STATE OF MICHIGAN

COURT OF APPEALS

SUSAN M. MCCOY and JAMES MCCOY,

Plaintiffs-Appellants,

v

KELLEY'S HARLEY-DAVIDSON, INC., d/b/a WILD BOAR HARLEY-DAVIDSON, INC., and MOTORCYCLE SAFETY FOUNDATION, INC.,

Defendants-Appellees.

UNPUBLISHED
December 27, 2007

No. 273047
Ottawa Circuit Court
LC No. 05-053474-NO

Before: Bandstra, P.J., and Meter and Beckering, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's decision to grant defendants' motions for summary disposition in this negligence action. We affirm.

Plaintiff Susan McCoy[1] purchased two motorcycles from defendant Kelley's Harley Davidson, Inc., d/b/a Wild Boar Harley Davidson, Inc. ("Kelley's") in June 2002. After purchasing the motorcycles, plaintiff enrolled in a motorcycle safety course titled "Rider's Edge New Riders Course" partially sponsored by Kelley's and defendant Motorcycle Safety Foundation, Inc. ("MSF"). During the course, plaintiff accidentally drove a motorcycle into a brick wall, injuring her ankle, pelvis, scapula, thumb and wrist. Plaintiff brought this action against defendants in June of 2005 for injuries arising out of the motorcycle accident, which occurred in June of 2002. The trial court granted defendants' motions for summary disposition based on the presence of a release, MCR 2.116(C)(7), and a lack of genuine issues of material fact, MCR 2.116(C)(10).

We review a trial court's decision on a motion for summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). We consider the evidence in the light most favorable to the non-moving party. *Id*. at 119-120; *Gortney v Norfolk & Western RR Co*, 216 Mich App 535,

[1] Because James McCoy's claims are derivative, we refer to Susan McCoy as "plaintiff."

539; 549 NW2d 612 (1996). When reviewing a motion under MCR 2.116(C)(7), we must accept the plaintiff's well-pleaded allegations as true. *Id*. at 538-539. A motion under MCR 2.116(C)(7) may be supported by affidavits, depositions, admissions, or other documentary evidence, *Maiden, supra* at 119, and should be granted only if no factual development could establish a basis for recovery, *Amburgey v Sauder,* 238 Mich App 228, 231; 605 NW2d 84 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, we consider all of the evidence submitted by the parties. *Maiden, supra* at 119-120. The motion should be granted only where the evidence fails to establish a genuine issue regarding any material fact. *Id*. at 120.

I

Plaintiff initially argues that the release she signed during the safety course was invalid because it was not supported by sufficient consideration. We disagree. "A release of liability is valid if it is fairly and knowingly made." *Xu v Gay*, 257 Mich App 263, 272; 668 NW2d 166 (2003) (quotations and citations omitted). A release can, however, be deemed invalid if the releasor acted under duress, the nature of the release agreement was misrepresented, or there was fraudulent or overreaching conduct on behalf of the releasee. *Brooks v Holmes*, 163 Mich App 143, 145; 413 NW2d 688 (1987). In addition, a release must be supported by sufficient consideration to be considered valid. *Paterek v 6600 Ltd*, 186 Mich App 445, 451; 465 NW2d 342 (1990). Consideration is adequate when it is (1) a legal detriment to the defendant, (2) which induced the plaintiff's promise to release the defendant from liability, and (3) the plaintiff's promise to release the defendant from liability induced the defendant to suffer the detriment. *Id*.

Plaintiff signed up for and paid for the safety course over the telephone. The course consisted of both classroom preparation and range time on Kelley's property, where participants were allowed to practice motorcycle operation on motorcycles provided by the course. On the first day of the course, before any actual range driving occurred, plaintiff signed a release. We find plaintiff's continued participation in the course, particularly on the range where defendants furnished her with services and equipment, was sufficient consideration to support the release. Cf. *Paterek, supra* (holding that the defendant's agreement to allow the plaintiff to play softball on its field was adequate consideration to support a release). Furthermore, the trial court correctly ruled that the release was part of the overall agreement between the parties for plaintiff to participate in the safety course. Where a release is part of a larger contract involving multiple promises, the rule is that the consideration paid for all the promises is also consideration for each one. *Rowady v K Mart Corp,* 170 Mich App 54, 59; 428 NW2d 22 (1988). Accordingly, we find that the release was not invalid for want of sufficient consideration.

II

Plaintiff next argues that requiring students to sign an exculpatory release to participate in a motorcycle safety course violates public policy. We disagree. "As a general proposition, parties are free to enter into any contract at their will, provided that the particular contract does not violate the law or contravene public policy." *Cudnik v William Beaumont Hosp,* 207 Mich App 378, 383-384; 525 NW2d 891 (1994). It is not contrary to the public policy of this state, however, for a party to contract against liability for damages caused by its own ordinary negligence. *Skotak v Vic Tanny Int'l, Inc,* 203 Mich App 616, 617-618; 513 NW2d 428 (1994).

In *Cudnik, supra* at 384-385, this Court found that because medical treatment involves a particularly sensitive area of public interest, requiring a patient to sign an exculpatory agreement in order to receive hospital treatment violates public policy. The *Cudnik* Court adopted the following non-exhaustive list of factors to consider in determining sensitive areas of public interest:

> "[The exculpatory agreement] concerns a business of a type generally thought suitable for public regulation. The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards. As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services. In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence. Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents." [*Id*. at 385-386, quoting *Tunkl v Regents of the Univ of California*, 60 Cal 2d 92, 98-101; 383 P2d 441 (1963).]

The release in this case did not violate public policy because motorcycle safety courses do not involve sensitive areas of public interest. Motorcycle safety courses are not practical necessities to most people, and this course was not a necessity to plaintiff. Plaintiff testified during her deposition that her interest in operating a motorcycle "was just something [she] always wanted to do." In addition, plaintiff did not present evidence that defendants possessed a decisive advantage of bargaining strength against her. In fact, plaintiff provided evidence of competing courses, and even obtained her motorcycle operator's license from a competitor. Thus, plaintiff was not forced to sign defendants' release in order to receive training. She could have, and did, receive the training from another entity. Furthermore, plaintiff did not present evidence that she was under the complete control of defendants, unlike cases where medical care providers exercise complete control over patients. See *Cudnik, supra* at 386-387.

III

Next, plaintiff argues that there was a genuine issue of material fact that defendants committed gross negligence. We disagree. A party may contract against liability for damages arising from its own ordinary negligence, *Skotak, supra* at 617-618, but a provision that indemnifies a party for gross negligence is void, *Xu, supra* at 269. Gross negligence is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Id*. (quotations and citations omitted). Generally, evidence of ordinary negligence is not sufficient to create a material question of fact concerning gross negligence. *Maiden, supra* at 122.

Viewed in the light most favorable to plaintiff, the facts presented to the trial court did not demonstrate that defendants possessed a substantial lack of concern for plaintiff's well being. Plaintiff testified during her deposition that the course instructors spent roughly 45 minutes

ascertaining that all participants were wearing safe clothing for the range, presumably to minimize the damage inflicted from an accident. The instructors confirmed that plaintiff fit the motorcycle assigned to her and later reprimanded her for handling the motorcycle improperly. The instructors then split the 12 training course participants into two groups of six, presumably for closer supervision. Further, while plaintiff argues that defendants were grossly negligent for failing to help her "master" the wrist down position on the motorcycle's throttle, plaintiff admitted hearing instructors tell the participants to keep their wrists down. Plaintiff simply did not present any evidence that the course instructors ignored her, failed to pay attention to her, or exhibited any behavior indicating a lack of concern over plaintiff's well being.

Plaintiff further argues that according to this Court's decision in *Lamp v Reynolds*, 249 Mich App 591; 645 NW2d 311 (2002), a question of fact exists as to defendants' gross negligence with respect to the training course itself. In *Lamp*, the plaintiff injured his left knee when, during a motorcycle race, he lost control of his motorcycle, veered off of the racecourse, and struck a stump located next to the racecourse. *Id*. at 593. The evidence established that the defendants allowed a known dangerous condition to remain obscured, while concurrently allowing activities likely to expose participants to the danger to occur near the dangerous condition. *Id*. at 595-596.

Here, defendants did not obscure the presence of the brick wall adjacent to the range course, and plaintiff presented no evidence that defendants knew that the course design was potentially dangerous and acted recklessly in using it. Contrary to plaintiff's assertions, Kelley's was only aware that the range course was approved by the MSF. In addition, there was no evidence presented before the trial court that the MSF approved the course knowing that it was dangerous, or using procedures that exhibited a substantial lack of concern for whether an injury was likely to result to participants using the range course. One of the range instructors testified during her deposition that affiliates of the MSF assisted with the painting and marking of the range course, by "put[ting] down paint marks for the beginning of each exercise, the ending place of each exercise, [and] the path of travel of each exercise." In addition, after the range course was painted and marked, "it was viewed and measured by" affiliates of the MSF.

No genuine issue of material fact existed on the issue of gross negligence, and thus, we affirm the trial court's ruling.

IV

Finally, plaintiff argues that defendants violated the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq*., by causing a probability of confusion or misunderstanding as to plaintiff's legal rights, obligations, or remedies and failing to reveal material facts to plaintiff. See MCL 445.903(1)(n), (s), and (cc). Plaintiff has effectively abandoned this issue, however, by failing to cite any supporting authority for her position. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). Furthermore, the release plaintiff signed discharged defendants from "*any and all* claims, demands, causes of action or losses of any kind" resulting from her participation in the course. The trial court correctly found that the release was "clear and unambiguous," and "[t]he law is clear that one who signs an agreement, in the absence of coercion, mistake, or fraud, is presumed to know the nature of the document and to understand its contents, even if he or she had not read the agreement." *Clark v Daimler Chrysler Corp*, 268 Mich App 138, 144-145; 706 NW2d 471

(2005). Therefore, because there is no evidence of fraud, coercion, or mistake in the execution of the release in this case, plaintiff's claims under the MCPA are precluded by the release.

Affirmed.

/s/ Richard A. Bandstra
/s/ Patrick M. Meter
/s/ Jane M. Beckering