

STATE OF MICHIGAN
COURT OF APPEALS

BRIAN GERALD MANKOSKI,

Plaintiff-Appellant,

v

SHANE MIERAS,

Defendant-Appellee.

UNPUBLISHED

March 12, 1999

No. 204659

Kent Circuit Court

LC No. 95-004412 NO

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant went to a facility to participate in indoor rock climbing. Both parties were experienced at the sport. Prior to engaging in climbing, plaintiff signed a document in which he acknowledged the risks inherent in the sport, expressly assumed those risks, and released the facility from liability. Defendant acted as plaintiff's belayer. A belayer is a spotter who watches the climber, controls the tension on the safety rope, and operates a braking device designed to prevent the climber from falling to the ground. When plaintiff fell from the wall, defendant attempted to operate the braking device. Because the safety rope had excessive slack, defendant could not prevent plaintiff from falling to the ground.

Plaintiff filed suit, alleging that defendant was negligent in exercising his duties as a belayer. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that he breached no duty to plaintiff, that plaintiff assumed the risks of injury, that the injury sustained was within the scope of plaintiff's consent to the risks inherent in the sport, and that plaintiff released all participants from liability. The trial court granted defendant's motion based on *Higgins v Pfeiffer*, 215 Mich App 423; 546 NW2d 645 (1996).

This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

We affirm. In *Higgins, supra*, the plaintiff was injured by a baseball thrown by a teammate. We affirmed the grant of the defendants' motion for summary disposition, finding that a participant in a sporting event is assumed to be aware of the inherent risks of injury in the sport, and to have consented to those risks. The plaintiff's injury was within the scope of the plaintiff's consent. *Higgins, supra*, at 425-427. Here, plaintiff expressly acknowledged and consented to the risks inherent in indoor rock climbing, including the risk that his belayer would act in a negligent manner. Plaintiff's injuries were within the scope of his consent. *Higgins, supra*, controls the instant case and supports the granting of defendant's motion for summary disposition.

Contrary to plaintiff's argument, the doctrine of primary assumption of the risk may be asserted as a defense if the plaintiff has expressly contracted to assume the risk. *Felgner v Anderson*, 375 Mich 23, 55-56; 133 NW2d 136 (1965). Plaintiff expressly assumed the risks of indoor rock climbing, including that he would incur injury due to the negligence of his belayer.

Affirmed.

/s/ William B. Murphy
/s/ Barbara B. MacKenzie
/s/ Michael J. Talbot