STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH R. BRODIE by ROBERT J. BRODIE, as Next Friend,

Plaintiff–Appellant,

v

CITY OF RIVERVIEW,

Defendant–Appellee.

UNPUBLISHED

November 19, 1996

No. 187126
LC No. 95-502532

Before: Wahls, P.J., and Cavanagh and J.F. Kowalski,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant summary disposition in this negligence and nuisance action arising out of plaintiff's skiing accident. We affirm.

On February 24, 1994, Joseph Brodie was skiing in a facility operated by defendant when he collided with a span of safety netting. The collision caused Joseph to suffer life-threatening injuries which have required extensive medical treatment. The netting-fence was erected to prevent skiers from entering into a drainage area.

Plaintiff argues that the trial court erred in granting defendant summary disposition under the Ski Area Safety Act, MCL 408.321 *et seq.;* MSA 18.483(1) *et seq*. Plaintiff claims that because the netting-fence at issue was not an inherent and obvious risk a skier assumes under the statute, his claim survived. We disagree.

When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(8), all factual allegations in support of the claim are accepted as true, as well as any reasonable inferences that can be drawn from them. *Cipri v Bellingham Foods,* 213 Mich App 32, 45; 539 NW2d 526 (1995). The Ski Area Safety Act was enacted in part "to provide for certain presumptions relative to liability for

* Circuit judge, sitting on the Court of Appeals by assignment.

an injury or damage sustained by skiers." Preamble 1962 PA 199, amended by 1981 PA 86, § 1. Specifically, the act provides for the duties of skiers including those risks that skiers accept when engaging in the sport of skiing:

> 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); MSA 18.483(22)(2) (emphasis added).]

The language of the above provision places the burden of certain risks or dangers inherent to the sport of skiing on skiers, not the operators of a ski area. *Barr v Mt. Brighton, Inc*, 215 Mich App 512, 517; 546 NW2d 273 (1996) (citing *Schmitz v Cannonsburg Skiing Corp*, 170 Mich App 692, 695; 428 NW2d 742 (1988)). In determining whether the risk that caused a skier's injury is one of the "obvious and necessary" risks assumed by skiers under MCL 408.342(2); MSA 18.483(22)(2), the reasonableness of a skier's or a ski area operator's behavior is irrelevant. *Barr, supra*, p 519. The issue of whether a particular set of circumstances falls with the scope of MCL 408.342(2); MSA 18.483(22)(2) is a question of law. *Schmitz, supra*, p 696; *Grieb v Alpine Valley Ski Area, Inc*, 155 Mich App 484, 486; 400 NW2d 653 (1986).

Because we find the netting-fence at issue to be similar to man-made hazards like snow-making equipment and lift tower components, we conclude that a collision with the fence was the type of inherent danger sought to be included by MCL 408.342(2); MSA 18.483(22)(2). By the mere act of skiing, a skier accepts the risk that he may be injured in a manner described by the statute. *Barr, supra*, p 519. Therefore, we conclude that the trial court did not err in granting defendant's motion for summary disposition pursuant to the Ski Area Safety Act. Because this issue is dispositive, we need not address plaintiff's arguments that the trial court erred by granting defendant's motion for summary disposition on the alternate grounds of governmental immunity.

Affirmed.

/s/ Myron H. Wahls
/s/ Mark J. Cavanagh
/s/ John F. Kowalski