COURT OF APPEALS
DECISION
DATED AND FILED

September 18, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2941 **Cir. Ct. No. 2005CV143**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

SHERRI ANN KONIECZNY,

PLAINTIFF-APPELLANT,

V.

WAUSAU-STETTIN MUTUAL INSURANCE COMPANY,

DEFENDANT-RESPONDENT,

AETNA HEALTH PLAN,

SUBROGATED DEFENDANT-CO-APPELLANT.

APPEAL from a judgment of the circuit court for Taylor County: GARY L. CARLSON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Sherri Ann Konieczny appeals a summary judgment granted in favor of Wausau-Stettin Mutual Insurance Company

(Wausau-Stettin). She argues the recreational immunity statute does not bar her claim. We disagree and affirm the judgment.

¶2 Konieczny was injured while horseback riding on William and Cecilia Dmytro's property. According to Konieczny, her horse struck a piece of timber that was lying next to a fence line, causing the horse to lunge forward and throw her to the ground. The Dmytros obtained the timbers approximately five months earlier when William Dmytro helped a neighbor demolish a barn.

¶3 Konieczny sued the Dmytros' insurer, Wausau-Stettin, which moved for summary judgment. The circuit court granted Wausau-Stettin's motion, concluding that WIS. STAT. § 895.52,[1] the recreational immunity statute, barred Konieczny's claim.

¶4 Konieczny contends the recreational immunity statute does not apply because the storage of the timber on the Dmytros' property was unrelated to the condition or maintenance of the land. She also argues that the Dmytros' property fits within an exception to the statute because it is "platted land" under WIS. STAT. § 895.52(6)(d)1. We reject both arguments.

¶5 This case involves a question of statutory interpretation, which we review de novo. *See* ***Garcia v. Mazda Motor of Am., Inc.***, 2004 WI 93, ¶7, 273 Wis. 2d 612, 682 N.W.2d 365. Regarding Konieczny's first argument, the relevant statutory language states:

> Except as provided in subs (3) to (6), no owner and no officer, employee or agent of an owner owes to any person

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

> who enters the owner's property to engage in a recreational activity:
>
> 1. A duty to keep the property safe for recreational activities.
>
> 2. A duty to inspect the property, except as provided under s. 23.115(2).
>
> 3. A duty to give warning of an unsafe condition, use or activity on the property.

WIS. STAT. § 895.52(2)(a). Horseback riding is explicitly included within the statutory definition of "recreational activity." WIS. STAT. § 895.52(1)(g). A plain reading of the statutory language appears to bar Konieczny's claim because the Dmytros had no duty to keep the property safe or to warn Konieczny about the timbers.

¶6 Konieczny contends the statute does not apply where a landowner's conduct causes injury and that conduct is not directly connected to the condition of the land. In support of this argument, she relies upon ***Linville v. City of Janesville***, 184 Wis. 2d 705, 516 N.W.2d 427 (1994), and ***Kosky v. International Ass'n of Lions Clubs***, 210 Wis. 2d 463, 565 N.W.2d 260 (Ct. App. 1997).

¶7 In ***Linville***, a child drowned in a City of Janesville park and the parents sued the city, alleging the city and its paramedics were negligent in rescuing the child. ***Linville***, 184 Wis. 2d at 712-13. Our supreme court distinguished the city's role as owner of the park from its role as provider of rescue services. ***Id.*** at 720. While the city would have been immune from any claim that injury resulted from the park being negligently maintained, WIS. STAT. § 895.52 did not provide immunity for the city's provision of paramedic services. ***Id.*** at 720-21.

¶8 In ***Kosky***, the plaintiff was injured while assisting a local Lions Club with a fireworks display. ***Kosky***, 210 Wis. 2d at 468-69. We held that the recreational immunity statute did not bar the plaintiff's claim because the alleged negligence was unrelated to the condition or maintenance of the land. ***Id.*** at 475. We noted that the recreational immunity statute was designed to immunize people in their capacity as landowners to encourage them to open their land for public use. ***Id.*** at 476-77. We reasoned that extending immunity to negligent acts unrelated to the land would not serve the same purpose. ***Id.***

¶9 Unlike the situations in ***Linville*** and ***Kosky***, the Dmytros' act of storing timber along their fence line is not distinct from their capacity as landowners. The timber constituted a condition on the Dmytros' land and their act of putting it there created that condition. Contrary to Konieczny's assertion, the timber was not unrelated to the condition or maintenance of the land. This situation fits squarely within the parameters of the recreational immunity statute, and the circuit court's conclusion in this regard was therefore correct.

¶10 Konieczny's next argument is that the recreational immunity statute cannot apply because the Dmytros' property is platted land. An exception for platted land applies where the person injured was an invited social guest on the property. *See* WIS. STAT. § 895.52(6)(d). The only issue here is whether the Dmytros' land is "platted land."

¶11 WISCONSIN STAT. § 895.52 does not define "platted land." The parties, however, refer to WIS. STAT. ch. 236, entitled "Platting Lands," where "Plat" is defined as "a map of a subdivision." *See* WIS. STAT. § 236.02(8). Konieczny does not dispute that the Dmytros' land is not platted land under this definition.

¶12 Konieczny instead argues that WIS. STAT. ch. 236 was not created until 1979 and that the Dmytros' property was "platted land" before that date. In support of this argument, Konieczny relies upon documents from the 1800s that include the words "as now platted" and "official plat." Specifically, Konieczny relies upon a survey created by the General Land Office of the United States Treasury Department, which she states is part of an "original plat" of the State of Wisconsin. She also relies upon language in an 1888 deed of what is now the Dmytros' property that includes the words, "as now platted" in the legal description.

¶13 The circuit court concluded that the statutory definitions controlled, noting that the Wisconsin Statutes addressed platted land before WIS. STAT. § 895.52(6)(d) was created. The court agreed with Wausau-Stettin's argument that Konieczny's definition of "platted land" would include virtually all land in Wisconsin and, if adopted, would effectively nullify the recreational immunity statute, thereby leading to an absurd result. The court was unimpressed with Konieczny's argument that her definition of platted land excludes "omitted lands" and islands. We agree with the circuit court's reasoning and are similarly unconvinced by Konieczny's arguments.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.