

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

JOHN C. RAPP, Appellant, ) No. ED100042  
 ) Appeal from the Circuit Court of  
vs. ) St. Louis County  
 ) Honorable Mark D. Seigel  
EAGLE PLUMBING, INC., Respondent. ) Filed: June 10, 2014

John Rapp (Plaintiff) appeals the trial court's grant of summary judgment to Eagle Plumbing, Inc. (Defendant) on his action in negligence. Plaintiff contends the trial court erred in granting summary judgment to Defendant based on the open and obvious doctrine because it applies only to possessors of land. Plaintiff also asserts that, even assuming application of the open and obvious doctrine, the trial court erred in entering summary judgment because genuine disputes of material fact exist regarding whether: (1) the hazard posed by the trench wall was open and obvious; (2) Defendant should have anticipated the harm caused by the trench wall's collapse; and (3) Defendant's actions or omissions were the proximate cause of Plaintiff's injuries.

AFFIRMED.

Division Four Holds: Plaintiff failed to preserve the issue of the inapplicability of the open and obvious doctrine on the grounds that Defendant was not a possessor of land. The trial court properly granted Defendant's motion for summary judgment because no genuine issues of material fact exist regarding whether: (1) the hazard posed by the trench wall was open and obvious; and (2) Defendant should have anticipated the harm suffered by Plaintiff. Because Plaintiff was unable to establish duty, an essential element of his negligence claim, we need not address the issue of causation.

Opinion by: Patricia L. Cohen, J.  
Lisa S. Van Amburg, P.J., and Philip M. Hess, J., concur.

Attorney for Appellant: James D. O'Leary

Attorney for Respondent: Portia C. Kayser

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