# STATE OF MICHIGAN

# COURT OF APPEALS

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PAMELA WALTON and JOHN WALTON,

Plaintiffs-Appellants,

v

ROBERT J. BRENNER, JR.,

Defendant-Appellee.

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UNPUBLISHED
May 26, 2000

No. 212794
Oakland Circuit Court
LC No. 97-546801-NO

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Plaintiffs appeal by right from the trial court's order granting summary disposition in favor of defendant in this personal injury case. We affirm.

Plaintiffs argue that the trial court erred in finding that defendant owed no duty to warn plaintiff Pamela Walton of his errant golf shot. We disagree. In the present case, defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10); however, the trial court did not specify under which subrule it was granting summary disposition. Because the trial court went beyond the scope of the pleadings in making its decision, we believe that the trial court granted summary disposition under MCR 2.116(C)(10). See *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999).

This Court reviews a trial court's grant of a motion for summary disposition de novo. *Id*. at 118. A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Id.* at 119. The trial court considers all the evidence in the light most favorable to the nonmoving party. *Id*. at 119-120. Summary disposition under MCR 2.116(C)(10) is appropriate where the evidence fails to establish a genuine issue of material fact. *Id.* at 120. Whether a duty of care exists is a question of law. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 262; 571 NW2d 716 (1997).

This Court dealt with a very similar golfing incident and established guidelines for determining the responsibilities of golfers to their fellow golfers in *Schmidt v Youngs*, 215 Mich App 222; 544 NW2d 743 (1996):

> A person who engages in the game of golf is not an insurer of the safety of others, and he is only required to exercise ordinary care for the safety of persons reasonably within the range of danger.
>
> Generally, one who is about to strike a golf ball must, in the exercise of ordinary care, give an adequate and timely notice to those who are unaware of his intention to play and who may be endangered by the play. Conversely, *there is no duty to give advance warning to persons who are on contiguous holes or fairways, and not in the line of play, if danger to them is not reasonably to be anticipated*. Also, where the person injured was in a place where he should have been reasonably safe, and he was aware of the player's intention to play the ball, an oral or audible warning would be superfluous and is therefore unnecessary. [*Schmidt, supra* at 225, quoting 4 Am Jur 2d, Amusements and Exhibitions, § 87, pp 211-212 (1995 interim pamphlet) (emphasis added).]

There is no dispute that Pamela Walton was on a contiguous hole and not in the line of play. Further, danger to Pamela Walton was not reasonably anticipated. In addition, she was in a place where she should have been reasonably safe, and she was aware of defendant's intention to play the ball, making any oral warning superfluous and unnecessary. The trial court was correct in finding that there was no genuine issue of material fact where *Schmidt* established that defendant owed no duty to Pamela Walton.

Further, since the *Schmidt* decision, the Michigan Supreme Court has examined the issue of the standard of care owed to participants in recreational activities in *Ritchie-Gamester v Berkley*, 461 Mich 73; 597 NW2d 517 (1999). The *Ritchie-Gamester* Court determined that the *Schmidt* Court applied a standard of ordinary care. *Id.* at 81. However, the *Ritchie-Gamester* Court adopted the "reckless misconduct standard" for coparticipants in recreational activities, reasoning that participants in recreational activities do not expect to enter litigation for mere carelessness. *Id.* at 89. The decision in *Ritchie-Gamester* reinforces the trial court's decision in the present case. If defendant did not owe Pamela Walton a duty under the ordinary care standard, then defendant certainly did not owe Walton a duty under the reckless misconduct standard.

In light of our disposition of the above issue, we need not address plaintiffs' other arguments.

We affirm.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin