STATE OF MICHIGAN

COURT OF APPEALS

NICHOLAS NOBLE, Plaintiff-Appellant,	UNPUBLISHED April 29, 2026 8:55 AM
v	No. 373652 Monroe Circuit Court
FAMILY AND FRIENDS FUNLAND, LLC, Defendant-Appellee.	LC No. 2023-146712-NO

Before: GARRETT, P.J., and MURRAY and ACKERMAN, JJ.

PER CURIAM.

Plaintiff Nicholas Noble appeals from the trial court's grant of summary disposition to defendant Family and Friends Funland, LLC, in this negligence action arising from a bounce house accident at defendant's indoor play facility. We conclude that plaintiff has raised jury-submissible questions regarding breach and causation, and we therefore reverse and remand for further proceedings.

I. FACTS

On May 20, 2023, plaintiff—then a few months shy of his 30th birthday—was visiting the home of a friend, Jesse O'Neil. Several other members of O'Neil's family were also present, including his girlfriend and daughter (who was roughly five years old). With the adults looking for a way to spend a spring Saturday with children, O'Neil broached the prospect of going to defendant's facility in The Mall of Monroe. There, defendant operates a play space targeted at children featuring seven bounce houses and additional inflatable slides. Plaintiff, O'Neil, and the others agreed on this plan.

Plaintiff testified that upon arriving, "they told us that adults were free and just the kids got to pay." So the adults paid for the children and then chaperoned them in the play area, which included the adults having some fun themselves, like shooting a basketball. At one point, O'Neil's daughter wanted to play in a "Scooby-Doo!" bounce house and asked plaintiff if he would accompany her. He agreed. There was no attendant supervising the bounce house, in part because defendant staffed only three employees at that time of year. While jumping about inside the bounce house, O'Neil's daughter asked if plaintiff could execute a backflip. He did one, and she

asked him to do it again. The second time, he landed on his head and seriously injured his neck. He alleges that he was paralyzed for some time and has regained only limited use of his limbs.

Plaintiff then initiated this negligence action. In his complaint—later supported with an "Inflatable, Trampoline, and Amusement Device Expert," Lance Miller—he asserted that industry standards established a responsibility for bounce house operators to provide an attendant at each device being used "to provide instruction and/or behavior correction" for patrons. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that the industry standards were not legally binding and that in any event plaintiff had only speculative evidence to support causation. After a hearing, the trial court agreed, concluding that plaintiff could not establish breach or proximate cause. It accordingly granted summary disposition to defendant, and this appeal followed.

II. STANDARD OF REVIEW

All trial court rulings on motions for summary disposition are reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). For a motion brought under MCR 2.116(C)(10), a court "considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties . . . in the light most favorable to the party opposing the motion." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The court must grant the motion if the evidence "show[s] that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law." *Id*.

III. ANALYSIS

Plaintiff challenges on appeal the trial court's conclusion that he cannot establish breach or proximate cause. We agree and reverse.

As an initial matter, there is no reasonable dispute that plaintiff was a business invitee. While defendant charged only children, plaintiff was at least as much an invitee as those children. The nature of the duty owed to invitees of entertainment establishments was expressed in *Lane v B & J Theatres, Inc*, 314 Mich 666; 23 NW2d 120 (1946). There, the Court held that "[p]laintiff was an invitee and, while defendant was not an insurer of her safety, the duty rested on it, and its employees, to exercise reasonable care for her protection against injury in [its] theatre." *Id*. at 671. That is the duty that defendant owed plaintiff—to exercise reasonable care for plaintiff's protection against injury in defendant's establishment.

What a defendant must do to act with reasonable care is therefore not a question of duty; it is instead a question of the standard of care, and therefore of breach. This principle was established in *Moning v Alfono*, 400 Mich 425; 254 NW2d 759 (1977). There, the plaintiff was a child whose eye was injured by another child using a slingshot and sued the manufacturer and distributor of the slingshot. The majority observed that the dissent "declares that there is no legal duty to refrain from manufacturing slingshots for and marketing them directly to children," but the majority said that this "obscures the separate issues in a negligence case . . . to combine and state them together in terms of whether there is a duty to refrain from particular conduct." *Id*. at 432-433. The Court further said that "[i]n a negligence case, the standard of conduct is reasonable or due care." *Id*.

at 443. This "general standard of care" is then applied by the fact-finder to establish whether the "specific standard of care" was satisfied. *Id*. at 438.

Here, there is a genuine issue of material fact regarding whether the standard of care was breached. Plaintiff points in particular to ASTM International standard F2374-22—*Standard Practice for Design, Manufacture, Operation, and Maintenance of Inflatable Amusement Devices*—which says that owner/operators are obliged to "[i]nstruct patrons on proper use of the device prior to participation" and "[a]ctively monitor patron play and enforce rules." It also says that "[a]n inflatable amusement device should always be supervised by a trained operator/attendant while inflated unless it is secured from unauthorized access." Plaintiff's expert further supports this by opining that defendant "failed to properly service the Scooby Doo bounce house per industry standards." It is undisputed that defendant did not satisfy these standards, and a question of fact exists as to whether defendant *ought* to have satisfied them.

Defendant argues that reliance on this standard would be a form of negligence per se, which is improper where the industry standard has not been legally adopted in Michigan.[1] We disagree. The existence of the ASTM standard is not *necessarily* proof that defendant breached its duty to plaintiff, but it is *evidence* of it. "[C]ustom and industry practices are relevant to the issue of due care," so "[a]n argument on the basis of industry standards . . . goes to the question whether a defendant breached its duty of ordinary care." *Schultz v Consumers Power Co*, 443 Mich 445, 456; 506 NW2d 175 (1993). Under the ASTM standard, the "[m]inimum number of operators on an inflatable bounce . . . is one (1)," and there is no dispute that did not happen here. That creates a question of fact whether defendant breached its duty. A jury is, of course, free to conclude that the industry standard is excessively cautious, or that the context of a quiet spring Saturday afternoon indoors at the mall rather than a busy outdoor summer festival calls for a more relaxed specific standard of care, but nonetheless, the jury must decide.

Defendant also notes that a label affixed to the bounce house entrance stated, "NO flips, wrestling or running," and argues that plaintiff knew he should not perform such maneuvers inside it. But the label also said, "DO NOT use the ride unless attendant is present," yet the record reflects that defendant only had three attendants on site for approximately seven bounce houses and additional inflatable slides. In context, defendant effectively invited plaintiff to use the bounce house without an attendant notwithstanding the warning label on the bounce house; if that warning was not adhered to, defendant is in no position to fault plaintiff for not observing another warning on the list.[2] We find this argument unpersuasive.

We likewise conclude that plaintiff has established a genuine issue of material fact as to proximate cause. "In a negligence action, a plaintiff must establish both factual causation, i.e.,

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[1] By comparison, MCL 691.1733(b) adopts certain ASTM standards into Michigan law for trampoline court operators.

[2] The parties also dispute whether the warning label is directed to the owner/operator or the user of the bounce house. We need not resolve this question, however, because even if the warning was directed to the user, defendant was at least arguably inviting users to disregard it by providing very few attendants in relation to the number of bounce houses present.

'the defendant's conduct in fact caused harm to the plaintiff,' and legal causation, i.e., the harm caused to the plaintiff 'was the general kind of harm the defendant negligently risked.' " *Ray v Swager*, 501 Mich 52, 64; 903 NW2d 366 (2017) (citation omitted). Moreover, "there may be more than one proximate cause of the same injury." *Bordner v McKernan*, 294 Mich 411, 414; 293 NW 889 (1940).

Here, plaintiff submitted an affidavit in which he asserts that "[h]ad a Funland employee blown a whistle and told me that flip[s] were not allowed after I did the first flip, I would not have attempted a second one." That creates a question of fact as to whether defendant's failure to intervene is a cause in fact of plaintiff's injury.[3] And if a jury were to find that defendant's specific standard of care involved providing an attendant to supervise and warn users against dangerous behavior,[4] then the injury plaintiff suffered is "the general kind of harm the defendant negligently risked" by not providing such supervision. It is precisely the sort of orthopedic injury that is a foreseeable consequence of a bounce house user performing dangerous stunts inside the device.

We conclude that the trial court erred in holding that plaintiff has not demonstrated jury-submissible questions regarding breach and causation. The judgment of the circuit court is therefore reversed and the matter is remanded for further proceedings not inconsistent with this opinion.

/s/ Kristina Robinson Garrett
/s/ Matthew S. Ackerman

[3] The dissent argues that this affidavit does not create a factual dispute because it contradicts plaintiff's deposition testimony. We disagree. Plaintiff was asked "[d]id you feel that you needed to be supervised while you were in the bounce house like by an employee?" and answered "No. I felt like it was safe." We do not believe the affidavit and deposition testimony actually contradict each other—plaintiff's statement that he felt safe in the bounce house is not a statement that he would have rejected being admonished for jumping. Even in the absence of the affidavit, we also believe that a reasonable juror could conclude, based on the juror's ordinary life experience, that regardless of plaintiff's subjective sense of whether he felt that he needed to be supervised, he would have complied if admonished.

[4] This aspect of the specific standard of care alleged by plaintiff distinguishes this case from the trampoline-related caselaw cited by the dissent. Those cases all turn on a failure to *warn* the injured person of the risks of using a trampoline. Here, by contrast, plaintiff has adequately substantiated his assertion that defendant was obliged to do more than merely warn him and instead to *monitor* his conduct and *immediately intervene* if he acted dangerously. If plaintiff had been injured on his first back flip, we would find these cases more relevant, and plaintiff's ability to prove cause-in-fact would be more debatable, because even if defendant had provided an attendant, that attendant may not have had an opportunity to intervene before plaintiff hurt himself.

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MURRAY, J. (*dissenting*).

Family and Friends Funland is a business that provides indoor activities for children and only charges a fee for children to enter. One available activity is to bounce inside a Scooby-Doo bounce house. The Scooby-Doo bounce house contained a warning on its side, informing users before entering that performing flips was prohibited. Despite this, 29-year-old Nicholas Noble, our plaintiff, entered the Scooby-Doo bounce house with his friend's minor daughter. Once inside, the minor encouraged plaintiff to do a back flip, and because plaintiff considered himself skilled at performing back flips, he did so, knowing but not caring about the risks inherent in the attempt. Plaintiff successfully completed the back flip, and upon further encouragement, attempted a second one. This time plaintiff only made it half-way and injured himself. The trial court granted defendant summary disposition on several grounds. I would affirm the trial court's order because there was no genuine issue of material fact as to whether defendant was a proximate cause of plaintiff's injuries.

To prove causation, a plaintiff "must demonstrate that 'but for' the defendant's negligence, the plaintiff's injury would not have occurred." *Nathan v David Leader Mgt, Inc*, 342 Mich App 507, 522; 995 NW2d 567 (2022) (quotation marks and citation omitted). "Proof of proximate cause requires establishing two elements: (1) cause in fact and (2) legal cause or proximate cause." *Auto-Owners Ins Co v Seils*, 310 Mich App 132, 157; 871 NW2d 530 (2015). "Cause in fact requires that the harmful result would not have come about but for the defendant's . . . conduct." *Haliw v Sterling Hts*, 464 Mich 297, 310; 627 NW2d 581 (2001). "A plaintiff must adequately establish cause in fact in order for legal cause or 'proximate cause' to become a relevant issue." *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). "Once a plaintiff produces

the factual support establishing a logical sequence of cause and effect, the plaintiff must also come forward with evidence supporting that the actual cause was proximate, meaning that it created a foreseeable risk of the injury the plaintiff suffered." *Nathan*, 342 Mich App at 522 (quotation marks and citation omitted).

"Proximate cause is that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the injury, without which such injury would not have occurred." *Auto-Owners Ins Co*, 310 Mich App at 157 (quotation marks and citation omitted). "[C]ausation theories that are mere possibilities or, at most, equally as probable as other theories do not justify denying defendant's motion for summary judgment." *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 282; 807 NW2d 407 (2011) (quotation marks and citation omitted).

The material facts surrounding this issue are undisputed. Plaintiff was a 29-year-old adult who had experience doing back flips on trampolines. He admitted he felt no need for supervision, given his prior experience in performing back flips,[1] and that he fully appreciated the risks inherent in attempting a back flip in the bounce house.[2] But, because plaintiff used to be an athlete, he was admittedly "not scared of" those risks. It is also undisputed that there was a warning sign located just beside the entrance to the bounce house, warning against performing any flips in the bounce house, or in even entering the bounce house when no employee was present.[3]

Given plaintiff's admission that he needed no supervision and was not concerned about the inherent risks in performing back flips, his undisputed experience performing back flips, the fact he successfully performed the first back flip, and the undisputed warning at the entrance to the bounce house warning against performing flips, no reasonable juror could conclude that but for the addition of *more* safeguards—in particular, the addition of a staff person to *verbally* warn plaintiff of these dangers/prohibition—plaintiff's accident would not have occurred. For, despite all the aforementioned evidence, plaintiff proceeded to perform a second back flip, knowing the risks involved.[4]

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[1] Plaintiff grew up learning how to do flips on trampolines in his father's gym.

[2] Plaintiff's awareness of the risks involved when performing a back flip is consistent with a long line of caselaw holding that individuals who engage in recreational activity are presumed aware of the risks inherent to that activity. See *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 87; 597 NW2d 517 (1999) ("When people engage in a recreational activity, they have voluntarily subjected themselves to certain risks inherent in that activity. When one of those risks results in injury, the participant has no ground for complaint."); *Higgins v Pfeiffer*, 215 Mich App 423, 426; 546 NW2d 645 (1996).

[3] As one employee testified, the supervisory responsibility they had was geared towards ensuring the safety of the children within the business, not the adults with the children.

[4] Plaintiff's post-deposition affidavit that he would not have attempted the second back flip had an employee told him not to does not create a factual dispute, as a party may not create an issue of fact by submitting an affidavit that contradicts the party's prior deposition testimony. *Palazzola v Karmazin Prod Corp*, 223 Mich App 141, 155; 565 NW2d 868 (1997). In his deposition plaintiff

We addressed the issue of proximate cause in a product liability and negligence case involving an injury on a trampoline in *Van Dike v AMF, Inc*, 146 Mich App 176; 379 NW2d 412 (1985). In a somewhat cursory opinion, this Court upheld the trial court's grant of a directed verdict on the plaintiff's claim that the warnings on the trampoline were not sufficient, holding that the plaintiff did not produce evidence of a duty or proximate causation because he testified that he was aware of the inherent dangers and did not see the warning label:

> The trial court directed a verdict for defendants, on the claim that the information packet was defective, because plaintiff had produced no evidence of a causual [sic] link between the content of the information packet furnished to the Raineys and plaintiff's injuries. In fact, Rainey and others testified that plaintiff was told to get off the trampoline because of the danger involved. Because plaintiff failed to produce any evidence that he would have taken additional precautions to avert the injury had different materials been supplied to the Raineys, there was no evidence to support a finding of proximate cause and the directed verdict for defendants was proper.
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> We also find unpersuasive plaintiff's argument that defendants had a duty to inform the user directly of the dangers inherent in trampolining because, as noted above, there were cautionary labels on the trampoline and plaintiff did not see them. [*Van Dike*, 146 Mich App at 182-183.][5]

Cases from other jurisdictions involving injuries from performing flips on trampolines despite warnings have likewise held on summary judgment that proximate cause is lacking. For example, in *Crosswhite v Jumpking, Inc*, 411 F Supp 2d 1228, 1235-1236 (D Or, 2006), the court granted summary judgment on proximate cause, holding:

> Plaintiff fails to present any evidence to demonstrate a material issue of fact that the lack of different or additional warnings on the trampoline caused his injuries. There is no dispute that plaintiff had jumped on at least five different trampolines over the course of six or seven years prior to his accident. Plaintiff

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clearly testified that he did *not* need any supervision while in the bounce house. His subsequent affidavit that he would have altered course if he *had* been supervised is inconsistent with his prior testimony, particularly when he testified that he was aware of the risks involved.

[5] See also *Cavins v BAT Commercial, Inc*, unpublished per curiam opinion of the Court of Appeals, issued May 23, 2024 (Docket No. 363424), p 7 (trial court should have granted defendant summary disposition because the plaintiff's "injury arose from his attempt to execute an advanced maneuver involving an aerial jump, and because signage in the Distortion section where he was jumping warned of the increased risk of injury from advanced maneuvers, including those involving aerial skills, and that such maneuvers should not be attempted before mastering single trampoline jumping, there is no genuine issue of material fact whether the alleged signage violation was a proximate cause of [the plaintiff's] injury").

states that he never saw any warning on any trampoline, including the trampoline at issue.

Defendant presented evidence that it provided ten warnings on its trampoline. Most of these warnings cautioned potential jumpers of the dangers associated with performing flips, and specifically mention the risk of paralysis that is involved with landing on one's head or neck. Defendant provided other warnings to inform potential users that they can reduce the chance of landing on their head and neck by not performing somersaults or flips. Plaintiff has failed to produce any evidence to support his allegation that his injuries were caused by the lack of additional warnings. Plaintiff seemingly ignored ten warnings posted by the defendant on the trampoline, most of which cautioned users against the precise activity in which plaintiff engaged and warning against the possibility of the precise type of injury that resulted. The record contains no evidence that the absence of yet another warning advising users against performing flips and jumping with multiple people on a trampoline was the "substantial cause" of his injury. [Citations omitted.]

Similarly, in *Anderson v Weslo, Inc*, 79 Wash App 829, 839-840; 906 P2d 336 (1995), the court of appeals upheld the grant of summary judgment because no reasonable juror could find that the lack of additional warnings caused the plaintiff's injuries:

Similarly, because Anderson was aware of the risks of injury, yet paid so little attention to the warnings that were given, it is unlikely that he would have changed his behavior in response to even more detailed warnings. Thus, Anderson has not established cause in fact.

But even if cause in fact presents a jury issue in this case, without the existence of legal causation, proximate cause has not been established.

* * *

These cases demonstrate that determining the existence of legal causation is driven by policy considerations and common sense, which in turn stem from the particular facts of the case. Here, . . . detailed warnings were provided. Again, no matter how many warnings are given, or how detailed they are, it is simply impossible completely to prevent trampoline injuries. As one court has pointed out, providing more detailed warnings may very well reduce the chances they will be read, thereby increasing the risk of injury.

Burchinal v Gregory, 41 Colo App 490, 492; 586 P2d 1012 (1978), came to the same conclusion:

Under the facts here, defendants had no duty to warn John of dangers he already understood and appreciated. Where the potential for danger is readily apparent, a warning of the obvious is not necessary.

> Likewise, defendants had no duty to instruct John since he had more expertise on the use of the trampoline than the defendants and the other two boys. The cause of the injury was not the acts or omissions of defendants, but John's own actions. There was nothing the defendants could have said or done which would have made John more capable of avoiding the obvious risk. Where there is no duty, there can be no negligence. Therefore, no liability can attach to defendants for failure to instruct.
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> Also, defendants' failure to supervise was not a proximate cause of the accident. John admitted that spotters persons stationed near the trampoline to aid jumpers who are about to fall off the trampoline could not have helped him complete the flip he attempted, and, therefore, could not have prevented his injuries. Under these circumstances, the failure to supervise did not create liability. [Citations omitted.]

As the *Burchinal* Court recognized, its decision on proximate cause was consistent with the assumption of risk principles announced in *Nabkey v Jack Loeks Enterprises, Inc*, 376 Mich 397, 400; 137 NW2d 132 (1965):

> Plaintiff contends that defendant should have provided an instructor or attendant but she fails to explain how an instructor or attendant could have prevented the incident. Plaintiff fully understood the nature of the device. She observed others using it. There was nothing an instructor could have said or done which was not readily apparent to her or which, under the circumstances, was not under her own sole control. No instructor could remove the danger of becoming unbalanced. The trampoline was in good operating condition. It did exactly what it purported to do.

See also *Liesener v Weslo, Inc*, 775 F Supp 857, 860 (D Ma, 1991) ("Although no Maryland case has addressed the obviousness of paralyzing injury from trampolines, the few cases in other jurisdictions that have done so have involved persons who subjectively appreciated the risks, which, the courts said, need not thus have been warned against. These cases, therefore, can be said to involve either assumption of the risk or lack of proximate cause, and they are fact-specific.").

The same holds true here. No *reasonable*[6] juror could conclude on these facts that plaintiff's injuries were proximately caused by defendant's failure to *verbally* warn plaintiff of the prohibition of attempting flips in the bounce house, or the dangers in doing so. Plaintiff admitted he was aware of these risks, was not scared of them, did not need supervision, and proceeded anyway to perform not one, but two flips. To say that, but for defendant not providing direct supervision of plaintiff while he was in the bounce house, he would have altered course (especially after successfully performing the first one) is both speculative and inconsistent with his prior

[6] To this point, plaintiff testified that after suffering the injury his friend asked plaintiff why he was even attempting to do a back flip at his age.

testimony. No reasonable juror could conclude that defendant was a proximate cause of plaintiff's injuries. I would affirm.

/s/ Christopher M. Murray