendants, implicates the imposition of requiring all building owners, whether a factory/metal working business owner like defendants or any other non-industrial building, to install guards on skylights. According to Jeff's testimony, such a requirement would require installing barricades on 90% of buildings that have skylights. No matter the accuracy of Jeff's estimation, the consequence of imposing the burden of guarding all roof skylights is too great and unjustified given the open and obvious nature of the risk involved. *Id.* ¶ 37.

¶ 37 Based on the application of the four duty factors to the facts of this case, we conclude that defendants did not have a duty to protect plaintiff against the condition of the skylights on the

roof. Because there was no duty imposed on defendants, plaintiff cannot establish a claim for negligence. *Id.* ¶ 13. We, therefore, find summary judgment was proper.

¶ 38 CONCLUSION

¶ 39 The trial court properly dismissed plaintiff's negligence claim.

¶ 40 Affirmed.