STATE OF MICHIGAN

COURT OF APPEALS

CARIE GORS, as Next Friend of JOSEPH GORS, a Minor,

Plaintiff-Appellant,

v

CONNECTOR SET TOY COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 16, 1999

No. 204725
Wayne Circuit Court
LC No. 96-619674 NP

Before: MacKenzie, P.J., and Gribbs and Wilder, JJ.

PER CURIAM.

In this products liability action, plaintiff, whose son was injured while playing with a toy manufactured by defendant, appeals as of right from an order granting defendant's motion for summary disposition. We affirm.

Although the trial court did not specify the court rule under which it granted summary disposition, its ruling focused on the absence of a duty, implying that MCR 2.116(C)(8) was the basis for the ruling. See *Schmidt v Youngs*, 215 Mich App 222, 224-225; 544 NW2d 743 (1996). We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(8). *Jenks v Brown*, 219 Mich App 415, 417; 557 NW2d 114 (1996). Like the trial court, we take only the pleadings into consideration, and we presume that the complaint's well-pleaded factual allegations and related, reasonable inferences are true. *Id.* If no factual development could possibly lead to recovery, then summary disposition was appropriately granted. *Id.*

Plaintiff argues that defendant owed the users of its toy a duty to warn about the toy's potential for harm. In *Boumelhem v Bic Corp*, 211 Mich App 175, 178-179; 535 NW2d 574 (1995), we indicated that the manufacturer of a simple product has no duty to warn of the product's potentially dangerous characteristics that are readily apparent upon casual inspection and reasonably expected to be recognized by the average user of ordinary intelligence. See *Glittenberg v Doughboy Recreational Industries* (*On Rehearing*), 441 Mich 379, 385; 491 NW2d 208 (1992). Our first inquiry, then, is whether the toy in question – a "build it yourself" race car consisting of several small parts and propelled by a rubber band – was a "simple product." In *Jamieson v Woodward & Lothrup*, 247 F

2d 23, 28 (DC Cir 1957), the court indicated that a simple product has "universally known characteristics," is devoid of "parts or mechanism," and poses only obvious dangers. Plaintiff argues that because the toy at issue in the instant case consisted of several small parts, including a large, stretched rubber band, it could not be considered a simple product. We disagree. Our jurisprudence departs from a strict reading of *Jamieson* in that items consisting of numerous parts can be deemed simple products.

In *Viscogliosi v Montgomery Elevator Co*, 208 Mich App 188, 189; 526 NW2d 599 (1994), we concluded that an airport moving walkway – which, of course, consists of several parts – was a simple product. We stated that only one of the two tests set forth in *Raines v Colt Industries, Inc*, 757 F Supp 819, 825 (ED Mich 1991), need be satisfied in order to determine that an item is a simple product. *Viscogliosi, supra* at 189. The two tests are:

> (1) the products are not highly mechanized, thus allowing the users to maintain control over the products [or] (2) the intended use of the products does not place the users in obviously dangerous positions. [*Raines, supra* at 825.]

The *Raines* court went on to designate a gun a simple product because it was not highly mechanized and because its intended operation – to shoot targets, animals, or human attackers – did not place the user in danger. *Id.*; see also *Resteiner v Sturm, Ruger & Co, Inc*, 223 Mich App 374, 380; 566 NW2d 53 (1997) (White, P.J.) (handgun deemed a simple product). Similarly, the toy at issue in the instant case was not highly mechanized, and its intended use did not place its users in an obviously dangerous position. Accordingly, it was a simple product.

The next inquiry is whether the danger about which plaintiff complains – the danger of a large, taut rubber band projecting itself or other objects into a user's eye – was open and obvious to an average user of ordinary intelligence. See *Boumelhem, supra* at 178-179. We conclude that it was. Rubber bands are widely known, even by minors, to snap back into place and project forward if stretched and released, and the risk of harm this poses is obvious. See *Jamieson, supra* at page 26 (potential danger from use of rubber bands is obvious). The possibility that a taut rubber band stretched around a small object will project the object if the tension on the band is suddenly released is also an obvious danger. Because the toy at issue was a simple product and because the danger associated with it was open and obvious, defendant was not obligated to warn plaintiff about the danger. *Boumelhem, supra* at 178-179. Thus, summary disposition for defendant on the failure to warn claim was appropriate. Plaintiff argues that even if defendant had no duty to warn, it had a duty to properly instruct the users of its toy how to assemble the race car so as to avoid injury from the rubber band. We find this argument duplicative of the failure to warn argument and conclude that it is without merit.

Plaintiff also argues that the toy was a defective and dangerous product for which defendant should be held liable. In *Mallard v Hoffinger Industries, Inc (On Remand)*, 222 Mich App 137, 141-143; 564 NW2d 74 (1997), we concluded that a manufacturer of a simple product is not required to design safety features to protect users from dangers that are obvious and inherent in the utility of the product. See *Jamieson, supra* at 37, *Fisher v Johnson Milk Co, Inc*, 383 Mich 158, 159-162; 174 NW2d 752 (1970), *Owens v Allis-Chalmers Corp*, 414 Mich 413, 423-425; 326 NW2d 372

(1982), and *Glittenberg, supra* at 391-397. As we indicated earlier, the toy at issue was a simple product. Moreover, any danger associated with it was open, obvious, and inherent in the utility of the product. Therefore, plaintiff's design defect claim was not viable as a matter of law, and summary disposition with respect to it was properly granted.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Roman S. Gribbs
/s/ Kurtis T. Wilder