

2026 IL App (2d) 250495
No. 2-25-0495
Opinion filed October 14, 2026

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CODY KRAEPLIN, Plaintiff-Appellant,

v.

JOHN B. SANFILIPPO & SON, INC., Defendant-Appellee.

Appeal from the Circuit Court of Kane County.
Honorable Mark A. Pheanis, Judge, Presiding.
No. 19-L-131

JUSTICE SCHOSTOK delivered the judgment of the court, with opinion.
Justices Birkett and Mullen concurred in the judgment and opinion.

OPINION

¶ 1 While working on the roof of a factory owned by defendant, John B. Sanfilippo & Son, Inc. (JBSS), plaintiff, Cody Kraeplin, fell through a skylight and was injured. Plaintiff filed a complaint against JBSS, sounding in negligence and premises liability. The circuit court of Kane County granted JBSS's motion for summary judgment, finding that the hazard presented by the skylight was open and obvious. Plaintiff appeals from that order. For the following reasons, we reverse and remand for additional proceedings.

¶ 2

I. BACKGROUND

¶ 3 On June 9, 2018, plaintiff fell through an unprotected Skylight¹ on the roof of JBSS's factory after his foot became entangled in the hose of a pressure washer that he was using to clean the roof. He fell 30 feet to the floor below and suffered severe injuries. On June 21, 2018, plaintiff filed a complaint against JBSS. As relevant to this appeal, plaintiff ultimately filed a four-count fourth amended complaint on April 30, 2025. Count I alleged negligence, and count II alleged premises liability. Counts III and IV asserted negligent spoliation of evidence claims. (Neither count III or count IV are at issue on appeal.)

¶ 4 In count I, plaintiff alleged that (1) the Skylight was not guarded from above or below to prevent a person from falling to the floor; (2) the Skylight was not properly glazed or reinforced so that it could withstand the weight of a person; and (3) JBSS knew of the hazard but chose not to take precautions despite the relatively minimal cost. As such, plaintiff alleged that JBSS was negligent in failing to (1) install protection over, below, or around the Skylight; (2) warn him or erect warning signs that the Skylight was unprotected; and (3) install skylights that met applicable glazing and safety requirements.

¶ 5 In count II, plaintiff alleged that the Skylight was an unreasonably dangerous condition, which posed an unreasonable risk of harm to workers on the roof, and that JBSS allowed the roof to remain in an unsafe condition. Plaintiff further alleged that JBSS should have reasonably expected that people on the roof would not discover the condition and thus protect themselves against the danger.

¶ 6 On June 9, 2025, JBSS filed a motion for summary judgment. In its motion, JBSS argued that it was not liable for plaintiff's injuries because the Skylight was not a condition on the property

¹We will refer to the specific skylight at issue as the "Skylight."

presenting an unreasonable risk of harm to plaintiff. Alternatively, JBSS argued that the Skylight was an open and obvious condition that plaintiff knew about. As such, JBSS maintained that it owed no duty to plaintiff to protect him from falling through the Skylight. Further, JBSS argued that the Skylight was not a cause of plaintiff's injury but rather "merely a condition." JBSS insisted that plaintiff's own contributory negligence was the reason for his fall.

¶ 7 On July 18, 2025, plaintiff filed its response to JBSS's motion for summary judgment. Plaintiff argued that JBSS had breached its duty to maintain the premises in a reasonably safe condition or inform him of the hazards associated with the dangerous condition. Further, plaintiff maintained that the dangerousness of the Skylight was not open and obvious.

¶ 8 JBSS supported its summary judgment motion, and plaintiff supported its response, with deposition testimony and exhibits. We summarize that testimony and other relevant evidence below.

¶ 9 JBSS owns and operates a Fisher Nuts factory in Elgin. The factory is approximately three stories tall. The roof of the facility has more than 50 skylights. The Skylight, which plaintiff fell through, did not have an external screen or cover that could withstand the weight of a person. The Skylight also did not have any type of fall protection underneath it.

¶ 10 John Schafer, the chief engineer of JBSS, contracted with RMM Chicago, LLC (RMM) to clean the roof of JBSS's factory. Prior to RMM working on the roof, its general manager, Matt Schroeder, and a salesperson, Kevin Lewis, visited the factory and met Schafer, as well as Brian Hess, JBSS's Safety Director, and other JBSS employees. Those RMM employees inspected the roof. Following that inspection, Schafer believed that RMM had identified all the risks on the roof, which included the roof's edge and the Skylight. Schafer never informed anyone that there was

not a bottom screen on the Skylight. After inspecting the roof, Schroeder sent a proposal to JBSS on April 3, 2018. JBSS accepted the proposal and work commenced on June 8, 2018.

¶ 11 Joseph Arway, RMM's safety director, testified that RMM trained its employees about hazards they may encounter on a roof, such as the edge of the roof or skylights. He explained that when someone was working within six feet of such a hazard, OSHA required that a worker be tied off using fall protection. Beyond that six-foot barrier, a worker was not required to wear fall protection. He further explained that there was no OSHA regulation that requires a landowner to put a full protective screen on a skylight. JBSS never informed the RMM workers that the Skylight lacked a protective screen. Had JBSS done so, the RMM employees would have worn fall protection on both days they worked on the factory roof.

¶ 12 Zach Steinberg, a foreman for RMM, testified that a skylight was a fall hazard whether it had a screen or not. He testified that no one ever informed him that the Skylight was not screened from below.

¶ 13 Plaintiff testified that he began working for RMM in 2016 and had worked on at least 100 roofing jobs. He had been instructed on how to safely do his job. As to skylights, he was specifically trained that if skylights were without covers, he was to keep at least a body's length away from the skylights. Arway had personally trained him to wear a safety harness if he was within six feet from a skylight or the roof's edge.

¶ 14 At the time of the accident, plaintiff was working as a foreman on the job with Steinberg. On the morning of June 8, 2018, before the work started, plaintiff had observed the Skylight and was aware that it had no protective external covering on it. He was aware that the Skylight might break if he stepped on it.

¶ 15 Plaintiff testified that on the first day of work, the plan was to take care of the “risky” areas, which included the area around the Skylight. As such, all the RMM employees wore full fall protection that day. On that first day, RMM cleaned a six-foot area in front of the roof’s edge and a six-foot perimeter around the Skylight. RMM workers made certain of this six-foot barrier by measuring with a tape measure.

¶ 16 On June 9, 2018, the second day of work on JBSS’s roof, Steinberg and plaintiff decided that the RMM employees did not need to wear fall protection. This was because they had already cleaned a six-foot perimeter from the roof’s edge and the Skylight. Steinberg also explained that the ropes and harnesses pose hazards themselves, such as causing tripping and getting entangled with the pressure washer hoses.

¶ 17 While working that day, plaintiff received a phone call. As he answered the call, he put down the pressure washer, and he turned the hose off. At this time, plaintiff was 10 to 12 feet away from the Skylight. After completing the call, plaintiff restarted the washer. When he grabbed the gun, the hose moved and became tangled around his feet. Defendant attempted to untangle himself by kicking his feet. In trying to remove the pressure washer, plaintiff slipped and fell arm-first through the Skylight to the floor of the factory. No one ever informed him the Skylight was not screened from below. Plaintiff testified that it was customary in the industry for an owner to tell him if a skylight was unguarded.

¶ 18 Brian Hess, JBSS’s Safety Director, testified that shortly after he was hired by JBSS in 2017, he observed that not all the skylights on the factory’s roof had protection. Skylights without protective fall screens were potentially hazardous to workers. As such, Hess suggested to JBSS that adding skylight guards should be a top priority for the company. (In September 2018, after plaintiff’s fall, JBSS had 10 rooftop screens installed at a cost of \$44,000).

¶ 19 Mike Finn, JBSS’s controller, acknowledged that a \$20,000 request for “skylight safety” had been made in 2017. Finn testified that—considering JBSS’s 2017 gross sales of \$980 million, its operating income of \$64 million, and its net income of between \$10 million and \$30 million—there was nothing about JBSS’s financial condition that would have prevented it from spending \$20,000 on skylight safety.

¶ 20 On October 2, 2025, the trial court granted JBSS’s motion for summary judgment. The trial court explained that the Skylight constituted an open and obvious danger and that JBSS had no duty to protect plaintiff from such a condition. Following the trial court’s ruling, plaintiff filed a timely notice of appeal.

¶ 21 II. ANALYSIS

¶ 22 On appeal, plaintiff argues that JBSS owed plaintiff a duty of reasonable care and had a duty to provide safety measures regarding the Skylight or to warn him that the Skylight was unprotected. Plaintiff insists that questions of fact exist as to the visibility of the hazardous condition and the risks associated with it. As such, plaintiff contends that the trial court erred in granting summary judgment in JBSS’s favor.

¶ 23 Summary judgment is appropriate where, when viewed in the light most favorable to the nonmoving party, the pleadings, depositions, admissions, and affidavits on file reveal that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Hall v. Henn*, 208 Ill. 2d 325, 328 (2003). When reviewing a trial court’s award or denial of summary judgment, we must construe the pleadings, depositions, admissions, exhibits, and affidavits strictly against the moving party and liberally in favor of the nonmoving party. *Pyne v. Witmer*, 129 Ill. 2d 351, 358 (1989). The standard of review for the entry of summary judgment is *de novo*. *Kornick v. Goodman*, 2023 IL App (2d) 220197, ¶ 12.

¶ 24 Plaintiff's complaint sounds in both negligence and premises liability. Ordinary negligence requires proof of only three elements—the existence of a duty, a breach of that duty, and an injury proximately caused by the breach. *Guvénos v. Target Corp.*, 2015 IL App (1st) 133940, ¶ 89. Premises liability requires proof of those three things, plus three additional elements: (1) that there was a condition on the property that presented an unreasonable risk of harm; (2) that the defendant knew or reasonably should have known of the condition and the risk; and (3) that the defendant could reasonably have expected people on the property would not realize, would not discover, or would fail to protect themselves from the danger. *Hope v. Hope*, 398 Ill. App. 3d 216, 219 (2010). If it is a landowner's conduct or activity—as opposed to a dangerous condition on the property—that creates an injury-causing hazard, the claim is one of negligence, rather than premises liability. *Garcia v. Goetz*, 2018 IL App (1st) 172204, ¶ 31.

¶ 25 A legal duty is a prerequisite to liability. *Buchelares v. Chicago Park District*, 171 Ill. 2d 435, 447 (1996). The existence of a duty is a question of law, and, in determining whether a duty existed, the trial court considers whether a relationship between the parties existed that imposed a legal obligation upon one party for the benefit of the other party. *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 215 (1988). Without a showing from which the court could infer the existence of a duty, no recovery by the plaintiff is possible as a matter of law, and summary judgment in favor of the defendant is proper. *Haupt v. Sharkey*, 358 Ill. App. 3d 212, 216 (2005).

¶ 26 Our supreme court has held that relationship-induced duty is the sum of four factors: “the likelihood of injury, the reasonable foreseeability of such injury, the magnitude of guarding against the injury, and the consequences of placing that burden on the defendant.” *Jackson v. TLC Associates, Inc.*, 185 Ill. 2d 418, 425 (1998).

¶ 27 There is an exception to a duty of care imposed on a landowner under a theory of either negligence or premises liability. That being the “open and obvious doctrine,” which as set forth in section 343 of the Restatement (Second) of Torts states: “A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.” Restatement (Second) of Torts § 343A(1) (1965). See *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 20.

¶ 28 There are two exceptions to the open-and-obvious rule: the “distraction exception” and the “deliberate encounter” exception. *Kun Mook Lee v. Young Rok Lee*, 2019 IL App (2d) 180923, ¶ 17. The former exception refers to a circumstance where the landowner “has reason to expect that the invitee’s attention may be distracted so that he will not discover what is obvious, or will forget what he has discovered, or fail to protect himself against it.” Restatement (Second) of Torts § 343A cmt. f, at 220 (1965). The latter exception arises when the landowner “has reason to expect that the invitee will proceed to encounter the known or obvious danger because to a reasonable man in his position the advantages of doing so would outweigh the apparent risk.” *Id.*

¶ 29 Based on these principles, we consider whether the trial court properly granted summary judgment in JBSS’s favor.

¶ 30 A. Whether the Skylight Was a Dangerous Condition

¶ 31 JBSS first argues that it owed no duty to plaintiff because the Skylight was not a dangerous condition on the property. In so arguing, JBSS relies on *Ziemba v. Mierzwa*, 142 Ill. 2d 42, 49-50 (1991). In *Ziemba*, the plaintiff was riding his bike when he was struck by a dump truck exiting the defendant’s property. *Ziemba*, 142 Ill. 2d at 45-46. The plaintiff alleged that foliage growing on the defendant’s property prevented people traveling on the adjacent road from seeing the

defendant's driveway. The defendant moved to dismiss the plaintiff's complaint, claiming that he did not owe a duty to the plaintiff. The trial court granted the motion, and our supreme court affirmed. *Id.* at 52.

¶ 32 In reaching this conclusion, our supreme court considered what the plaintiff alleged, and failed to allege, in his complaint. Specifically, the plaintiff alleged that the driver of the dump truck was negligent when he exited the driveway without warning and without yielding the right-of-way to traffic on the roadway. *Id.* at 50. The plaintiff did not allege, however, that the foliage prevented the dump truck driver from seeing oncoming traffic. *Id.* Viewing these allegations in a light most favorable to the plaintiff, the court held that the accident was not foreseeable because the defendant could not reasonably foresee that the dump truck driver would exit the driveway without first ascertaining whether there was traffic on the roadway. *Id.*

¶ 33 JBSS argues that this case is like *Ziembra* because plaintiff acknowledged that the Skylight was not dangerous when someone was more than 10 feet away. JBSS's reliance on *Ziembra* is misplaced. There, the plaintiff did not allege that the condition on the defendant's land—the presence of foliage—was dangerous. Conversely, here plaintiff has alleged that the Skylight was dangerous. These allegations were corroborated by Arway, who testified to the OSHA requirements that safety gear be worn near a skylight because it was a hazard. Further, the record indicates that the RMM employees did, in fact, wear safety equipment while working within six feet of the Skylight.

¶ 34 JBSS insists that the Skylight was not dangerous when workers were at least 10 feet away from it. Obviously, a dangerous condition is less dangerous the farther you are away from it. However, just because one is not next to a dangerous condition does not cause that condition to lose its inherent dangerousness. Further, in the case before us, plaintiff got so close to the Skylight

that he fell through it. Based on these facts, it is apparent that the Skylight was a dangerous condition.

¶ 35 B. Whether the Dangerousness of the Skylight

Was an Open and Obvious Condition

¶ 36 Moreover, not only was the Skylight dangerous, but its dangerousness was open and obvious. Again, Arway testified that OSHA required that there be safety precautions in place if one was working within six feet of a skylight. The clear reason for such precautions is because a skylight is a hazard. Plaintiff acknowledged that he was aware of the Skylight and was wearing safety gear when working within six feet of it.

¶ 37 C. JBSS's Duty to Warn of an Open and Obvious Condition

¶ 38 However, the existence of an open and obvious danger is not a *per se* bar to finding that a landowner has a duty to exercise reasonable care. *Jackson*, 185 Ill. 2d at 425. In determining whether such a duty is owed, we must still apply the four-part duty analysis set forth above. *Id.*; see also *Ward v. Mid-American Energy Co.*, 313 Ill. App. 3d 258, 261 (2000).

¶ 39 In *Ward*, the Illinois Appellate Court, Third District, was confronted with a similar issue to the one presented here. That being whether a landowner had a duty to warn those on his land that a dangerous condition was even more dangerous than it appeared. *Ward*, 313 Ill. App. 3d at 260-61. There, two teenage boys were playing catch by a body of water that was located below a dam owned and operated by the defendant. *Id.* at 259. After the boys entered the water to retrieve their ball, they were swept up in dangerous currents and drowned. *Id.* The plaintiffs alleged that the defendant had created the dangerous currents and knew that the dangerousness of the currents were not apparent from the surface. *Id.* at 259-60. The trial court dismissed the plaintiffs' complaint, finding that the dangers presented by a body of water were open and obvious. *Id.* at 260.

¶ 40 On appeal, the reviewing court applied the four-part traditional duty analysis. *Id.* at 261. With respect to the first fact—the likelihood of injury—the court recognized that a body of water presents an open and obvious danger of drowning. *Id.* The court then expounded:

“Nevertheless, plaintiffs have alleged that the existence of powerful underwater man-made currents was not apparent from the surface and the danger was not open and obvious. A dangerous condition is ‘obvious’ when ‘ “both the condition and the risk are apparent to and would be recognized by a reasonable [person]” ’ exercising ordinary perception, intelligence and judgment. *Deibert v. Bauer Brothers Construction Co.*, 141 Ill. 2d 430, 435 (1990), quoting Restatement (Second) of Torts § 343A, comment b, at 219 (1965). In this case, while the dangers associated with the water were obvious (strong currents, submerged obstacles, sudden drop-offs, etc.), the increased risks caused by the dangerous man-made currents were hidden beneath the surface. Under those circumstances, we believe the likelihood of injury was at least moderate.” (Emphasis omitted.) *Id.*

¶ 41 As to the second factor, the reasonable foreseeability of injury, the reviewing court found that the foreseeability was very high, despite the obvious dangers associated with bodies of water. *Id.* According to the plaintiff’s complaint, the defendant knew that the dangerous currents were not apparent and that there had been six previous drownings in the area. *Id.* at 261-62.

¶ 42 As to the remaining two factors, the magnitude of the burden of guarding against the injury and the consequences of placing that burden on the defendant, the reviewing court found that they were both minor. *Id.* at 262. The reviewing court determined that, based on the plaintiffs’ allegations, all the defendant needed to do “was simply *** place and maintain signs warning of the dangerous underwater currents.” *Id.*

¶ 43 Based on consideration of the four factors, the reviewing court found that the defendant owed a duty to warn the plaintiffs' decedents of the dangerous underwater currents allegedly produced by the defendant's dam. *Id.* The reviewing court therefore reversed the trial court's dismissal of the plaintiffs' complaint. *Id.* at 263.

¶ 44 *Ward* is analogous to the instant case. First, as in *Ward*, the likelihood of injury in this case was at least moderate. Just as the treacherous, man-made undercurrents made the water more dangerous in *Ward*, the lack of protective netting under the Skylight made it more dangerous. As in *Ward*, the enhanced danger of what was beneath the surface was not apparent to those on the surface. Further, plaintiff testified that skylights generally have protection underneath. If they do not, this information is communicated to workers. Arway testified that had the RMM employees known that the Skylight was unprotected, he would have had the RMM employees wear their protective gear on the second day as well. This would obviously have lessened the possibility of plaintiff being injured.

¶ 45 As to the second factor, as in *Ward*, the reasonable foreseeability of injury was high. In *Ward*, the defendant knew of the existence of the dangerousness of the undercurrents. *Id.* at 261-62. Here, JBSS's knowledge of the dangerousness of an unprotected skylight was apparent from its having installed protective covers on most of the other skylights. JBSS was also aware that the Skylight did not have a protective cover because Hess had recommended that one be installed.

¶ 46 JBSS insists that it could not have reasonably foreseen that plaintiff would be injured because the circumstances of plaintiff's fall were unforeseeable. Specifically, JBSS contends that plaintiff's injuries resulted from freakish, bizarre or fantastic circumstances. Relying on *Lee*, 2019 IL App (2d) 180923, ¶ 29, JBSS asserts that such fantastic circumstances are not, as a matter of law, reasonably foreseeable.

¶ 47 In *Lee*, the plaintiff climbed a ladder that was tied to another ladder and cut a tree limb against which the ladder was itself leaning. *Id.* ¶ 5. Applying the open and obvious doctrine, this court determined that the defendant landowner had no duty to protect against the risk entailed by the plaintiff's conduct. *Id.* ¶ 27. We explained: "We fail to understand how any reasonable person could not have appreciated the open-and-obvious danger of tying two ladders together and placing those ladders against a tree limb 20 to 25 feet above the ground, the very limb that he was attempting to cut down." *Id.* We held that the plaintiff's injuries that resulted from such "freakish, bizarre, and fantastic circumstances" were not reasonably foreseeable. *Id.* ¶ 29.

¶ 48 Here, JBSS tries to portray the circumstances of plaintiff's fall as "freakish." JBSS describes plaintiff as hopping and jumping 10 to 12 feet across the roof to untangle himself from the power washer. However, plaintiff's testimony is that, as he was kicking to free the hose of the power washer from his feet, he slipped backwards, lost his balance, and fell arm-first through the Skylight. Tripping and falling is common and is not some "bizarre, freakish, or fantastic event." (Internal quotation marks omitted.) *Jarosz v. Buona Cos.*, 2022 IL App (1st) 210181, ¶ 38. Plaintiff's conduct is unlike the plaintiff's in *Lee*. In *Lee*, it was "bizarre" that the plaintiff would place a ladder against the very tree limb that he was planning to cut. *Lee*, 2019 IL App (2d) 180923, ¶ 29. Here, it was not "bizarre" that plaintiff would slip and fall while cleaning a dirty roof. As such, JBSS's argument that it was unforeseeable that plaintiff would slip and fall while he was on the roof is unpersuasive.

¶ 49 As to the third and fourth factors, as in *Ward*, the burden of guarding against the injury and the consequences of placing that burden on the defendant were minimal. In *Ward*, the defendant could have met its burden by placing signs warning of the dangerous underwater currents. Here,

JBSS could have met its burden by informing the RMM employees that the Skylight did not have a protective net underneath it or by posting a warning regarding that lack of a protective net.

¶ 50 JBSS argues that the magnitude of guarding against injury is great because it “would effectively require all landowners and possessors of land (commercial and residential) to install fall arrest protective covers or barriers on all skylights.” JBSS also insists that the consequences of such a mandate would be extreme as it would “financially shock the financial viability of companies and homeowners throughout the state.”

¶ 51 In so arguing, JBSS overlooks plaintiff’s assertion that JBSS should have warned him that the Skylight lacked any such protection. Such a verbal warning would not have imposed any significant burden on JBSS or led to any “extreme” financial consequences.²

¶ 52 JBSS acknowledges that it did not inform RMM that the Skylight possessed fall protection, externally or underneath. However, it insists that it was not obligated to provide any such warnings regarding the Skylight because its dangerousness was open and obvious and plaintiff knew about it. In so arguing, JBSS relies on *Blue v. Environmental Engineering Co.*, 215 Ill. 2d 78, 106 (2005) (“Reasonable care on the part of the possessor, therefore, does not ordinarily require precautions, or even a warning, against dangers which are known to the visitor, or so obvious to him that he may be expected to discover them.” (citing Restatement (Second) of Torts § 343A, cmt. e, at 219 (1965))); and *Glass v. Morgan Guaranty Trust Co.*, 238 Ill. App. 3d 355, 361 (1992) (defendant

²Even if we were to consider the financial consequences imposed on JBSS for installing protection around the skylights, the record reveals that such expenses would not be “extreme.” JBSS ultimately spent \$44,000 to have 10 skylight screens installed. Controller Finn testified that, based on JBSS’s financial state, there was nothing that would have precluded it from installing skylight screens when Safety Director Hess had recommended.

was not obligated to warn plaintiff of the potential danger of stairs because plaintiff knew about them). Neither of the above cases supports JBSS's argument. First, *Blue* does not state that no warnings or precautions are ever warranted regarding an open and obvious danger. Rather it uses the phrase "does not ordinarily require precautions." This necessarily means that, in certain circumstances, warnings are appropriate. Further, unlike the plaintiff in *Glass*, plaintiff was not aware that the hazard was more dangerous than it appeared.

¶ 53 JBSS further argues that plaintiff's alleged lack of knowledge regarding whether the Skylight had any safety mechanisms under it is irrelevant because plaintiff treated the Skylight as a dangerous condition. JBSS's assertion is accurate as to how the RMM employees worked on the first day when they were working within six feet of the Skylight. However, on the second day, they did not treat the Skylight as dangerous, as they did not utilize such protection. Arway explained that had he known the Skylight was unprotected he would have directed the RMM workers to wear their safety gear that second day as well. As such, contrary to JBSS's contention, the RMM workers did not treat the Skylight as a dangerous condition on the day plaintiff fell.

¶ 54 Accordingly, in applying the four-part duty analysis, we determine that JBSS's duty of reasonable care required it to warn plaintiff of the danger presented by the unprotected Skylight. This is because the likelihood of plaintiff's injuries was at least moderate, as the Skylight was more dangerous than it appeared. It was foreseeable that plaintiff may slip and fall while on a dirty roof and be injured by an unprotected skylight. The burden of guarding against plaintiff's injuries and the consequences of placing that burden on JBSS were minimal, as a verbal warning to RMM regarding the Skylight's lack of internal protection would have been sufficient: a warning that JBSS acknowledged it never gave.

¶ 55

D. Exceptions to the Open and Obvious Doctrine

¶ 56 Additionally, the record reveals that the distraction exception to the open and obvious doctrine is also applicable to this case. As noted earlier, the distraction exception generally involves a situation where the injured party was distracted from the open and obvious condition because circumstances required him to focus on some other condition or hazard. *True v. Greenwood Manor West, Inc.*, 316 Ill. App. 3d 676, 680 (2000).

¶ 57 Here, plaintiff's testimony, and the inferences therefrom, indicate that he was distracted³ when, trying to untangle himself from his power washer, he tripped and fell through the Skylight. As noted earlier, tripping and falling on a wet walking surface was not unforeseeable. *Jarosz*, 2022 IL App (1st) 210181, ¶ 38. Further, "it is generally reasonably foreseeable that a construction worker would become distracted and fall through *** a hole, despite its open and obvious nature." *Clifford v. Wharton Business Group, L.L.C.*, 353 Ill. App. 3d 34, 46 (2004); see also *Shaffer v. Mays*, 140 Ill. App. 3d 779, 782 (1986).

¶ 58 In *Clifford*, the plaintiff was working at a construction site near an unguarded stairwell opening. *Clifford*, 353 Ill. App. 3d at 37. As a nearby wall began to collapse, the plaintiff claimed that he " 'became distracted from and momentarily forgetful of the hole and fell through' " as he tried to evade the falling wall. *Id.* at 43. The defendant argued that the distraction exception to the open and obvious rule did not apply because it created neither the hazard nor the distraction. The reviewing court rejected the defendant's argument, finding that it was immaterial who created the

³JBSS points to plaintiff's testimony that indicates "his own actions that brought him to the Skylight were not a distraction." However, the context of plaintiff's statement was that he was not distracted while he performed his work on the roof. Plaintiff later clarified that while he was not distracted from his work, he was distracted from the Skylight at the time he fell.

hazard. *Id.* at 44 (imposing a duty of care on the store even where a customer created his own distraction (citing *Ward v. K mart Co.*, 136 Ill. 2d 132, 153-54 (1990))). Rather, the reviewing court determined that the relevant concern was whether the defendant “had reason to anticipate that a carpenter’s attention is likely to be distracted, so that he would fail to protect himself against the open and obvious dangerous condition.” *Id.* at 45. The reviewing court held that the defendant should have so anticipated as it was generally foreseeable that a worker would become distracted under the circumstances. *Id.* at 46. The reviewing court explained that the supreme court has set forth a low threshold in determining what constitutes a defendant’s awareness that those in proximity to an open and obvious hazard are likely to become distracted. *Id.* at 46-47 (citing *Rexroad v. City of Springfield*, 207 Ill. 2d 33, 46 (2003)).

¶ 59 In *Shaffer*, the plaintiff was injured while helping remodel the house owned by the defendant. *Shaffer*, 140 Ill. App. 3d at 780. A new floor was built on an existing foundation and an opening for a small stairwell to the basement was cut. *Id.* at 781. The plaintiff and other workers knew of the existence of the hole for the stairwell. *Id.* at 782. The plaintiff was helping move a heavy and awkward object into place when he stepped into the uncovered hole and fell to the basement, sustaining severe injuries. *Id.* at 781-82. The court held that the defendant had reason to expect that even though the plaintiff and other workers knew of the hole, they would likely be distracted during the work and step into the hole. *Id.* at 782.

¶ 60 Based on *Clifford* and *Shaffer*, plaintiff tripping after becoming entangled with his power washer would seem to be appropriate grounds to find that the distraction exception to the open and obvious rule applies. JBSS points to several cases, however, that indicate the exception does not apply to “distractions created wholly by the plaintiff himself [as they] are not reasonably foreseeable.” See *Bruns*, 2014 IL 116998, ¶ 22, *Peters v. R. Carlson & Sons, Inc.*, 2016 IL App

(1st) 153539, ¶ 17, *Negron v. City of Chicago*, 2016 IL App (1st) 143432, ¶ 22, *Wilfong v. L.J. Dodd Construction*, 401 Ill. App. 3d 1044, 1047 (2010), and *Sandoval v. City of Chicago*, 357 Ill. App. 3d 1023, 1031 (2005). As plaintiff's own actions led to him being distracted, JBSS insists that the exception is not applicable to this case.

¶ 61 Although these cases JBSS relies on seem to present a conflict with *Clifford* and *Shaffer*, the supreme court in *Bruns* explains how this conflict is to be resolved:

“In contrast to these cases, the plaintiff has failed to identify any circumstance, much less a circumstance that was reasonably foreseeable by the City, which required her to divert her attention from the open and obvious sidewalk defect, or otherwise prevented her from avoiding the sidewalk defect. The only circumstance upon which plaintiff relies is the fact that, at the time she tripped, she was looking not at the sidewalk, but ‘towards the door and the steps’ of the clinic. The issue, however, is not whether plaintiff was looking elsewhere, but why she was looking elsewhere. Plaintiff did not focus her attention on the door and steps of the clinic in order to avoid another hazard or potential hazard like the plaintiffs in *Deibert* and *American National Bank [& Trust Co. of Chicago v. National Advertising Co.*, 149 Ill. 2d 14, 25, 27-28 (1992)]. Nor did plaintiff fail to avoid the sidewalk defect because some other task at hand required her attention, like the plaintiffs in [*K mart Co.*] and *Rexroad*. Thus, the present case shares none of the characteristics of the cases in which we have held the distraction exception applies.” (Emphases omitted.) *Bruns*, 2014 IL 116998, ¶ 30.

¶ 62 Thus, from *Bruns*, the general rule is that the distraction exception may apply if the plaintiff was distracted by another hazard or another task at hand. The distraction exception does not apply if the plaintiff was daydreaming. *Id.* ¶ 22. It is also not applicable if the plaintiff's injuries are the

result of his not paying attention to his surroundings. See *Wilfong*, 401 Ill. App. 3d at 1047 (distraction exception not applicable to worker who was talking on his cell phone when he fell on deep ruts at a construction site); *Sandoval*, 357 Ill. App. 3d at 1031 (distraction exception not applicable to plaintiff’s own inattentiveness). It also does not apply to “commonplace” distractions that could happen anywhere. *Peters*, 2016 IL App (1st) 153539, ¶¶ 18, 20 (distraction exception did not apply to plaintiff who stumbled after hearing a noise); *Negron*, 2016 IL App (1st) 143432, ¶ 22 (same). Further, the exception is not applicable to one who cannot identify what distracted him. *Schroeder v. Gordon/Johnson Limited Partnership*, 2018 IL App (1st) 171989-U, ¶ 31 (distraction exception did not apply to a roofer who fell through a skylight because roofer could not identify what caused him to divert his attention from the skylight).⁴

¶ 63 Here, plaintiff was distracted after trying to avoid another hazard—tripping over the power washer. Thus, based on *Clifford* and *Shaffer*, the distraction exception applies in this case. Based on this determination, we need not determine whether the deliberate encounter exception would also apply to the alleged facts of this case.

¶ 64 E. Whether the Skylight was the Proximate Cause of Plaintiff’s Injuries

¶ 65 Finally, we reject JBSS’s argument that the trial court’s judgment should be affirmed because the Skylight was not the proximate cause of plaintiff’s injuries. Although JBSS acknowledges that proximate cause is ordinarily a question of fact for the jury (*Inman v. Howe Freightways, Inc.*, 2019 IL App (1st) 172459, ¶ 62), it argues here that proximate cause may be

⁴There was not an issue of whether the skylight at issue in *Schroeder* was more dangerous than it appeared because the plaintiff had witnessed two conversations between his employer and defendants where defendants had refused to install any safety barricades around the skylights. Thus, the plaintiff knew that the skylight at issue was unprotected. *Schroeder*, 2018 IL App (1st) 171989-U, ¶ 10.

determined as a matter of law because the material facts are undisputed and reasonable minds could not differ in the inferences to be drawn from those facts (*Abrams v. City of Chicago*, 211 Ill. 2d 251, 257-58 (2004); *Illinois Central R.R. Co. v. Oswald*, 338 Ill. 270, 273-74 (1930)). JBSS insists that “there is no reasonable certainty that [its] alleged acts were a material and substantial factor in bringing about [p]laintiff’s injury.” Rather, it insists that plaintiff, through his own acts and omissions, caused his own injuries.

¶ 66 JBSS essentially argues that plaintiff’s own negligence should bar him from any recovery. However, “[c]ontributory fault is rarely an issue that can be decided on a motion for summary judgment.” *Akerberg v. Metropolitan Rail*, 773 F. Supp. 111, 114 (N.D. Ill. 1991) (citing *West v. Kirkham*, 207 Ill. App. 3d 954, 958-59 (1991)). The record reveals that this is not that “rare” case where contributory fault can be resolved as a matter of law. In making its argument, JBSS ignores the testimony of Arway that, had RMM been warned that the Skylight lacked a protective netting underneath it, the RMM employees would have used ropes and harnesses on the second day of work as well, which may have prevented plaintiff’s injuries. Arway’s testimony ultimately raises a question of fact which is to be resolved by the trier of fact—not this court. *Id.*

¶ 67 III. CONCLUSION

¶ 68 For the reasons stated, we reverse the judgment of the circuit court of Kane County and remand for further proceedings.

¶ 69 Reversed and remanded.

Kraeplin v. John B. Sanfilippo & Son, Inc., 2026 IL App (2d) 250495

Decision Under Review: Appeal from the Circuit Court of Kane County, No. 19-L-131; the Hon. Mark A. Pheanis, Judge, presiding.

**Attorneys
for
Appellant:** Jeffrey M. Brown, of Leonard Law Group, LLC, of Chicago,
and Lynn D. Dowd and Patrick C. Anderson, of Naperville, for
appellant.

**Attorneys
for
Appellee:** Lori Vanderlaan and Wade T. Shimer, of Best, Vanderlaan &
Harrington, of Chicago, for appellees.
