

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD PINGLE and DONNA PINGLE,

Plaintiffs-Appellants,

v

KEVIN M. QUAGLIA,

Defendant-Appellee.

UNPUBLISHED

February 27, 2001

No. 218499

Oakland Circuit Court

LC No. 98-008116-NO

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Richard Pingle and defendant were playing in a pick-up basketball game. During play, the two made physical contact and plaintiff fell and broke his ankle. He filed this action for damages. We review the trial court's ruling de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997).

In *Ritchie-Gamester v Berkley*, 461 Mich 73, 89; 597 NW2d 517 (1999), the Court adopted a reckless misconduct standard of care for coparticipants in recreational activities. Reckless misconduct is the same as wilful and wanton misconduct. The conduct is not wilful in the sense that there is an actual intent to harm but is instead the functional equivalent thereof: it shows "such indifference to whether harm will result as to be the equivalent of a willingness that it does." *Jennings v Southwood*, 446 Mich 125, 140; 521 NW2d 230 (1994).

Plaintiff and defendant made physical contact in the course of a basketball game. Plaintiff admitted that the contact was accidental and that defendant had not intended to hurt him. Thus the evidence does not support a finding that defendant acted recklessly. Moreover, plaintiff admitted that some physical contact between players normally occurs in basketball games and "conduct within the range of the ordinary activity involved in the sport can hardly be termed reckless." *Ritchie-Gamester*, *supra* at 90 n 10. Therefore, the trial court did not err in dismissing plaintiffs' complaint.

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Peter D. O'Connell