STATE OF MICHIGAN

COURT OF APPEALS

MATTHEW BARRETT, Plaintiff-Appellee,	UNPUBLISHED June 3, 2004
v	No. 222777 Livingston Circuit Court
MT. BRIGHTON, INC., Defendant-Appellant.	LC No. 97-016219-NO ON REMAND

Before: Cavanagh, P.J., and Zahra and Meter, JJ.

ZAHRA, J. (*dissenting*).

I respectfully dissent. I disagree with the majority's conclusion that under the Ski Area Safety Act of 1962 (SASA), MCL 408.321 *et seq.*, an alpine skier does not accept the danger of colliding with a snowboard rail while engaged in the sport of alpine skiing. I further disagree with the majority's conclusion that defendant violated MCL 408.326a(c) and (e) by failing to post adequate signage warning of the degree of difficulty of the ski runs, as required under the SASA. I would reverse the trial court's denial of defendant's motion for summary disposition and remand with instructions that summary disposition be entered in favor of defendant.

In *Anderson v Pine Knob Ski Resort, Inc*, 469 Mich 20, 25-26; 664 NW2d 756 (2003), our Supreme Court interpreted the relevant provisions of the SASA and determined that the potential of collision with a timing shack used for ski racing is a danger inherent in the sport of skiing that is obvious and necessary. A timing shack is not necessary for alpine skiing, snowboarding, or any type of skiing other than racing, yet our Supreme Court concluded that, because it is necessary for ski racing, it inheres in the sport of skiing. The Court did not differentiate between different types of skiing or conclude that, because a timing shack is only necessary for ski racing, only ski racers accept the danger of collision with such a shack. Rather, the Court held that a timing shack is a danger that any skier—whether a cross-country skier, a snowboarder, or a ski racer—is held to have accepted as a matter of law. *Id.* at 26.

Here, the majority concedes that a snowboard rail is inherent in the sport of snowboarding and is an obvious and necessary danger for that particular type of skiing. Yet the majority erroneously attempts to distinguish between different types of "skiing" and concludes that different types of dangers are inherent in skiing, depending on which type of skiing the skier is engaged. The majority then attempts to assign a different level of danger acceptance to each type of skiing. The SASA broadly defines the word "skier" to include persons involved in both alpine skiing and snowboarding. MCL 408.322(g). MCL 408.342(2) provides that skiers accept

the dangers inherent in the sport of skiing as a whole; it does not expressly provide or even imply that skiers only accept the dangers inherent in their particular form of skiing. Therefore, I conclude under *Anderson*, that because a snowboard rail is obvious and necessary to snowboarding, it is a hazard that inheres in the sport of skiing under MCL 408.342(2).

I also disagree with the majority's conclusion that defendant violated MCL 408.326a(c) and (e) by failing to post adequate signs. MCL 408.326a provides, in pertinent part, as follows:

> Each ski area operator shall, with respect to operation of a ski area, do all of the following:
>
> * * *
>
> (c) Mark the top of or entrance to each ski run, slope, and trail to be used by skiers for the purpose of skiing, with an appropriate symbol indicating the relative degree of difficulty of the run, slope, or trail, using a symbols code prescribed by rules promulgated under section 20(3).
>
> * * *
>
> (e) Maintain 1 or more trail boards at prominent locations in each ski area displaying that area's network of ski runs, slopes, and trails and the relative degree of difficulty of each ski run, slope, and trail, using the symbols code required under subdivision (c) and containing a key to that code, and indicating which runs, slopes, and trails are open or closed to skiing.

There is nothing in the above quoted statutory provisions that requires defendant to post signs indicating that certain ski runs or trails are only meant for certain types of skiers, such as snowboarders. These statutory provisions only require that each ski run be marked with an appropriate symbol indicating its degree of difficulty and that a trail board display the network of ski runs and label them with their appropriate degree-of-difficulty symbol. There is no indication that this was not done in the present case.

Even assuming that defendant failed to provide the notice required under these statutory provisions, it is only liable "for that portion of the loss or damage resulting from that violation." MCL 408.344. Here, there is nothing to support the conclusion that defendant would have stayed off the snowboard run had he known its degree of difficulty. Plaintiff started at the top of the hill and began his descent down a ski run, but skied at an angle and purposely crossed over into the area that he knew was used for snowboards, where he hit the snowboard rail. Any lack of signage relating to the degree of difficulty of the snowboard run did not cause plaintiff's injury.

I conclude that, pursuant to the SASA, as interpreted in *Anderson, supra*, a snowboard rail is an obvious and necessary hazard that inheres in the sport of skiing, and that plaintiff accepted the danger of such a hazard. Furthermore, defendant did not violate MCL 408.326a(c)

or (e) by failing to post adequate signs. I would reverse the trial court's order denying defendant's motion for summary disposition and remand with instructions that summary disposition be entered in favor of defendant.

/s/ Brian K. Zahra