

STATE OF MICHIGAN  
COURT OF APPEALS

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LEON ZIELINSKI,

Plaintiff-Appellant,

v

SHAWN MANDEVILLE,

Defendant-Appellee.

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UNPUBLISHED

May 25, 2001

No. 221842

Oakland Circuit Court

LC No. 98-009702-NO

Before: Jansen, P.J., and Zahra and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and defendant were assistant coaches at a children's ice hockey practice. The nets had been set up near one another for a goalie drill. While plaintiff was standing by one net addressing the goalies, defendant and another assistant coach were shooting at the other net. One of defendant's shots missed the net, hit the glass, and ricocheted into plaintiff's face. Plaintiff filed this action for damages, asserting that defendant was negligent. We review the trial court's ruling de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997).

In *Ritchie-Gamester v Berkley*, 461 Mich 73; 597 NW2d 517 (1999), the Court rejected the ordinary care standard and instead adopted a reckless misconduct standard of care for coparticipants in recreational activities. *Id.* at 89. Reckless misconduct is the same as wilful and wanton misconduct. The conduct is not wilful in the sense that there is actual intent to harm but is instead the functional equivalent thereof: it shows "such indifference to whether harm will result as to be the equivalent of a willingness that it does." *Jennings v Southwood*, 446 Mich 125, 140; 521 NW2d 230 (1994), quoting *Burnett v City of Adrian*, 414 Mich 448, 455; 326 NW2d 810 (1982).

Plaintiff was hit by an errant shot on goal. There is no evidence that defendant intended to hurt plaintiff, that he deliberately shot the puck toward him, or that he was firing pucks around the rink without regard for the other people on the ice. To the contrary, plaintiff said that he did not see what defendant was doing when he hit the shot and defendant stated that he was shooting at the net but missed. This is not an unexpected event in hockey practice and games. Plaintiff

admitted that he knew that the puck did not always go where the shooter aimed, that people could be hit by errant shots, and that injuries occurred during practice. “[C]onduct within the range of the ordinary activity involved in the sport can hardly be termed reckless.” *Ritchie-Gamester, supra* at 90, n 10. Therefore, the trial court did not err in dismissing plaintiff’s complaint.

Affirmed.

/s/ Kathleen Jansen

/s/ Brian K. Zahra

/s/ Donald S. Owens