STATE OF MICHIGAN

COURT OF APPEALS

DONALD A. LAIER, Personal Representative of the Estate of RODNEY ALAN LAIER, Deceased, Plaintiff-Appellant, v LEONARD K. KITCHEN, Defendant-Appellee.	FOR PUBLICATION May 24, 2005 9:10 a.m. No. 251275 Washtenaw Circuit Court LC No. 02-000839-NO Official Reported Version

Before: Hoekstra, P.J., and Neff and Schuette, JJ.

SCHUETTE, J. (*concurring*).

The issue before this Court involves a tragic accident where the bucket on a front-end loader crushed plaintiff's decedent, who was attempting to fix a broken hydraulic hose fitting on the front-end loader.

The record of this case is about as thick as the bent grass on a putting green is tall and is about as factually underdeveloped as a fourth-world economy.

I concur in Judge Neff's conclusion that the decision of the trial court should be reversed and the case remanded for further proceedings. Plaintiff should be offered an opportunity to amend his complaint. In so doing, plaintiff is encouraged to state with clarity his theory or theories of action and the grounds proposed for imposing liability, if any, upon defendant.

Given the paucity of the factual record before this Court, it is premature to utilize this specific case as an analytical tool to measure the breadth of the open and obvious danger doctrine in premises liability cases. Several opinions have expanded the application of the open and obvious danger doctrine. In *Valinski v Little Mexico Restaurant*, unpublished opinion per curiam of the Court of Appeals, issued September 24, 2002 (Docket No. 233446), although not binding precedent, this Court held that a restaurant's serving food items on a hot skillet could be considered an activity or condition on the land. In *Klimek v Drzewiecki*, 135 Mich App 115, 119; 352 NW2d 361 (1984), this Court held that a loose dog is a "condition on the land." In *Resteiner v Sturm, Ruger & Co, Inc*, 223 Mich App 374, 380; 566 NW2d 53 (1997), this Court applied the open and obvious danger doctrine to a revolver as a product. In *Eason v Coggins Mem Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995),

this Court applied the open and obvious danger doctrine to a ladder with a defective safety latch, which ladder was placed on the outside of defendant's church building, and held that the ladder was an instrumentality in that premises liability case. On the other hand, some advocate a narrower reading of § 343A(1) of the Restatement Torts, 2d, wherein the doctrine of open and obvious does not apply whenever the alleged negligence involves an activity or condition on the land. I would not delve into this type of doctrinal analysis on such a sparse record.

Therefore, while I concur in the result reached by my colleague, I decline to join Judge Neff in her thoughtful analysis.

/s/ Bill Schuette