

## GRANT v. SOUTH ROXANA DAD'S CLUB NOTES

### OBVIOUS PLAYGROUND DANGER DOES NOT NEGATE DUTY

#### GRANT v. SOUTH ROXANA DAD'S CLUB

young boy who was seriously injured when he fell while riding his bicycle over a dirt pile on the premises of the defendant

Eight-year-old Zachary Grant rode his bicycle over the dirt pile as a means of deliberately becoming airborne on the bicycle--a practice called "ramping."

defendant appeals, arguing Dad's Club did not owe Zachary a duty either to remove the dirt pile or to warn him of the potential hazard because it was an open and obvious danger which posed a risk that even a child of eight could understand and appreciate

defendant is a nonprofit organization which operates a playground that is open to the public. Children are permitted to play in the park without adult supervision. two large dirt piles in the parking lot of Dad's Club. Each pile was approximately four feet high.

dirt had been trucked in for use in a construction project several months earlier. might have been there for close to a year.

arm that was broken in the accident did not grow to be as long as Zachary's uninjured arm.

defendant removed the dirt pile the day following Zachary's accident. This was accomplished simply by spreading the dirt around.

complaint alleging that the defendant acted negligently in leaving the dirt pile where it knew or should have known that children were playing and in failing to warn the children of the danger.

defendant contended that (1) the dirt pile was an open and obvious danger and (2) Zachary was mature enough to appreciate the risk posed by ramping his bicycle on the dirt pile.

Zachary admitted in deposition testimony that he was aware he could fall while ramping his bicycle and that, in fact, he had fallen while ramping his bicycle on previous occasions.

argued that the defendant had actual knowledge that children, including Zachary, were riding their bicycles on the pile of dirt, thus defeating any claim that the injury was not foreseeable.

Dad's Club's park commissioner. Halbert stated that he had seen children riding their bicycles on the dirt pile on two different occasions prior to Zachary's accident

## GRANT v. SOUTH ROXANA DAD'S CLUB NOTES

told them to stop because they could get hurt, and then he went into the building to do some work.

when he left the building later to go home, he saw that the boys were still in the Dad's Club parking lot walking their bikes. He stated, "[S]o I had no doubt they came right back."

while the pile of dirt itself was innocuous, it became a dangerous and defective condition when the defendant became aware on more than one occasion that young children were using it to ramp their bicycles;

defendant knew that such activity on its dirt pile was dangerous and likely to cause injury;

knew that the children, because of their immaturity, did not appreciate the risk involved, because it knew that its warnings of the danger would go unheeded;

expense involved in remedying the condition and guarding against injury was slight, i.e., spreading the dirt about;

given defendant's actual knowledge of all of the foregoing, potential injury to the children invited to play on its property was foreseeable, and defendant therefore had a duty to remedy the condition;

What duty, if any, does a landowner have to an eight-year-old minor on its property with respect to an open and obvious condition, a four-foot-high dirt pile, when it has notice that the minor has engaged in an activity involving that condition, riding his bicycle over the dirt pile, that has a risk of injury to the minor?

(1) the reasonable foreseeability of the plaintiff's injury, (2) the reasonable likelihood of the injury, (3) the magnitude of the defendant's burden of guarding against the injury, and (4) the consequences of placing that burden on the defendant.

defendant argues that any duty it might have owed Zachary was negated by the open and obvious nature of the risk.

rule stems from the presumption that it is not foreseeable that a person will intentionally encounter the risk of an open and obvious danger.

courts recognize that it may be foreseeable that the child, due to immaturity, will not fully appreciate the risk involved in encountering what to an adult is an open and obvious danger.

whether a typical child who is old enough to be at large would lack the maturity to understand and appreciate the risk involved, therefore making it foreseeable that a typical child might be injured.

## GRANT v. SOUTH ROXANA DAD'S CLUB NOTES

landholder owes a duty to a child injured on its premises,

(1) a dangerous condition exists on the property, (2) it is reasonably foreseeable that children would be present on the premises, and (3) the risk of harm to children outweighs the burden of removing the danger.

open-and-obvious-danger rule is simply one aspect of determining the foreseeability of harm.

foreseeability as the cornerstone of our duty analysis.

foreseeability by the reasonableness of the landowner's actions,

open and obvious hazards, liability stems from the knowledge of the possessor of the premises, and what the possessor had reason to expect the invitee would do in the face of the hazard.

whether Zachary's injuries were foreseeable under the facts presented.

Halbert, knew that Zachary and other children his age were using the dirt pile to ramp their bicycles he anticipated that the boys, including Zachary, could be hurt.

Dad's Club had actual knowledge that children, including Zachary, were using the dirt pile in a dangerous manner.

what duty a landholder has to a child "when it has notice that the minor has engaged in an activity involving that condition, riding his [bicycle] over the dirt pile, that has a risk of injury to the minor."

-"unless the possessor should anticipate the harm despite such knowledge or obviousness"

foresaw that the children would not appreciate the risk and would continue to encounter it fits within that meaning.

In the face of the defendant's acknowledged anticipation of the risk to the children, including Zachary, we believe that Zachary's injuries were foreseeable.

defendant argues that this factor carries little weight because, once the risk is determined to be open and obvious, it is reasonable for the defendant to assume that the risk will be appreciated and avoided.

fact that the minor is a child of 8 years must have some bearing on our decision regarding the assessment of what is open and obvious, as does the fact that here the defendant did not assume that the risk would be appreciated and avoided by the children.

## GRANT v. SOUTH ROXANA DAD'S CLUB NOTES

magnitude of the burden of imposing the duty and the consequences of imposing the duty--favor imposing a duty on the defendant

expense of remedying the duty was slight

no question that the dirt pile was relatively easy to remove." The dirt was simply spread out around the ground the next day

consequences of imposing this burden on the defendant were also negligible.  
dirt had been left over from a construction project and apparently was no longer needed

We therefore find that Dad's Club owed Zachary a duty of reasonable care.

decline to expand the scope of review to include whether Dad's Club breached the duty of care owed to Zachary.

we find that the defendant owed the plaintiff a duty of reasonable care under the circumstances.