STATE OF MICHIGAN

COURT OF APPEALS

TRACY GEHRKE,

Plaintiff-Appellant,

v

CONNOR FOREST INDUSTRIES, INC.,

Defendant-Appellee.

UNPUBLISHED
June 2, 1998

No. 204667
Gogebic Circuit Court
LC No. 96-000308 NO

Before: Markman, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

On August 17, 1996, while driving a "four wheeler" all-terrain vehicle on defendant's property, plaintiff sustained personal injuries when she collided with a gate that blocked defendant's private road. After ruling that defendant was entitled to the protections afforded by the Recreational Land Use Act, MCL 324.73301; MSA 13A.73301, the lower court granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(10), holding that plaintiff had failed to present sufficient evidence to establish a genuine issue of material fact that defendant's conduct constituted either gross negligence or wilful and wanton misconduct. We affirm.

Plaintiff argues that because defendant's property was zoned for industrial use and was used for business purposes, the Recreational Land Use Act does not apply and therefore does not afford defendant with its protections. Plaintiff relies on *Wymer v Holmes*, 429 Mich 66, 79; 412 NW2d 213 (1987), in which the Supreme Court held that the Legislature did not intend the Recreational Land Use Act to apply to urban, suburban, and subdivided lands. However, in the present case, *Wymer* is not controlling. The *Wymer* decision construed the previous version of the Recreational Land Use Act that provided:

> No cause of action shall arise for injuries to any person who is on the land of another without paying to such other person a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use, with or without permission, against the owner, tenant, or lessee of said premises unless the injuries were caused by the gross

> negligence or wilful and wanton misconduct of the owner, tenant, or lessee. [MCL 300.201(1); MSA 13.1485(1), repealed 1994 PA 451.]

The amended version of the statute, which became effective on May 24, 1995, provides:

> (1) Except as otherwise provided in this section, a cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or *trail use*, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.
>
> (2) A cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of entering or exiting from or using a Michigan trailway as designated under part 721 or other public trail, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. For purposes of this subsection, a Michigan trailway or public trail may be located on land of any size *including, but not limited to, urban, suburban, subdivided, and rural land*. [MCL 324.73301(1) and (2); MSA 13A.73301(1) and (2) (emphasis added).]

The Legislature is presumed to act with knowledge of appellate court statutory interpretations. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 505-506; 475 NW2d 704 (1991); *Glancy v Roseville*, 216 Mich App 390, 394; 549 NW2d 78 (1996), lv gtd 454 Mich 907 (1997). Thus, we presume that by changing the scope of the Recreational Land Use Act to include all lands, including lands zoned for urban use, such as industrial use, the Legislature intended for the protections of the statute to be expanded from the limitations set forth in *Wymer*. See *Detroit v Walker*, 445 Mich 682, 697; 520 NW2d 135 (1994). In the present case, plaintiff was using defendant's property for outdoor recreational use and the amended act clearly applies. Because plaintiff did not pay defendant for the use of defendant's property, the act requires that defendant's actions be grossly negligent or constitute wilful and wanton misconduct in order for plaintiff to prevail.

Plaintiff also argues that, even if defendant is afforded limited immunity under the Recreational Land Use Act, defendant's actions in closing the gate in question amounted to wilful and wanton misconduct or, at the least, gross negligence. We disagree and conclude that even if defendant was arguably negligent, defendant's conduct was not so reckless that it showed a substantial lack of concern for whether an injury would result. *Jennings v Southwood (After Remand)*, 224 Mich App 15, 23-24; 568 NW2d 125 (1997). Defendant's operations manager testified that the reason the gate was closed on the date of the accident was because defendant had previously ended all operations and closed the mill on the property. Plaintiff presented no evidence to establish that defendant intended to injure anyone. Defendant's gate was painted bright yellow. After reviewing all the evidence submitted, we hold that defendant's actions, which were intended to close defendant's private road from

trespassers, did not constitute gross negligence or wilful and wanton misconduct as a matter of law. *Montgomery v Dep't of Natural Resources*, 172 Mich App 718, 721; 432 NW2d 414 (1988).

Affirmed.

/s/ Stephen J. Markman
/s/ Richard Allen Griffin
/s/ William C. Whitbeck