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# *Ogletree v. Navistar International Transportation Corp.*: The Demise of the "Open and Obvious Danger" Defense

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# *Ogletree v. Navistar International Transportation Corp.*: The Demise of the "Open and Obvious Danger" Defense

After working its way through the appellate court system for almost a decade, the Supreme Court of Georgia made an important decision in *Ogletree v. Navistar International Transportation Corp.*[1] by rejecting the "open and obvious" danger rule in products liability cases and the absolute defense it provided.[2]

## I. FACTUAL HISTORY

On March 10, 1984, Frank Richard Ogletree was killed while assisting a customer in attaching a trailer to the customer's vehicle. Ogletree, an agricultural supply salesman, sold the customer a load of ammonia nitrate that was located in a bulk transport trailer called a "Killebrew." After locating the correct Killebrew, Ogletree turned his back to the customer's vehicle and stood beside an adjacent Killebrew. The customer, whose view of Ogletree was blocked by the Killebrew, mistakenly backed his vehicle toward the adjacent Killebrew, striking and killing Ogletree. The customer's vehicle, which was manufactured by Navistar International Transportation Corporation, did not have an audible back-up alarm.[3]

Consequently, Ogletree's wife brought suit against Navistar for "wrongful death, pain and suffering, and funeral, medical, and necessary expenses of her deceased husband," asserting that Navistar negligently failed to include an audible back-up alarm on the vehicle.[4] In response, Navistar moved for summary judgment, contending that the vehicle was not negligently designed because "the absence of a back-up alarm was open and obvious to any user or bystander."[5] The trial court granted

1. 269 Ga. 443, 500 S.E.2d 570 (1998).
2. *Id.* at 444, 500 S.E.2d at 571.
3. Ogletree v. Navistar Int'l Transp. Corp., 194 Ga. App. 41, 42, 390 S.E.2d 61, 63 (1989).
4. *Id.*
5. *Id.* at 43, 390 S.E.2d at 64.

Navistar's motion, and Ogletree appealed to the Georgia Court of Appeals.[6]

In its first *Ogletree* decision ("*Ogletree I*"), the court of appeals considered "whether or not Navistar showed as a matter of law that it had no duty to install the alarm or that Ogletree's injuries and death resulted solely from his own negligence in that he assumed the risk of injury."[7] The court concluded that Navistar was not precluded from liability because "it was reasonably foreseeable to the cab and chassis manufacturer that in normal operation, the completed product would be backed up and there would be people behind it who were unaware of its rearward movement towards them."[8] However, four months later the court of appeals overruled *Ogletree I* in *Weatherby v. Honda Motor Co.*,[9] noting that *Ogletree* was "predicated upon significant errors of law"[10] because it required Navistar to prove that Mr. Ogletree had actual knowledge of the open and obvious danger.[11]

After the court's decision in *Weatherby*, Navistar appealed, claiming that the trial court was bound by *Weatherby* to grant its motion for summary judgment.[12] In its second *Ogletree* decision ("*Ogletree II*"), the court of appeals concluded that the trial court was bound by the law of the case to follow *Ogletree I*[13] and again rejected Navistar's motion for summary judgment.[14] The case then proceeded to trial and the jury returned a verdict for Ogletree in the amount of $5576.[15] Unhappy with the verdict, Ogletree moved for a new trial on the issue of damages. Navistar, also unhappy with the verdict, moved for a judgment notwithstanding the verdict or, alternatively, a new trial.[16] The trial court granted Navistar's motion for judgment notwithstanding the verdict.[17] However, the court did not rule on Navistar's motion for a new trial, and the case was again reviewed by the court of appeals.[18]

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6. *Id.* at 44, 390 S.E.2d at 65.
7. *Id.*
8. *Id.* at 47, 390 S.E.2d at 67.
9. 195 Ga. App. 169, 393 S.E.2d 64 (1990).
10. *Id.* at 170, 393 S.E.2d at 65.
11. *Id.* at 172, 393 S.E.2d at 66-67.
12. Navistar Int'l Transp. Corp. v. Ogletree, 199 Ga. App. 699, 699-700, 405 S.E.2d 884, 885 (1991).
13. *Id.* at 700, 405 S.E.2d at 886.
14. *Id.* at 701, 405 S.E.2d at 886.
15. Ogletree v. Navistar Int'l Transp. Corp., 227 Ga. App. 11, 13, 488 S.E.2d 97, 99 (1997).
16. Ogletree v. Navistar Int'l Transp. Corp., 221 Ga. App. 363, 364, 471 S.E.2d 287, 287 (1996).
17. *Id.* at 364, 471 S.E.2d at 287-88.
18. *Id.*, 471 S.E.2d at 288.

The court of appeals, in its third *Ogletree* decision ("*Ogletree III*"), determined that the trial court was required to rule on both Navistar's motion for a new trial and its motion for judgment notwithstanding the verdict at the same time to save money, time, and effort, and to force the trial court to make a decision while the case is "most fresh in the trial court's mind."[19] The court of appeals remanded,[20] and the trial court subsequently denied Navistar's motion for a new trial.[21] At this point, both Navistar and Ogletree appealed.[22]

In its fourth *Ogletree* decision ("*Ogletree IV*"), the court of appeals concluded that the evidentiary posture of the case changed between the time Navistar moved for summary judgment after *Ogletree I* and the time the jury returned a verdict for Ogletree.[23] The court then affirmed the trial court's grant of judgment notwithstanding the verdict because the *Weatherby* interpretation of the "open and obvious" rule applied.[24]

The ruling by the court of appeals in *Ogletree IV* to apply *Weatherby* and the "open and obvious" rule prompted the Supreme Court of Georgia to grant certiorari to determine whether the "open and obvious" rule applies in design defect cases.[25] In reconsidering this rule, the court examined a number of different jurisdictions that previously held the "open and obvious" danger rule inapplicable in design defect cases.[26] The court concluded that the "open and obvious" rule, also known as the patent danger doctrine, encourages manufacturers to eliminate safety devices and to make hazards obvious to escape liability.[27] Instead of retaining the open and obvious rule as an absolute defense, the court determined that it was only one of many factors to weigh in a risk-utility formula[28] and that there was no justification to preclude liability for design defect cases brought in strict liability or in negligence.[29] In so holding, the court overruled *Weatherby* and reversed *Ogletree IV*.[30]

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19. *Id.* at 364-65, 471 S.E.2d at 288.
20. *Id.* at 366, 471 S.E.2d at 289.
21. 227 Ga. App. at 13, 488 S.E.2d at 99.
22. *Id.* at 13-14, 488 S.E.2d at 99.
23. *Id.* at 16, 488 S.E.2d at 101.
24. *Id.* at 16-17, 488 S.E.2d at 101.
25. 269 Ga. at 444, 500 S.E.2d at 571.
26. *Id.*, 500 S.E.2d at 571-72.
27. *Id.* at 445, 500 S.E.2d at 572 (citing Auburn Mach. Works Co. v. Jones, 366 So. 2d 1167, 1170 (Fla. 1979)).
28. *Id.*
29. *Id.* at 446, 500 S.E.2d at 572.
30. *Id.* at 444, 446, 500 S.E.2d at 571, 572.

## II. LEGAL BACKGROUND

The patent danger doctrine, otherwise known as the "open and obvious" defense, was first articulated in 1950 by the Court of Appeals of New York in *Campo v. Scofield*[31] when the court stated that a manufacturer is "under no duty to guard against injury from a patent peril or from a source manifestly dangerous . . . as long as the danger to be avoided is obvious and patent to all."[32] Twenty-one years later in *Stovall & Co. v. Tate*,[33] the Georgia Court of Appeals introduced the "open and obvious" defense into Georgia law.[34] In *Stovall* plaintiff was hit by a rock expelled from a lawnmower while she was sitting in her classroom.[35] Plaintiff sued the manufacturer, claiming, among other things, that the manufacturer was negligent for not providing a device to deflect objects thrown from the mower blade.[36] In holding that the "open and obvious" danger rule applied, the court observed that "'there are . . . on the market vast numbers of potentially dangerous products as to which the manufacturer owes no duty of warning or other protection.'"[37] The court added that "[a]lmost every physical object can be inherently dangerous or potentially dangerous in a sense . . . . The law does not require him to warn of such common dangers."[38]

While over the next two decades other states debated the issue of "risk-utility"[39] and the "open and obvious" danger doctrine,[40] Georgia

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31. Campo v. Scofield, 95 N.E.2d 802 (N.Y. 1950).

32. *Id.* at 804.

33. 124 Ga. App. 605, 184 S.E.2d 834 (1971).

34. *Id.* at 610-11, 184 S.E.2d at 838 (citing *Campo*, 95 N.E.2d at 802).

35. *Id.* at 605, 184 S.E.2d at 835.

36. *Id.* at 609, 184 S.E.2d at 837.

37. *Id.* at 610, 184 S.E.2d at 837 (quoting Jamieson v. Woodward & Lothrop, 247 F.2d 23, 25-26 (D.C. Cir. 1957)).

38. *Id.*, 184 S.E.2d at 838 (quoting *Jamieson*, 247 F.2d at 26).

39. In 1976, the Court of Appeals of New York discarded the "open and obvious" defense that it had made famous. Micallef v. Miehle Co., 348 N.E.2d 571, 573 (N.Y. 1976). The defense had been highly criticized for allowing defendant to present what amounted to an affirmative defense of assumption of risk without bearing the burden of showing that plaintiff had subjectively appreciated the risk. *Id.* at 576. The court also argued that the manufacturer was in the best position to make safer products but that the "open and obvious" defense allowed them to make unsafe products as long as the danger they present is patently obvious. *Id.* at 577.

In the 1980s and 1990s, many jurisdictions began to incorporate "risk-utility balancing" in products liability cases. For example, the Supreme Court of New Hampshire noted that when "weighing utility and desirability against danger, courts should also consider whether the risk of danger could have been reduced without significant impact on product effectiveness and manufacturing cost." Thibault v. Sears, Roebuck & Co., 395 A.2d 843, 846 (N.H. 1978). Other jurisdictions have articulated numerous factors associated with

continued to apply the "open and obvious" defense to products liability cases and refused to implement a risk-utility approach.[41] In *Ogletree I* the Georgia Court of Appeals appeared to change subtly the doctrine by stating that the "open and obvious" danger defense should absolve a manufacturer of liability only when it can prove that the consumer had subjective knowledge of the danger.[42] The following year, the Georgia Court of Appeals reversed this decision in *Weatherby*, concluding that *Ogletree I* was "predicated upon significant errors of law."[43] In *Weatherby* plaintiffs sued Honda Motor Co. for failing to attach safety features to the gas tank of Honda motorcycles.[44] The court stated that "[w]hile the 'open and obvious rule' has been the subject of considerable criticism and has been abandoned in some other jurisdictions . . . it continues to be the law in Georgia."[45] Thus, the court in *Weatherby* overruled *Ogletree I*[46] and determined that "[a]ctual knowledge by the user of the danger posed by a product is *not* necessary in order to invoke the 'open and obvious rule.'"[47]

Throughout the 1990s, Georgia appellate courts applied the "open and obvious" danger defense.[48] In *Vax v. Albany Lawn & Garden Center*,[49] for example, the court of appeals applied *Weatherby* in a case concerning a consumer who was injured while operating her riding lawnmower.[50] In that case, a seven-year-old lawnmower "reared up," causing the consumer to fall off the mower and injure her leg on its blade.[51] The

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risk-utility balancing such as "the obviousness of the danger, public knowledge and expectation of the danger . . . and the ability to eliminate or minimize the danger without seriously impairing the product or making it unduly expensive." Radiation Tech., Inc. v. Ware Constr. Co., 445 So. 2d 329, 331 (Fla. 1983).

40. 124 Ga. App. at 610-11, 184 S.E.2d at 838.

41. 195 Ga. App. at 172, 393 S.E.2d at 67.

42. 194 Ga. App. at 44-45, 390 S.E.2d at 65.

43. 195 Ga. App. at 170, 393 S.E.2d at 65.

44. *Id.* at 169, 393 S.E.2d at 65.

45. *Id.* at 170, 393 S.E.2d at 65.

46. *Id.*

47. *Id.* at 172, 393 S.E.2d at 66-67 (emphasis in original).

48. *See, e.g.*, Gragg v. Diebold, Inc., 198 Ga. App. 823, 824, 403 S.E.2d 229, 230 (1991) (affirming the "open and obvious" danger doctrine in a products liability action against a bank for failing to alert incoming customers of security problems); Floyd v. BIC Corp., 790 F. Supp. 276, 278 (N.D. Ga. 1992) (allowing a manufacturer to utilize "open and obvious" danger defense to escape liability in a case concerning a butane lighter that was not child proof); Ream Tool Co. v. Newton, 209 Ga. App. 226, 228-29, 433 S.E.2d 67, 71 (1993) (affirming the "open and obvious" danger doctrine in an action brought against the manufacturer of a wood shaper).

49. 209 Ga. App. 371, 433 S.E.2d 364 (1993).

50. *Id.* at 371, 433 S.E.2d at 366.

51. *Id.*, 433 S.E.2d at 365.

consumer sued the manufacturer, distributor, and retailer of the mower "alleging claims of negligence, strict liability, and breach of warranty."[52] The trial court granted summary judgment for defendants and the court of appeals affirmed, noting that "[d]espite criticism of the 'open and obvious' rule, it remains law in this state."[53]

The Supreme Court of Georgia supported "risk-utility balancing" in defective design claims in a 1994 decision, *Banks v. ICI Americas, Inc.*[54] In that case, the parents of a nine-year-old child sued the manufacturer of a rat poison, alleging that the poison had been defectively designed and inadequately labeled.[55] The jury found for plaintiffs and awarded a large verdict, including punitive damages.[56] The court of appeals reversed on the ground that there was not sufficient evidence to find that the poison was inadequately labeled.[57] The Supreme Court of Georgia granted a writ of certiorari,[58] and after reviewing treatises and decisions from other jurisdictions, concluded that there was "a general consensus regarding the utilization in design defect cases of a balancing test whereby the risks inherent in a product design are weighed against the utility or benefit derived from the product."[59] The court also observed that the risk-utility balancing test was "consistent with Georgia law, which has long applied negligence principles in making the determination whether a product was defectively designed."[60] Finally, after acknowledging that the risk-utility analysis was consistent with Georgia law, the court stated that "we hereby adopt the risk-utility analysis."[61]

The most important portion of *Banks* was not found within the text of the opinion, but rather within a footnote. Footnote six of the opinion articulated "a non-exhaustive list of general factors derived from numerous sources" used in implementing risk-utility balancing.[62] Among these factors the court listed "the gravity and severity of the danger posed by the design; the likelihood of that danger . . . the user's knowledge of the product, publicity surrounding the danger . . . as well as common knowledge and the expectation of danger; [and] the user's

52. *Id.*
53. *Id.* at 372, 433 S.E.2d at 366.
54. 264 Ga. 732, 734-35, 450 S.E.2d 671, 673-74 (1994).
55. *Id.* at 732-33, 450 S.E.2d at 672.
56. *Id.* at 733, 450 S.E.2d at 672.
57. *Id.*
58. *Id.*
59. *Id.* at 734, 450 S.E.2d at 673.
60. *Id.* at 735, 450 S.E.2d at 674.
61. *Id.*
62. *Id.* at 736, 450 S.E.2d at 675.

ability to avoid danger."[63] Because the decision did not explicitly overrule the "open and obvious" danger defense, questions remained on its continued viability in Georgia.

The first case to discuss the status of the "open and obvious" danger defense after *Banks* was *Snow v. Bellamy Manufacturing & Repair*.[64] In this federal case from the Northern District of Georgia, the court analyzed *Banks* to determine its impact on the "open and obvious" danger doctrine.[65] In an unpublished order detailing numerous motions presented by plaintiff and defendant, the court rejected defendant's argument that the "open and obvious" defense precluded liability and thus denied the manufacturer's motion for summary judgment.[66] In making this determination, the court extensively reviewed *Banks* to determine whether the "open and obvious" danger rule was still applicable.[67] After reviewing the risk-utility analysis and the effect it had on the patent danger doctrine in other jurisdictions, the court concluded that *Banks* had "impliedly overruled the open and obvious doctrine as applied to products liability design defect cases."[68]

Seven months later, the United States District Court for the Northern District of Georgia revisited the "open and obvious" danger doctrine in *Raymond v. Amada Co.*[69] In that case a metal worker crushed his hand in an industrial machine used to bend sheets of metal.[70] The metal worker sued the distributor of the machine, claiming that it was defectively designed.[71] The distributor responded by alleging that the danger posed by the machine was open and obvious.[72] After discussing the risk-utility approach presented in *Banks* and the district court's order in *Snow*, the court again determined that "*Banks* ha[d] impliedly overruled the open and obvious doctrine as applied to products liability design cases."[73]

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63. *Id.* at 736 n.6, 450 S.E.2d at 675 n.6.

64. CIV. A. No. 1:94-CV-957-JTC, 1995 WL 867859 (N.D. Ga. Sept. 26, 1995) (unpublished decision).

65. *Id.* at *10. Plaintiff in this case was injured while exiting a mobile makeup trailer which "had no steps, ladder, [or] handles . . . to assist with entry or exit." *Id.* at *1.

66. *Id.* at *11.

67. *Id.* at *10.

68. *Id.* at *11.

69. 925 F. Supp. 1572 (N.D. Ga. 1996).

70. *Id.* at 1575.

71. *Id.*

72. *Id.* at 1576.

73. *Id.* at 1578.

While these federal district courts interpreted *Banks* to have "impliedly overruled the open and obvious danger doctrine,"[74] the Georgia Supreme Court would not explicitly acknowledge this change until *Ogletree*.[75]

## III. COURT'S RATIONALE

In *Ogletree* the Supreme Court of Georgia concluded that "the 'open and obvious danger' rule is not controlling in a case where, as here, it is alleged that a product has a design defect."[76] To support its holding, the court referred to a number of different sources.[77] First, the court referred to the court of appeals determination in *Banks* that a risk-utility balance should be used in design defect cases.[78] Second, the court acknowledged that numerous foreign cases and "[t]he overwhelming majority of jurisdictions" have discarded the "open and obvious" rule.[79] Third, the court referred to the Restatement (Third) of Torts: Products Liability and academic commentators who had criticized the rule.[80] Finally, the court provided several policy reasons to discard the "open and obvious" rule.[81]

The court rationalized its decision to discard the "open and obvious" rule by reaffirming *Banks* and the risk-utility formula found therein.[82] The court noted that "the risk-utility factors which were explicitly mentioned in *Banks* encompass the degree to which the danger in the product is open and obvious."[83] Because the court acknowledged in *Banks* that the open and obvious danger of a product was one of the factors to be used in the risk-utility formula, the court held that the "open and obvious" rule was no longer necessary.[84]

The court also observed that decisions from other jurisdictions had "abandoned or rejected the obvious danger rule."[85] In addition, the court was persuaded by the Restatement (Third) of Torts: Products Liability and the accompanying comments which stated that the "open

74. *Id.*; *Snow*, 1995 WL 867859, at *11.
75. 269 Ga. at 444, 500 S.E.2d at 571.
76. *Id.*
77. *Id.* at 443-46, 500 S.E.2d at 571-72.
78. *Id.* at 444, 500 S.E.2d at 571.
79. *Id.*, 500 S.E.2d at 571-72.
80. *Id.*, 500 S.E.2d at 572.
81. *Id.* at 444-45, 500 S.E.2d at 572.
82. *Id.* at 444, 500 S.E.2d at 571.
83. *Id.*
84. *Id.*
85. *Id.*

and obvious" danger rule "is not viable."[86] The court also relied on reporter's notes in the Restatement which included criticism of the "open and obvious" danger rule by academic commentators.[87] Together with the Banks decision to utilize the risk-utility formula, this persuasive authority provides the backbone of the court's decision.

Finally, the court set forth numerous policy reasons for discarding the "open and obvious" danger rule.[88] The court acknowledged that "'[t]he patent danger doctrine encourages manufacturers to be outrageous in their design, to eliminate safety devices, and to make hazards obvious.'"[89] However, by discarding the "open and obvious" danger rule, the court concluded that manufacturers would be forced to consider obvious dangers and encouraged to eliminate them or provide safety mechanisms.[90] The court also observed that the openness and obviousness of the danger was not rendered irrelevant, but is to be utilized in the risk-utility formula.[91] While a defendant is still permitted to argue that the plaintiff should have been objectively aware of the patent or obvious risk involved in using the product, this assertion is no longer dispositive of the liability issue.[92]

## IV. IMPLICATIONS

*Ogletree* has caused a significant change in the defense of products liability cases in Georgia. By explicitly rejecting the "open and obvious" danger rule and the absolute defense that it previously provided, the court has evinced a willingness to align itself with the Restatement (Third) of Torts: Products Liability and a majority of other jurisdictions.[93] The decision is also a logical extension of the risk-utility formula first presented in *Banks*.[94] *Banks* opened the door to *Ogletree* by articulating a number of factors to be used by courts when analyzing a products liability claim.[95] The nonexhaustive list of factors presented in *Banks* appeared to include the extent to which a product was patently dangerous.[96] However, because that issue was not on appeal in *Banks*,

86. *Id.*, 500 S.E.2d at 572.
87. *Id.* at 444-45, 500 S.E.2d at 572.
88. *Id.*
89. *Id.* at 445, 500 S.E.2d at 572 (quoting Auburn Mach. Works Co. v. Jones, 366 So. 2d 1167, 1170 (Fla. 1979)).
90. *Id.*
91. *Id.*
92. *Id.*
93. *Id.* at 444, 500 S.E.2d at 571-72.
94. 264 Ga. at 734-35, 450 S.E.2d at 673-74.
95. *Id.* at 736 & n.6, 450 S.E.2d at 675 & n.6.
96. *Id.* at 736 n.6, 450 S.E.2d at 675 n.6.

it was left for a future case. *Ogletree* provided the court with the opportunity.

The decision in *Ogletree* was appropriate when considered in relation to the risk-utility formula. The court's holding does not destroy the "open and obvious" danger defense; it simply ensures that the defense is no longer absolute.[97] Defendants will be allowed to present evidence showing that a product has an open and obvious danger, and this evidence will be considered by the jury. However, this evidence will comprise only *one* of the risk-utility factors considered by the jury and the court.[98] For purposes of the risk-utility analysis, the court apparently concluded that a defendant can present evidence to show whether the plaintiff objectively should have been aware of the obvious danger.[99] Because this objective awareness is only one of the factors to weigh in a risk-utility formula, it is no longer an absolute defense.[100]

On the other hand, it appears that an "open and obvious" danger can still be used as an absolute defense if a defendant can prove that the plaintiff appreciated the open or obvious danger and assumed the risk. This places a heavier burden on the defendant because the defendant must show that the plaintiff subjectively realized and assumed the risk. While the court in *Ogletree* did not discuss the effect that its decision would have on the assumption of the risk defense, the United States District Court for the Northern District of Georgia has concluded that it remains a viable defense in products liability cases.[101] As long as a defendant can show that the plaintiff subjectively appreciated the obvious danger or risk, "it is not inherently inconsistent with risk-utility balancing to hold that [he] . . . should be prevented from recovering against the manufacturer for a resulting injury."[102]

The decision is also important because it has the potential to affect the way in which products are manufactured. Because manufacturers are in the best position to protect consumers, *Ogletree* will encourage them to produce safer products by designing out, or providing guards against, open and obvious dangers. With the abolition of the "open and obvious" danger defense, plaintiffs will be able to assert freely that the danger was open and obvious and could have been easily corrected by the manufacturer. This will force manufacturers to examine carefully the costs and benefits of providing certain safety mechanisms.

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97. 269 Ga. at 445, 500 S.E.2d at 572.
98. *Id.*
99. *Id.*
100. *Id.*
101. 925 F. Supp. at 1579.
102. *Id.* at 1578.

Finally, the decision will help plaintiffs survive motions for summary judgment and allow them to present their cases to a jury. In fact, only four months after the court rejected the "open and obvious" rule, the Georgia Court of Appeals applied *Ogletree* in *Zeigler v. CloWhite Co.*[103] and determined that the trial court erred in granting summary judgment for a manufacturer.[104] In that case, defendant manufactured lemon-scented bleach that injured a consumer. The consumer claimed that the lemon-scent masked the toxicity of the bleach and its fumes.[105] The court of appeals reversed the trial court's decision, stating that "an open and obvious danger did not preclude an action against the manufacturer of a product" because it was only one factor used in the risk-utility analysis.[106]

In conclusion, *Ogletree* has continued the transformation of Georgia products liability law in design defect cases by rejecting the longstanding "open and obvious" danger defense. It also reflects the court's decision to align itself with the Restatement (Third) of Torts: Products Liability and a majority of other jurisdictions. The decision will encourage manufacturers to examine safety issues and will allow plaintiffs a better opportunity to present their case before a jury.

RICHARD L. SIZEMORE

103. 234 Ga. App. 627, 507 S.E.2d 182 (1998).
104. *Id.* at 627, 507 S.E.2d at 183.
105. *Id.*
106. *Id.* at 628, 507 S.E.2d at 184.