STATE OF MICHIGAN

COURT OF APPEALS

EUGENE FELDMAN,

Plaintiff-Appellant,

v

MT. HOLLY RESORT, INC.,

Defendant-Appellee.

UNPUBLISHED
November 22, 2005

No. 263199
Oakland Circuit Court
LC No. 2004-059056-NO

Before: Davis, P.J., and Fitzgerald and Cooper, JJ.

PER CURIAM.

Plaintiff Eugene Feldman appeals as of right the trial court's dismissal of his negligence claims against defendant Mt. Holly Resort upon its motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). We affirm.

The facts of this case are not disputed. On January 31, 2004, plaintiff was snowboarding with friends at defendant's facility. Midway through the day, he rode a chair lift to the top of a hill with a friend. Plaintiff turned to face his friend while ascending the hill and his arm became lodged in the chair's metal framework. However, plaintiff did not discover that he was stuck until he attempted to step down from the seat. As the lift continued to move, plaintiff's arm was severely fractured and finally dislodged.

We review a trial court's determination regarding a motion for summary disposition de novo.[1] A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the pleadings alone and should be granted only if the factual development of the claim could not justify recovery.[2] A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim.[3] "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence

[1] *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

[2] *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001).

[3] *Auto-Owners Ins Co v Allied Adjusters & Appraisers, Inc*, 238 Mich App 394, 397; 605 NW2d 685 (1999).

submitted in [the] light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists."[4] Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law.[5]

The trial court determined that plaintiff's claims were barred by the Michigan Ski Area Safety Act (SASA).[6] Section 22 of the act,

> 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 . . . collisions with ski lift towers and their components . . . .[7]

Pursuant to this assumption of risk clause, skiers assume the obvious and necessary dangers of skiing.[8] When an injury occurs as a result of a danger enumerated in the SASA, whether the skier or ski lift operator behaved in a reasonable and prudent manner is irrelevant.[9]

In *Kent v Alpine Valley Ski Area, Inc*, this Court found that the trial court properly granted defendant's motion for summary disposition where the plaintiff was injured as a result of a collision with a chair lift component.[10] In *Kent*, the plaintiff took his young grandson on a chair lift after asking an employee which hill was the safest for the child. The chair approached too quickly from behind and knocked the boy down. The plaintiff was knocked back into a seated position. He reached out to grab his grandson and slipped from the seat. However, his arm became entangled in the seat post. The plaintiff's arm broke and he was dragged for several feet before the lift came to a stop.[11] This Court determined that the plaintiff's contact with the seat post was a "collision" within the SASA, as a "collision" does not require the skier to "actually [be] in the process of skiing."[12] We are bound by this previous published opinion of our Court.[13]

Plaintiff in this case was similarly injured when he became entangled in a component of a chair lift. The reasonableness of his behavior as he turned to talk with his friend is irrelevant to

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[4] *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001).

[5] *MacDonald, supra* at 332.

[6] MCL 408.321 *et seq.*

[7] MCL 408.342(2).

[8] *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 739; 613 NW2d 383 (2000).

[9] *Id.* at 739-740, quoting *Schmitz v Cannonsburg Skiing Corp*, 170 Mich App 692, 696; 428 NW2d 742 (1988).

[10] *Id.* at 743-744.

[11] *Id.* at 732-733.

[12] *Id.* at 742.

[13] MCR 7.215(C)(2).

the determination of whether he assumed the risk of this injury. The danger of becoming entangled in the metal frame of the chair lift seat is no less obvious and necessary than the danger of breaking one's arm against the seat post. Accordingly, the trial court properly determined that plaintiff's injury was the type barred by the SASA.

Affirmed.

/s/ Alton T. Davis
/s/ E. Thomas Fitzgerald
/s/ Jessica R. Cooper