STATE OF MICHIGAN

COURT OF APPEALS

JANE BAZAN AND DAVID BAZAN,

Plaintiffs-Appellants,

v

CRYSTAL ENTERPRISES, INC. AND CRYSTAL MOUNTAIN RESORT,

Defendants-Appellees.

UNPUBLISHED
October 11, 2002

No. 234646
Benzie Circuit Court
LC No. 00-005793-NI

Before: Hood, P.J., and Whitbeck, C.J., and O'Connell, J.

PER CURIAM.

Plaintiffs Jane and David Bazan appeal by right the circuit court's order granting defendants Crystal Enterprises, Inc. and Crystal Mountain Resort's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10) in this personal injury action. We affirm.

Plaintiffs were riding a chairlift at Crystal Mountain when David, Jane's husband, noticed that a group of young people had fallen to the ground near the chairlift unloading area. David yelled to the chairlift operator to stop the chairlift so the young people could get out of the way, but the operator did not stop the chairlift.[1] David and another unidentified occupant of the chairlift decided to avoid the young people by skiing sharply to either side. David told Jane to follow him to the right. Jane attempted to do so, but one of her skis hit one of the young people and she fell to the ground, tearing ligaments in her knee. Jane was out of work for four to five weeks, had arthroscopic surgery, and now claims her knee injury is permanent.

The circuit court granted defendants' motion on the ground that recovery was barred by the assumption of risk provision of the Ski Area Safety Act (SASA), MCL 408.342(2), and in reliance on *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731; 613 NW2d 383 (2000), and *McCormick v Go Forward Operating Limited Partnership*, 235 Mich App 551, 554-555; 599 NW2d 513 (1999).

[1] The chairlift operator, Sam Imbrunone, who plaintiffs originally sued individually as "John Doe," testified in his deposition that he had no recollection of the incident. He is not a party to this appeal.

This Court reviews a decision on a summary disposition motion de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(7) considers whether "the claim is barred because of . . . immunity granted by law . . . ." A motion under MCR 2.116(C)(10) tests whether there is factual support for a claim and is reviewed to determine whether the affidavits, pleadings, depositions, or any other documentary evidence establish a genuine issue of material fact to warrant a trial. *Spiek*, *supra* at 337, citing *Singerman v Municipal Bureau, Inc*, 455 Mich 135, 138; 565 NW2d 383 (1997); see also MCR 2.116(G)(5), (6). This Court will give the nonmoving party the benefit of all reasonable inferences when determining whether summary disposition is appropriate. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 615; 537 NW2d 185 (1995).

The SASA provides, in pertinent part:

> Each person who participates in the sport of skiing accepts the dangers that inhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; collisions with ski lift towers and their components, with other skiers, or with properly marked or plainly visible snow-making or snow-grooming equipment. [MCL 408.342(2).]

Plaintiffs' appealed issues will be discussed together. This matter is controlled by *McCormick*, *supra*, to which we are bound under the doctrine of stare decisis. MCR. 7.215(I)(1). According to this authority, plaintiffs' argument that the present case differs because her injuries had at least two proximate causes, both the fallen skiers (for which plaintiffs acknowledge immunity) and Imbrunone's failure to stop the chairlift (for which plaintiffs claim liability), is unsuccessful.

> The crux of plaintiffs' argument is that it is not obvious and necessary for a skier, when alighting from a chairlift, to have to avoid a fallen skier. Therefore, plaintiffs argue, the immunity provision does not apply. We disagree.
>
> The language of the statute itself establishes that plaintiff's injury comes within the immunity provisions. *The statute says that collision with another skier comes within the dangers that are necessary and obvious. It does not exclude the ski lift exit area.* Therefore, because plaintiff's injury arose from the collision with another skier, or the attempt to avoid such a collision, it comes within the immunity provision of the statute. That is, by statutory definition, any collision with another skier constitutes a necessary and obvious danger for which defendant is immune. In short, the location of the collision or fallen skier is irrelevant.
>
> Because the location of the fallen skier is irrelevant, so is the testimony offered by plaintiffs that the ramp area marked by the cones was inadequately small or that collisions with fallen skiers in the ramp area could be avoided by stopping the lift. *Perhaps the statute should retain liability to the ski area operator for collisions occurring within the exit ramp area* where the ski lift operator does not stop the lift, including requirements for the size and shape of

> exit ramps. *However, the statute does not.* The decision whether such provisions or exceptions are necessary and appropriate is for the Legislature to determine, not the courts. [*McCormick, supra* (interpreting MCL 408.342[2]) (emphasis added); see also *Kent, supra* at 741-742.]

Therefore, in this case, defendants are immune by law under the SASA, and their summary disposition motion was properly granted. MCR 2.116(C)(7); *McCormick*, *supra*. Consequently, there is also no genuine issue of material fact in this matter. MCR 2.116(C)(10).

Affirmed.

/s/ Harold Hood
/s/ William C. Whitbeck
/s/ Peter D. O'Connell