STATE OF MICHIGAN

COURT OF APPEALS

MARTIN LEVINSON, M.D.,

Plaintiff-Appellant,

v

ALPINE VALLEY SKI AREA, d/b/a ALPINE VALLEY SKI RESORT, SKIING UNLIMITED, INC., and WISCONSIN RESORTS,

Defendants-Appellees.

UNPUBLISHED
March 16, 2001

No. 218943
Oakland Circuit Court
LC No. 98-005228-NO

Before: Smolenski, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's grant of summary disposition in favor of defendants on plaintiff's negligence claim. We affirm.

This case arises from an accident which occurred at defendants' skiing facility. Plaintiff alleges that he and his minor son were riding the ski lift when the son lost a ski. Plaintiff further alleges that he called to lift operators to stop the lift so that his son could disembark safely. Because the operators failed to stop the lift, plaintiff alleged that his son was not able to promptly clear the lift's exit area. Plaintiff, who was riding in the following lift chair, fell on top of his son as he attempted to disembark from the ski lift. Plaintiff alleged that the accident caused serious injury to his thumb.

Plaintiff sued defendants in tort, claiming that the ski lift operators' negligence proximately caused his injury. The trial court granted defendants' motion for summary disposition, ruling that the Ski Area Safety Act, MCL 408.321 *et seq.*; MSA 18.483(1) *et seq.* (hereinafter "SASA"), precluded plaintiff's negligence claim. We agree. Both a trial court's grant of summary disposition and questions of statutory interpretation are subject to de novo review on appeal. *McGoldrick v Holiday Amusements, Inc*, 242 Mich App 286, 292; 618 NW2d 98 (2000).

The SASA provides, in pertinent part:

> 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 statute "generally grants ski area operators immunity from liability and places the burden of certain dangers on skiers rather than ski resort operators." *McGoldrick, supra* at 290.

Plaintiff argues on appeal that his accident did not result from a "collision" with another skier. Rather, plaintiff insists that he simply fell on his minor son while trying to move away from the ski lift, and that falling on someone does not constitute a "collision." Therefore, plaintiff argues that the SASA's assumption of the risk provision does not apply to his accident. We disagree. Although the term "collision" is not specifically defined by the SASA, this Court has recognized that the common, ordinary meaning of the term includes "'the meeting of particles or of bodies in which each exerts a force upon the other, causing the exchange of energy or momentum.'" *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 742; 613 NW2d 383 (2000) (citations omitted). It would be a tortured definition of the word "collision" that would not include plaintiff's accidentally and forcibly falling on top of his son while disembarking from the ski lift. Therefore, we conclude that plaintiff's argument is without merit.

Plaintiff next argues that he was a ski lift "passenger" at the time of the accident, not a "skier." Plaintiff further argues that the SASA's assumption of the risk provision applies only to "skiers," and does not apply to "passengers." Therefore, plaintiff again contends that the SASA's assumption of the risk provision does not apply to his accident. Both "skier" and "passenger" are specifically defined terms under the SASA. A "skier" is "a person wearing skis," or "a person not wearing skis or a skiing device while the person is in a ski area for the purpose of skiing." MCL 408.322(g); MSA 18.483(2)(g). A "passenger" is "a person, skier or nonskier, who boards, disembarks from, or is transported by a ski lift, regardless of whether the ski lift is being used during the skiing season or nonskiing season, and includes a person waiting for or moving away from the loading or unloading point of a ski lift." MCL 408.322(e); MSA 18.483(2)(e).

The trial court determined, as a factual matter, that plaintiff was simultaneously a "passenger" and a "skier" at the time of the accident. To the extent that the trial court's determination constitutes statutory interpretation, we review the issue de novo. *McGoldrick, supra* at 292. To the extent that the trial court's determination constitutes a factual finding, we review the issue for clear error. *Christiansen v Gerrish Twp*, 239 Mich App 380, 387; 608 NW2d 83 (2000); *Messenger v Dep't of Consumer & Industry Services*, 238 Mich App 524, 530-531; 606 NW2d 38 (2000). Plaintiff alleges that he was moving away from the unloading point of a ski lift at the time of the accident. This allegation, if true, would place plaintiff in the category of "passenger" as defined by statute. MCL 408.322(e); MSA 18.483(2)(e). However, the statutory definition makes clear that a "passenger" can be either a "skier or nonskier." MCL 408.322(e); MSA 18.483(2)(e). Because plaintiff was admittedly wearing skis at the time of the accident and because he was admittedly "in a ski area for the purpose of skiing," MCL

408.322(g); MSA 18.483(2)(g), we agree with the trial court's determination that plaintiff was both a "passenger" and a "skier" at the time of the accident.[1] Therefore, plaintiff's argument that the SASA does not apply to his negligence claim is without merit.

Finally, we conclude that the location of plaintiff's accident, i.e., the exit area of a ski lift, does not exempt plaintiff's case from application of the SASA's provisions. In *McCormick v Go Forward Operating Ltd Partnership*, 235 Mich App 551; 599 NW2d 513 (1999), this Court considered facts similar to those presented in the instant case. In *McCormick*, a skier had fallen a short distance from the ski lift. The plaintiff attempted to avoid the fallen skier as she disembarked from the ski lift, but injured her knee in the process. This Court rejected the plaintiff's argument that the SASA's assumption of the risk provision did not apply:

> The language of the statute itself establishes that plaintiff's injury comes within the immunity provisions. The statute says that collision with another skier comes within the dangers that are necessary and obvious. *It does not exclude the ski lift exit area.* Therefore, because plaintiff's injury arose from the collision with another skier, or the attempt to avoid such a collision, it comes within the immunity provision of the statute. . . . *In short, the location of the collision or fallen skier is irrelevant.* [*Id*. at 554 (emphasis added).]

In summary, we conclude that plaintiff was a "skier" injured in a "collision" with another "skier" at a ski facility, and that the SASA clearly renders defendants immune from plaintiff's negligence claim for injuries arising from that "collision." Accordingly, we affirm the trial court's grant of summary disposition in favor of defendants.

Affirmed.

/s/ Michael R. Smolenski
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald

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[1] The same analysis applies to plaintiff's son, who was also "in a ski area for the purpose of skiing," and who was also attempting to move away from the unloading point of a ski lift at the time of the accident.