

STATE OF MICHIGAN  
COURT OF APPEALS

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MATTHEW WRIGHT,

Plaintiff-Appellant,

v

PLAINFIELD SKATING RINK,

Defendant-Appellee.

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UNPUBLISHED

January 19, 2006

No. 257623

Kent Circuit Court

LC No. 03-000301-NI

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants in this action involving an injury suffered by plaintiff in a fall while skating at defendant's roller skating rink. We affirm.

Plaintiff was injured at defendant's roller skating rink when defendant's employee, a floor guard, allegedly stopped abruptly in front of plaintiff, causing him to lose his balance and fall. Plaintiff filed a negligence action against defendant, alleging that defendant breached its duty to comply with the roller skating safety standards published by the roller skating rink operators association. Specifically, plaintiff alleged that the floor guard's conduct fell below that of industry standards and that, but for the floor guard's actions, plaintiff would not have fallen and sustained an injury.

Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff's claims were barred by the Roller Skating Safety Act of 1988 ("RSSA"), MCL 445.1721 *et seq.* The trial court found that plaintiff failed to establish a genuine issue of material fact and granted the motion.

This Court reviews de novo a trial court's ruling to either grant or deny a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). Similarly, questions of statutory construction are reviewed de novo. *Id.*

MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. A trial court may grant a motion for summary disposition under MCR

2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). Initially, the moving party has the burden of supporting its position with documentary evidence, and, if so supported, the burden then shifts to the opposing party to establish the existence of a genuine issue of disputed fact. *Quinto, supra* at 362; see also MCR 2.116(G)(3) and (4). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in [the] pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Quinto, supra* at 362. Where the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 363. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

We first note that plaintiff's complaint and his argument at summary disposition were predicated on MCL 445.1723(b) of the RSSA, which provides that the operator of a roller skating center must "[c]omply with the safety standards specified in the roller skating rink safety standards published by the roller skating rink operators association, (1980)." Plaintiff pursues this argument on appeal, but also presents an appellate argument pursuant to MCL 445.1724, which concerns the duties of roller skaters and essentially requires them to act reasonably and in a non-negligent manner while skating. Plaintiff failed to preserve this issue by not presenting the argument below, and we thus decline to address it. *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

Defendant, as the operator of the roller skating rink, had a duty to comply with roller skating rink safety standards. Defendant was obligated under these standards to utilize floor guards to direct and supervise roller skaters. "A roller skater, spectator, or operator who violates [the RSSA] shall be liable in a civil action for damages for that portion of the loss or damage resulting from the violation." MCL 445.1726.

MCL 445.1725 of the RSSA:

Each person who participates in roller skating accepts the danger that inheres in that activity insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries that result from collisions with other roller skaters or other spectators, injuries that result from falls, and injuries which involve objects or artificial structures properly within the intended travel of the roller skater which are not otherwise attributable to the operator's breach of his or her common law duties.

Based on this assumption of risk clause, earlier cases provided absolute immunity to roller skating rink operators, where roller skaters were injured as a result of a fall or collision with another roller skater. *Dale v Beta-C, Inc*, 223 Mich App 801, 803; 566 NW2d 640 (1997)(*Dale I*), vacated by order convening special panel 223 Mich App 801 (1997); *Skene v*

*Fileccia*, 213 Mich App 1, 7; 539 NW2d 531 (1995), overruled by *Dale v Beta-C, Inc*, 227 Mich App 57, 66-67; 574 NW2d 697 (1997)(*Dale II*).

After *Dale I* was decided, a special panel of this Court convened to resolve a conflict between the *Skene* and *Dale I* decisions. The panel overruled *Skene* to the extent that *Skene* concluded that an operator's behavior was irrelevant where a roller skater was injured as a result of a fall or a collision because of the assumption of risk language in MCL 445.1725. *Dale II*, *supra* at 66-67. This Court concluded that the Legislature did not intend to provide absolute immunity to skating rink operators and therefore, although a roller skater assumes the risks of obvious and necessary dangers inherent in the sport of roller skating, a roller skater does not assume the risk of an operator violating its duties prescribed in MCL 445.1723. *Id.* at 66-67. Thus, if a violation of MCL 445.1723 is alleged and proven, the operator shall be liable for damages in a civil action as envisioned by MCL 445.1726. *Dale II*, *supra* at 67.

Here, plaintiff contends that defendant violated MCL 445.1723 by failing to comply with the roller skating rink safety standards published by the roller skating rink operators association. However, plaintiff failed to produce evidence that defendant or the floor guard violated any of the enumerated safety standards, and, therefore, plaintiff has failed to establish a genuine issue of material fact regarding defendant's alleged violation of the safety standards or MCL 445.1723. Moreover, assuming, but not conceding, that the safety standard, which provides that a floor guard "must use good judgment while being firm and maintaining the respect of the skaters[.]" relates to the reasonableness of a floor guard's skating actions and performance, we nonetheless believe that summary disposition was appropriate. Our review of the documentary evidence leads us to conclude, as a matter of law, that plaintiff's injuries were not caused by any negligent conduct on the part of the floor guard considering the totality of the circumstances, regardless of plaintiff's expert's opinion to the contrary. The trial court did not err in summarily dismissing the action.

After the trial court granted defendant's motion for summary disposition, plaintiff sought leave to file an amended complaint naming the floor guard, in her individual capacity, as a defendant. The trial court, however, denied plaintiff's motion to amend. The court found that under the RSSA, an employee of a roller skating rink is entitled to the same protections as the operator of the roller skating rink.

When a court grants summary disposition pursuant to MCR 2.116(C)(10), the court, under MCR 2.116(I)(5), must give the losing party an opportunity to amend their pleadings pursuant to MCR 2.118, unless the amendment would be futile. *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997). An amendment is futile if it restates, or slightly elaborates on, allegations already pleaded. *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 76; 592 NW2d 724 (1998). This Court reviews a trial court's denial of a motion to amend a complaint for an abuse of discretion. *Id.* at 75.

Plaintiff argues that the floor guard, as a roller skater herself, violated § 4 of the RSSA when she acted in a manner likely to cause injury to another, failed to exercise reasonable control, failed to maintain a proper lookout, and failed to use good judgment. Assuming that the RSSA contemplates that an operator's employee, such as a floor guard, can be deemed a "roller

skater” and be subject to individual liability, any amendment would still be futile in light of our ruling above finding that plaintiff’s injuries were not caused by any negligent conduct on the part of the floor guard considering the totality of the circumstances.

Affirmed.

/s/ Brian K. Zahra

/s/ William B. Murphy

/s/ Janet T. Neff