

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

RAY DOMANGUE

NO. 2014 CW 0408

VERSUS

DEBORAH FALGOUT AND STATE
FARM FIRE AND CASUALTY
COMPANY

JUN 25 2014

In Re: Deborah Falgout and State Farm Fire and Casualty Company, applying for supervisory writs, 32nd Judicial District Court, Parish of Terrebonne, No. 167138.

BEFORE: GUIDRY, McDONALD, HIGGINBOTHAM, CRAIN, AND DRAKE, JJ.

WRIT GRANTED. The trial court's February 5, 2014 judgment that denied the motion for summary judgment on behalf of Deborah Falgout and State Farm Fire and Casualty Company is hereby reversed and judgment is entered in favor of the defendants, granting their motion and dismissing the suit against Deborah Falgout and State Farm Fire and Casualty Company.


Defendants, Deborah Falgout and State Farm Fire and Casualty Company, have shown the camp at issue in this litigation is land which is covered under the Recreation Use Statutes immunity. Further, defendants have shown the plaintiff, Ray Domangue, was using the camp for recreational purposes. Therefore, the burden shifted to plaintiff to show an applicable exception to the immunity statute. Plaintiff has not shown any evidence the camp was used as a commercial facility by Deborah Falgout. It is the owner's use of the premises and not the underlying classification of the premises as a commercial recreational enterprise for profit that determines the availability of the immunity provisions to a qualified owner. See **Richard v. Hall**, 2003-1488, (La. 4/23/04), 874 So. 2d 137, rehearing denied, (La. 6/25/04).

Further, plaintiff has not shown evidence of a willful or malicious failure to warn of a dangerous condition. A failure to warn of a dangerous condition connotes a conscious course of action, and is deemed willful or malicious when action is knowingly taken or not taken, which would likely cause injury, with conscious indifference to the consequences thereof. See **Souza v. St. Tammany Parish**, 2011-2198 (La. App. 1st Cir. 6/8/12), 93 So.3d 745.

JMG
JMM
EGD

Higginbotham and Crain, JJ, dissent and would deny the writ.

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DEPUTY CLERK OF COURT
FOR THE COURT