

STATE OF MICHIGAN  
COURT OF APPEALS

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JULIE NEAL,

Plaintiff-Appellant,

v

TERRY WILKES,

Defendant-Appellee.

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UNPUBLISHED

September 17, 2002

No. 230494

Eaton Circuit Court

LC No. 99-000968-NO

Before: Markey, P.J., and Cavanagh and R. P. Griffin\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a grant of summary disposition in favor of defendant. Plaintiff was injured while riding as a passenger on an all-terrain vehicle (ATV) owned by defendant and driven by his brother on defendant's property in the Village of Dimondale. The trial court granted defendant's motion for summary judgment on the ground that plaintiff's suit was barred under the Recreational Land Use Act (RUA), MCL 324.73301. We reverse and remand for continued proceedings.

Plaintiff argues that summary disposition was improperly granted because the RUA is inapplicable to the facts of the instant case. We agree. We review the trial court's decision to grant a motion for summary disposition under MCR 2.116(C)(7) de novo to determine if the moving party was entitled to judgment as a matter of law. *Rheaume v Vandenberg*, 232 Mich App 417, 420-421; 591 NW2d 331 (1998). In reviewing a motion under this rule, we consider all affidavits, pleadings and other documentary evidence submitted by the parties and construe the pleadings in favor of the non-moving party. *Id.* at 421.

The relevant portion of the RUA states:

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

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\* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. [MCL 324.73301(1).]

Although nothing in the statutory language indicates that the statute is not applicable to the backyards of residential property such as defendant's, see *Winiacki v Wolf*, 147 Mich App 742, 745; 383 NW2d 119 (1985), the statute has been construed to apply "to large tracts of undeveloped land suitable for outdoor recreational uses," not to "[u]rban, suburban, and subdivided lands . . . ." *Wymer v Holmes*, 429 Mich 66, 79-80; 412 NW2d 213 (1987). See, also, *Ballard v Ypsilanti Twp*, 457 Mich 564, 577, n 12; 577 NW2d 890 (1998) (the RUA "was not designed to limit liability in residential backyards").

According to the affidavit of the township supervisor for the Village of Dimondale, defendant's property is zoned as single family residential, is both subdivided and improved, and is properly classified as either urban or suburban land. Furthermore, while it could be argued that the wooded portions of defendant's twelve-acre plot are covered by the RUA because of their undeveloped nature and the impracticability of keeping these areas safe for public use, see *Wymer, supra* at 79, it is undisputed that plaintiff's injuries were not incurred on this portion of defendant's property. Rather, plaintiff was injured when the ATV on which she was riding went over an uneven area of defendant's lawn. Where an injury occurs on an improved portion of an otherwise relatively undeveloped tract, the RUA does not apply. See *Wilson v Thomas L McNamara, Inc*, 173 Mich App 372, 378; 433 NW2d 851 (1988).

Considering the evidence submitted by the parties and construing the pleadings in favor of the non-moving party, we find that the RUA is inapplicable to the facts of this case because plaintiff's injury occurred on defendant's lawn, which is not a type of property that is covered by the statute. Therefore, the trial court erred in granting defendant's motion for summary disposition on this ground. In light of our holding, we need not decide plaintiff's remaining issues.

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

/s/ Jane E. Markey  
/s/ Mark J. Cavanagh  
/s/ Robert P. Griffin