

STATE OF MICHIGAN  
COURT OF APPEALS

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BRIAN LEGGERT,

Plaintiff-Appellant,

v

RICK REWEKANT,

Defendant-Appellee.

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UNPUBLISHED

September 10, 2002

No. 233213

Oakland Circuit Court

LC No. 96-515791

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court order granting defendant's motion for a directed verdict. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a directed verdict motion is reviewed de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). In reviewing the trial court's ruling, this Court views the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a question of fact existed. *Hatfield v St Mary's Medical Center*, 211 Mich App 321, 325; 535 NW2d 272 (1995). A directed verdict is appropriate only when no factual question exists upon which reasonable minds may differ. *Meagher, supra*.

The Court in *Ritchie-Gamester v Berkley*, 461 Mich 73, 86-87; 597 NW2d 517 (1999), held that generally speaking, "when people engage in a recreational activity, they have voluntarily subjected themselves to certain risks inherent in that activity. When one of those risks results in injury, the participant has no ground for complaint." However, coparticipants in a recreational activity owe each other a duty to not behave recklessly and as such, a participant in a sporting event may be held liable for injuries resulting from his recklessness. *Id.* at 89, 95.

Defendant testified that injuries plaintiff sustained were the result of defendant "sliding" into third base when plaintiff was in a position in between second and third base. According to defendant, he "tagged up" and ran toward third base, making a decision to slide when he was three feet from plaintiff and he saw plaintiff catch the ball. Plaintiff testified to the contrary that defendant did not slide into third base. Rather, plaintiff testified that defendant deviated from the base path and ran into plaintiff, who was standing on the infield side of third base, and tackled

him. Specifically, plaintiff testified that defendant “leaned into me (plaintiff), put his head in my chest, wrapped his arm around me, and flipped me right over and broke my ankle.”

Reasonable minds could differ as to whether plaintiff sustained injuries to his ankle as a result of defendant sliding into third base when plaintiff stood in his path, a common practice in softball, or as a result of defendant recklessly pummeling plaintiff even though plaintiff was not in defendant’s path to third base. Plaintiff presented sufficient evidence to go to the jury and it was up to the trier of fact to determine whether plaintiff was blocking the base path and defendant made legal contact in an effort to slide into third base or whether plaintiff was standing to the infield side of the base and defendant deliberately left the base path and tackled him. Because a question of fact existed upon which reasonable minds could differ, the grant of a directed verdict was inappropriate.

Further, this case is before this Court for the second time and, under the doctrine of law of the case, “a trial court may not take any action on remand that is inconsistent with the judgment of the appellate court.” *Everett v Nickola*, 234 Mich App 632, 635; 599 NW2d 732 (1999). A directed verdict in this case is inconsistent with this Court’s previous ruling that plaintiff’s testimony was sufficient to support a conclusion that defendant acted recklessly. *Leggert v Rewekant*, unpublished opinion per curiam (Docket No. 204658, issued 7/16/99), slip op at 1.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Helene N. White  
/s/ Janet T. Neff  
/s/ Kathleen Jansen