STATE OF MICHIGAN

COURT OF APPEALS

KEITH A. FOWLER and EVELYN FOWLER,

Plaintiffs-Appellants,

v

JACK'S CORNER STORES, a/k/a JACK'S CORNER STORE, INC. and STAR 9, INC., ILLINOIS INDUSTRIAL TOOL, INC., and WMH TOOL GROUP, INC.,

Defendants-Appellees.

UNPUBLISHED
July 15, 2010

No. 291020
Muskegon Circuit Court
LC No. 04-042992-NP

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

Plaintiffs appeal as of right the grant of summary disposition in favor of defendants in this product liability action. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

The facts of this product liability case are straightforward. Plaintiff, Keith Fowler ("Fowler"), purchased the 48-inch heavy-duty bungee cord that is the subject of this dispute, along with three similar cords, from defendant, Jack's Corner Store ("Jack's") in July 2003. Jack's purchased the bungee cords, in bulk, from defendant Illinois Industrial Tool, Inc. ("IIT"). There is apparently no dispute that IIT was simply a distributor, which never unpacked or examined the cords, but merely shipped the cords to Jack's after having obtained them from defendant, WMH Tool Group, Inc. ("WMH"). The bungee cords were sold separately, unpackaged, and without any attached warnings, warranties or instructions. Fowler acknowledged that his visual inspection of the bungee cord evidenced no obvious physical defect at the time of purchase.

Plaintiffs used the cords on one occasion without a problem during a fishing trip before the incident leading to Fowler's injury occurred. On August 4, 2003, Fowler was using one of the bungee cords to secure a piece of lumber on a trailer. After connecting one end of the cord to the trailer and while pulling the opposite end across the lumber, the hook attached to the trailer separated from the cord. The bungee cord then snapped toward Fowler, striking him in the left eye, resulting in injury.

Plaintiffs' initiated a lawsuit alleging breach of express and implied warranties, negligence, gross negligence and loss of consortium. Defendants filed motions for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). The trial court dismissed plaintiffs' claim of breach of implied warranty based on the absence of cause of action in accordance with MCL 600.2947(6). Addressing plaintiffs' claims that defendants had a duty to warn of unknown risks, the trial court found the applicable statutory provision, MCL 600.2948(3), to be "clear and unambiguous" in imposing on "[a] seller . . . a duty to warn its customers of any risks of harm from its merchandise that were known or should have been known by the manufacturer when the product left the producer's control." Although the trial court found that plaintiffs failed to present evidence that the manufacturer of the bungee cord had "actual knowledge" regarding the risk of harm, it referenced testimony from an engineer submitted as an expert indicating constructive knowledge by the manufacturer of the risk of harm pertaining to bungee cords based on the availability of an "abundance of information" within "the public domain." Consequently, the trial court ruled defendants "potentially had a duty to warn" premised on "the manufacturer's imputed knowledge of the risks," pursuant to MCL 600.1948. Citing MCL 600.2948(2), the trial court then addressed whether any duty to warn on the part of defendants' was alleviated because the risk was "obvious or is a matter of common knowledge." Using "an objective standard," the trial court determined that any duty to warn was inapplicable based on the open and obvious nature of the risk. Consequently, the trial court dismissed plaintiffs' claims for breach of implied warranty and duty to warn against Jack's and IIT. Subsequently, the trial court entered a separate order granting defendant WMH's motion for summary disposition, dismissing plaintiffs' claims against this defendant with prejudice and this appeal ultimately ensued.

II. STANDARD OF REVIEW

As noted in *Woodman v Kera, LLC*, 280 Mich App 125, 134-135; 760 NW2d 640 (2008), citing *Healing Place at North Oakland Med Ctr v Allstate Ins Co*, 277 Mich App 51, 55-56; 744 NW2d 174 (2007):

> Summary disposition under either MCR 2.116(C)(8) or (C)(10) presents an issue of law for [the Court's] determination and, thus, [the Court] review[s] a trial court's ruling on a motion for summary disposition de novo. Where the parties rely on documentary evidence, appellate courts proceed under the standards of review applicable to a motion made under MCR 2.116(C)(10).
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> A motion made under MCR 2.116(C)(10) tests the factual support for a claim and should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. A genuine issue of material fact exists when the record, drawing all reasonable inferences in favor of the nonmoving party, leaves open an issue upon which reasonable minds could differ.
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> When deciding a motion for summary disposition under this rule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in the

> light most favorable to the nonmoving party. But such materials "shall only be considered to the extent that [they] would be admissible as evidence. . . ." [Quotation marks and citations omitted.]

Matters involving statutory interpretation comprise questions of law, which this Court reviews in accordance with a de novo standard of review. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008).

III. ANALYSIS

A. MCL 600.2947

Subsequent to the trial court's ruling in this matter, this Court, in *Curry v Meijer, Inc*, 286 Mich App 586, 587-588; 780 NW2d 603 (2009)[1], addressed the issue of whether MCL 600.2947(6)(a) "requires a plaintiff to establish a failure to exercise reasonable care to prevail on a breach of implied warranty claim against a nonmanufacturing defendant." Consequently, the outcome of this case is, in significant part, governed by this Court's determination in *Curry* that it is necessary for a plaintiff to demonstrate a "failure to exercise reasonable care" in order to sustain a claim for breach of an implied warranty. *Id.* at 588.

Of primary significance is the statutory language comprising MCL 600.2947(6), which provides:

> In a product liability action, a seller other than a manufacturer is not liable for harm allegedly caused by the product unless either of the following is true:
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> (a) The seller failed to exercise reasonable care, including breach of any implied warranty, with respect to the product and that failure was a proximate cause of the person's injuries.
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> (b) The seller made an express warranty as to the product, the product failed to conform to the warranty, and the failure to conform to the warranty was a proximate cause of the person's harm.

In evaluating the statutory language, this Court has determined:

> MCL 600.2947(6)(a) and (b) clearly and unambiguously predicate product liability on a non-manufacturing seller for harm allegedly caused by the product under only two scenarios: (a) where the seller fails to exercise reasonable care, or (b) where there is a breach of an express warranty. [*Curry*, 286 Mich App at 592.]

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[1] The application for leave to appeal to the Michigan Supreme Court has been denied. *Curry v Meijer, Inc*, 486 Mich 961; 782 NW2d 773 (2010).

Specifically addressing the language of subsection (a) of the statute, this Court noted, "While subsection (a) contains the clause, "including breach of any implied warranty," the grammatical context and placement of this clause indicate that the Legislature did not intend to create a third avenue of liability." After reviewing the dictionary definition of the term "include," this Court held:

> [A]s used in the aforementioned participial phrase, a breach of any implied warranty constitutes a "subordinate element" of the broader reasonable care standard. Put another way, a breach of implied warranty claim is a type of, and not separate from, a breach of reasonable care claim. [*Id.* at 593-594.]

In support of this interpretation the Court indicated that "the last clause of subsection (a), which imposes a final condition to imposing liability, refers to a singular failure, i.e., "that failure," that must be a proximate cause of the person's injuries." *Id.* at 594. The Court also observed, "[t]he only failure in subsection (a) to which this language refers is the failure to exercise reasonable care." Hence, this Court concluded, "breach of implied warranty is not a separate theory upon which to bring a products liability claim against a nonmanufacturing seller." *Id.* at 594-595.

The Court also found to be significant the placement of the breach of implied warranty clause within MCL 600.2947(6):

> Specifically, that clause appears in subsection (a), which deals with fault, as opposed to subsection (b), under which the breach of an express warranty (with causation) alone is sufficient to impose liability. This distinction is key because traditionally a breach of warranty claim sounds in "contract" whereas the use of reasonable care, an element of negligence, sounds in "tort." Thus, the placement of the breach of implied warranty provision as a modifier in the "tort" subsection of § 2947(6) further indicates the Legislature's intent to add an element of fault to a traditional breach of implied warranty claim. [*Curry*, 286 Mich App at 594-595 (internal citations and footnotes omitted).]

Notably, in *Curry*, the Court rejected plaintiffs' argument that requiring "a showing of fault to impose liability" would "render the clause, 'including breach of any implied warranty,' mere surplusage or nugatory." *Id.* at 595. This Court also properly rejected the *Curry* plaintiffs' similar public policy arguments indicating they "should be raised to their state representative or senator for debate within the halls of our Legislature, not to the Judiciary." *Id.* at 599.

In accordance with MCR 7.215(J)(1), this Court is required to "follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals . . . ." Hence, based on this Court's published decision in *Curry*, plaintiffs' arguments on this issue are not viable.

Further, plaintiffs' contention that disparity between the relevant civil jury instruction and the trial court's interpretation of this statutory provision belies an error in interpreting the statutory provision is not tenable. Pursuant to *Taylor v Mich Power Co*, 45 Mich App 453, 457; 206 NW2d 815 (1973), it is recognized, "[a]lthough Michigan Standard Jury Instructions are not to be given the force and effect of court rules" they are "entitled to some deference." However,

"when resolving a conflict between a statute and a court rule, the court rule prevails [only] if it governs purely procedural matters." *Donkers v Kovach*, 277 Mich App 366, 373; 745 NW2d 154 (2008). Thus, given the lesser "status" of the jury instructions when in conflict with a statutory provision and the clear substantive rather than procedural nature of the issue presented, the wording of the cited jury instruction is not dispositive.

Plaintiffs also argue that MCL 600.2947(6) when read in conjunction with other statutory provisions, such as MCL 600.6304(8) pertaining to the allocation of fault, demonstrates that the Legislature intended to retain breach of an implied warranty as a separate cause of action. Specifically, MCL 600.6304 provides, in relevant part:

> (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death involving fault of more than 1 person, including third-party defendants and nonparties, the court, unless otherwise agreed by all parties to the action, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating both of the following:
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> (a) The total amount of each plaintiff's damages.
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> (b) The percentage of the total fault of all persons that contributed to the death or injury, including each plaintiff and each person released from liability under section 2925d, regardless of whether the person was or could have been named as a party to the action.
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> (8) As used in this section, "fault" includes an act, an omission, conduct, including intentional conduct, a breach of warranty, or a breach of a legal duty, or any conduct that could give rise to the imposition of strict liability, that is a proximate cause of damage sustained by a party.

Specifically, plaintiffs reference subsection (8), which indicates, as a separate component of "fault," the existence of "a breach of warranty." While plaintiffs are correct in asserting that statutes, which "relate to the same subject matter and share a common purpose . . . are in *pari materia*, and must be read together as one law," they ignore the remainder of the rule which indicates that "the more specific statute must control over the more general statute." *Donkers*, 277 Mich App at 370-371. In this instance, the reference in MCL 600.6304(8) to "a breach of warranty" may be referencing an express warranty as opposed to plaintiffs' assumption that it relates solely to an implied warranty. Further, the mere inclusion of this phrase, standing alone, does not imply a conflict with MCL 600.2947(6)(a), as breach of an implied warranty as a separate cause of action continues to exist with reference to manufacturers. As a result, any conflict or implication as alleged by plaintiffs does not exist.

Finally, because plaintiffs only contest interpretation of the statutory provision with regard to the necessity to demonstrate negligence to impose liability for breach of an implied warranty and do not challenge the trial court's factual determinations regarding the absence of

any evidence to establish that defendants' failed to exercise reasonable care, the trial court's ruling to grant summary disposition in favor of defendants on this issue should be upheld.

B. MCL 600.2948

Addressing plaintiffs' argument regarding the application of MCL 600.2948 to the open and obvious nature of the risk, we must review the language of three statutory provisions or subsections. Specifically, MCL 600.2948, provides in relevant part:

> (2) A defendant is not liable for failure to warn of a material risk that is or should be obvious to a reasonably prudent product user or a material risk that is or should be a matter of common knowledge to persons in the same or similar position as the person upon whose injury or death the claim is based in a product liability action.
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> (3) In a product liability action brought against a manufacturer or seller for harm allegedly caused by a failure to provide adequate warnings or instructions, a manufacturer or seller is not liable unless the plaintiff proves that the manufacturer knew or should have known about the risk of harm based on the scientific, technical, or medical information reasonably available at the time the specific unit of the product left the control of the manufacturer.

In addition, MCL 600.2947, includes:

> (5) A manufacturer or seller is not liable in a product liability action if the alleged harm was caused by an inherent characteristic of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability, and that is recognized by a person with the ordinary knowledge common to the community.

The trial court determined, based on evidence provided by plaintiffs' expert that substantial information existed in the "public domain" regarding safety concerns inherent in the use of bungee cords, that defendants potentially had a duty to warn in accordance with MCL 600.2948(3). However, the trial court went further and ruled that any duty to warn was alleviated by the open and obvious nature of the risk of harm as delineated in MCL 600.2948(2). Although the parties dispute the applicability and impact of these subsections based on distinctions made between the inherent characteristics of bungee cords versus the existence of a defect in the cord used by Fowler, neither approach would support the imposition of a duty to warn under the circumstances of this case based on these statutory provisions.

Our Supreme Court has specifically addressed the application of MCL 600.2948(2), in a case pertaining to the misuse or unintended use of a product, finding:

> [A] manufacturer has no duty to warn of a material risk associated with the use of a product if the risk: (1) is obvious, or should be obvious, to a reasonably prudent product user, or (2) is or should be a matter of common knowledge to a person in the same or a similar position as the person upon whose injury or death the claim is based. Accordingly, this statute, by looking to the reasonably prudent product

> user, or persons in the same or a similar position as the injured person, establishes an objective standard. [*Greene v A P Products, Ltd*, 475 Mich 502, 509; 717 NW2d 855 (2006) (footnotes omitted).]

The Court has indicated that MCL 600.2948(2) "incorporate[s] most of the common-law principles regarding the 'obvious danger' doctrine" but does not include principles pertaining to "simple tools and products." *Id.* at 509 n 8. Specifically, the Court ruled, "that the Legislature has imposed no duty to warn beyond obvious material risks. The statute does not impose a duty to warn of a specific type of injury that could result from a risk." *Id.* at 510. Notably, the language of MCL 600.2948 does not actually impose a duty to warn, but rather precludes the imposition of liability "for failure to warn." MCL 600.2948(2).

As interpreted by our Supreme Court in *Greene*, and in accordance with the plain statutory language of MCL 600.2948(2), liability cannot be imposed "for failure to warn of a material risk that is or should be obvious to a reasonably prudent product user or a material risk that is or should be a matter of common knowledge . . . ." Plaintiffs' allegations are confusing, as they do not clearly delineate between their claims for a failure to warn regarding the use and inherent characteristics of the product from their assertion that the bungee cord was defective. We note that this particular product is unique in that the same risks are inherent in both the use of the product and the product's failure.

There is no dispute that the bungee cord purchased by Fowler did not contain or provide any warnings or instructions pertaining to its use. However, defendants cannot be held liable, pursuant to MCL 600.2948(2) for failing to warn customers of an "obvious" risk associated with the product. As discussed in *Laier v Kitchen*, 266 Mich App 482, 487, 489; 702 NW2d 199 (2005):

> The open and obvious danger doctrine is commonly applied in products liability and premises liability cases as a limitation on the duty of care owed, often in the context of a duty to warn. In general, there is no obligation to warn someone of dangers that are so obvious and apparent that a person may reasonably be expected to discover them and protect himself or herself. The rationale underlying this doctrine is that "there should be no liability for failing to warn someone of a risk or hazard [that] he appreciated to the same extent as a warning would have provided."
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> * * *
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> Whether a defendant may properly rely on the defense of open and obvious danger depends on the theory of liability at issue. The defense is clearly available in response to a premises liability or products liability claim based on a failure to warn. [Internal citations omitted.]

Favorably citing *Glittenberg v Doughboy Recreational Indus (On Rehearing)*, 441 Mich 379, 385-396, this Court in *Lair* held, in relevant part:

> "For policy reasons, the law qualifies a manufacturer's duty to warn by declaring some risks to be outside that duty." In general, "[m]anufacturers have a

> duty to warn purchasers or users of dangers associated with the intended use or reasonably foreseeable misuse of their products . . . ." However, the open and obvious danger rule applies to limit that duty. "A manufacturer has no duty to warn if it reasonably perceives that the potentially dangerous condition of the product is readily apparent or may be disclosed by a mere casual inspection, and it cannot be said that only persons of special experience will realize that the product's condition or characteristic carries with it a potential danger."
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> "[A]n obvious danger is no danger to a 'reasonably' careful person." "[I]f the risk is obvious from characteristics of the product, the product itself telegraphs the precise warning that plaintiffs [would claim] is lacking." Accordingly, a "manufacturer of a simple product has no duty to warn of the product's potentially dangerous conditions or characteristics that are readily apparent or visible upon casual inspection and reasonably expected to be recognized by the average user of ordinary intelligence." [*Laier*, 266 Mich App at 488-489.]

While the *Greene* Court indicated the distinctions between simple and complex products is not specifically recognized by MCL 600.2948(2), this does not impact the applicability of the open and obvious doctrine. As noted by the trial court, a generally known and readily ascertainable characteristic of a bungee cord is its elasticity.[2] This characteristic also comprises its primary function. Given Fowler's use of this product consistent with its intended function, the trial court correctly concluded that the risks were open and obvious based on the readily ascertainable characteristics of the product.

This is consistent with a related concept contained in MCL 600.2947(5), which provides:

> A manufacturer or seller is not liable in a product liability action if the alleged harm was caused by an inherent characteristic of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability, and that is recognized by a person with the ordinary knowledge common to the community.

Clearly, the force exuded by the release of tension in the bungee cord when it dislodged is an anticipated result of the inherent characteristic and function of the product and cannot provide a basis for the imposition of liability. The risk inherent in the use of the product cannot be eliminated without seriously compromising the purpose and integrity of the product itself.

Plaintiffs also cite to MCL 600.2948(3), which precludes the imposition of liability on a seller or manufacturer for a failure to warn, "unless the plaintiff proves that the manufacturer knew or should have known about the risk of harm based on the scientific, technical, or medical

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[2] A "bungee cord" is defined as "an elasticized cord." *Random House Webster's College Dictionary* (1997). "Elasticity" is defined as "the property of a substance that enables it to change its length, volume, or shape in direct response to a force effecting such a change and to recover its original form upon the removal of the force." *Id.*

information reasonably available at the time the specific unit of the product left the control of the manufacturer." In support of the applicability of this exception, plaintiffs rely on the affidavit of their expert, Dennis Brickman. The trial court determined that the affidavit of plaintiffs' expert regarding the availability of information pertaining to the risks and injuries accompanying the use of bungee cords within the public domain, combined with the wording of MCL 600.2948(3) resulted in defendants "potentially" having a duty to warn. Technically, the trial court erred in this determination, as the wording of the statute, in actuality, did not impose a duty to warn but rather, permitted the imposition of liability based on the failure of defendants to warn plaintiffs of the attendant risk of harm. MCL 600.2948(3).

However, the trial court correctly interpreted this provision in conjunction with the remainder of the subsections of MCL 600.2948 in granting summary disposition. The precepts of statutory interpretation are well recognized. Specifically:

> When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature's intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature's intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed-no further judicial construction is required or permitted, and the statute must be enforced as written.
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> In discerning legislative intent, this Court gives effect to every word, phrase, and clause in the statute. We endeavor to avoid interpreting a statute in a manner that renders any statutory language nugatory or surplusage, and we "'construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature.'" [*In re Investigative Subpoenas*, 286 Mich App 201, 210-211; 779 NW2d 277 (2009) (internal citations omitted).]

Neither of the statutory subsections comprising MCL 600.2948(2) and (3) can be read or applied in isolation. MCL 600.2948 serves to provide exceptions for the imposition of liability for manufacturers and sellers in failing to warn of dangers associated with materials risks in the use of their products. While MCL 600.2948(3) does not permit liability to be incurred "unless the plaintiff proves that the manufacturer knew or should have known about the risk of harm based on the scientific, technical, or medical information reasonably available," subsection (2) of the statute provides an additional exception for liability pertaining to risks in the use of a product that are "obvious to a reasonably prudent product user . . . that is or should be a matter of common knowledge . . . ." Hence, while defendants could be charged with knowledge existing in the "public domain" pertaining the foreseeable risks involved in the use of the product, the imposition of liability is obviated by the open and obvious nature of the risk as determined by the trial court. In effect, subsections (2) and (3) of MCL 600.2948 retain, what existed in common law before the tort reform legislation enacted in 1995[3], the distinctions made between simple

[3] 1995 PA 249.

(subsection 2) and complex tools (subsection 3).[4] The test to ascertain whether a tool is deemed "simple" was addressed by the Court in *Glittenberg*, 441 Mich 391, stating in relevant part:

> [W]here a manufactured article is a simple thing of universally known characteristics, not a device with parts or mechanism, the only danger being not latent but obvious to any possible user, if the article does not break or go awry, but injury occurs through a mishap in normal use, the article reacting in its normal and foreseeable manner, the manufacturer is not liable for negligence. [Citation omitted.]

As such, defendants' were not liable for their failure to warn Fowler in accordance with MCL 600.2948(2).

Finally, plaintiffs have also alleged that defendants are liable for a defect in the product, resulting in Fowler's injury. While not specifically addressed by the trial court, MCL 600.2949a would preclude plaintiffs' defective design claims based on the failure to demonstrate defendants knew or should have known of a defect in the product when sold. Specifically, MCL 600.2949a provides:

> In a product liability action, if the court determines that at the time of manufacture or distribution the defendant had actual knowledge that the product was defective and that there was a substantial likelihood that the defect would cause the injury that is the basis of the action, and the defendant willfully disregarded that knowledge in the manufacture or distribution of the product, then sections 2946(4), 2946a, 2947(1) to (4), and 2948(2) do not apply.

As testified by Fowler, his inspection of the bungee cord at purchase and when used revealed no obvious or glaring defect. Further, plaintiffs have not provided evidence that defendants were aware of any prior failings or defects with this particular product. Consequently, liability cannot be imposed for plaintiffs' claim that the product was defective.

C. OTHER ALLEGATIONS

Taking a "shotgun" approach, plaintiffs seek to salvage their cause of action by claiming the existence of issues pertaining to witness credibility and the impropriety of the trial court's determination that the material risks associated with use of the bungee cord were open and obvious. Contrary to plaintiffs' arguments:

> [W]hen a plaintiff sues . . . for negligent design or failure to provide warnings, the plaintiff's prima facie case must demonstrate that the defendant manufacturer owed the plaintiff a duty of care. Whether this duty exists is a question of law for the Court to decide. When a court finds no . . . duty to the plaintiff in a product's liability case, summary judgment for the defendant is

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[4] See *Greene*, 475 Mich at 508 n 7.

> appropriate as a matter of law. [*Treadway v Smith & Wesson Corp*, 950 F Supp 1326, 1331 (internal citations omitted).][5]

Similarly, it is irrelevant whether the trial court sufficiently distinguished between the factual circumstances of an unpublished case and the current situation as the grant of summary disposition was premised on questions of law pertaining to statutory interpretation as now addressed in published case law that this Court is mandated to follow. Finally, plaintiffs now complain that the trial court failed to address their allegations of express warranty or gross negligence. However, plaintiffs did not preserve these arguments in the lower court and actively sought their dismissal in order to obtain a final order for purposes of appeal. "[E]rror requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence . . . ." *Genna v Jackson*, 286 Mich App 413, 422; 781 NW2d 124 (2009) (citation omitted).

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Alton T. Davis

[5] Although the decisions of . . . federal courts are not binding precedents, federal decisions interpreting Michigan law are often persuasive." *Adams v Adams*, 276 Mich App 704, 715-716; 742 NW2d 399 (2007).