

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Objective Open and Obvious Standard Applied to Child Licensee

By Thomas Economy

In *Estate of Skylar Wheeler v Sheets*, unpublished, Plaintiff's minor, Skylar, drowned in Defendants' pond. The Court of Appeals upheld the trial court's dismissal of Plaintiff's case based on the application of the "reasonably prudent person" objective standard of the open and obvious doctrine.

Defendants, who were the child's paternal grandparents, were not home when she drowned. At the time of her death, Skylar and her father were visiting Defendants' home. Skylar was a toddler. The trial court granted Defendants' motion to dismiss for the reason that the pond was an open and obvious danger. Furthermore, the trial court held that Skylar was a social guest (licensee) who was only owed a duty to warn and no duty to render the pond inaccessible.

The Court of Appeals upheld the trial court in dismissing the case. The Court stated that Skylar was a licensee (a social guest as opposed to an invitee who is owed a higher duty of care) and that a landowner only owes a duty to warn a licensee of known hidden dangers. Moreover, a landowner does not owe a licensee a duty to inspect or make the property safe.

The Court held that the claim was barred under the open and obvious doctrine, which applied to Skylar regardless of her age. Under the open and obvious doctrine, courts must examine whether a danger is open and obvious from the perspective of "a reasonably prudent person."

SECRET WARDLE NOTES:

The significance of this decision is the Court's application of the "reasonably prudent person" objective standard of the open and obvious doctrine to a child. In a footnote, the Court acknowledged its previous published decision in *Bragan v Symanzik*, 263 Mich App 324 (2004), where the Court declined to apply the "reasonably prudent person" *objective* open and obvious standard to a child invitee. *Bragan* held that the standard for a child *invitee* is "whether a dangerous condition would be open and obvious to a *reasonably careful minor*; that is, whether the minor would discover the danger and appreciate the risk of harm."

This case involves a child licensee and not an invitee. Although not expressly stated in the opinion, the Court appears to have chosen not to follow *Bragan* based on this distinction. While this decision may be considered persuasive by lower courts, it is unpublished and, therefore, not binding authority. Moreover, the Michigan Supreme Court denied leave in *Bragan* and has yet to weigh in on the issue.

Whether a dangerous condition is open

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and obvious is considered under an *objective* rather than *subjective* standard. Thus, characteristics of a particular claimant such as age, disability, etc., are irrelevant. Therefore, Defendants had no duty to take affirmative steps to bar the exits from their home, nor to make the pond inaccessible.

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