STATE OF MICHIGAN

COURT OF APPEALS

RONALD VAUGHN,

Plaintiff-Appellant,

v

RIVERSIDE ARENA INC, a/k/a RIVERSIDE ARENA ASSOCIATION LLC,

Defendant-Appellee.

UNPUBLISHED
December 19, 2006

No. 270753
Wayne Circuit Court
LC No. 05-502342-NO

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

PER CURIAM.

Plaintiff appeals by right the circuit court's order granting summary disposition in defendant's favor. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff attended a birthday party at defendant's roller skating rink, and fell while skating. Plaintiff testified that he saw a shiny substance on the floor after he slipped. In addition to his own deposition testimony, plaintiff presented statements from two witnesses to his fall. One witness maintained that he watched plaintiff fall, and then saw that plaintiff's wheels had traveled through a puddle on the floor prior to the fall. A second witness also noticed the substance on the skating floor. She maintained that she had notified defendant's employees repeatedly about the substance prior to plaintiff's fall, but that they had failed to remedy the situation.

Plaintiff sued defendant for negligence and for liability under the Roller Skating Safety Act of 1998 (RSSA), MCL 445.1721 *et seq*. Defendant moved for summary disposition, arguing that the RSSA barred plaintiff's claim. Defendant also moved to strike plaintiff's witnesses. The trial court did not strike plaintiff's witnesses, but found, without discussion, that the RSSA "precludes this kind of an action" and granted defendant's motion for summary disposition.

We review de novo a trial court's ruling on a motion for summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In considering a motion brought pursuant to MCR 2.116(C)(10), a court considers affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in a light most favorable to the nonmoving party. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party

is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

Defendant maintains that the trial court's decision was properly based on MCL 445.1725 of the RSSA, which provides:

> 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.

However, this section does not, as defendant suggests, relieve it of all liability here. Earlier cases from this Court held that this "assumption of risk" clause 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*, *supra*, was decided, a special panel of this Court convened to resolve a conflict between the *Skene* and *Dale I* decisions. The panel overruled *Skene*, *supra*, and concluded that the Legislature did not intend to provide absolute immunity to skating rink operators. 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. *Dale II*, *supra* at 66-67. Thus, if plaintiff can show a violation of MCL 445.1723, here, defendant is liable for damages under MCL 445.1726.[1] *Dale II*, *supra* at 67.

MCL 445.1723(b) of the RSSA provides that the operator of a roller skating center must "comply with the safety standards specified in the roller skating rink safety standards published by the roller skating rink operators association, (1980)." Defendant admits that, under these standards, it was obligated to inspect skating surfaces and keep them clean and free from foreign objects. Plaintiff contends that defendant violated MCL 445.1723 by failing to comply with this provision, and thus that the trial court erred when it granted summary disposition to defendant.

Plaintiff is correct. Defendant's argument rests on an assertion that plaintiff failed to provide supporting evidence to support his claim that any foreign object caused his fall or that defendant failed to meet its duties under the RSSA. Defendant maintains that the plaintiff presented no evidence that he actually slipped or skidded on a foreign object or substance, where such a substance may have come from, how long it may have been on the floor, or that the fall

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[1] MCL 445.1726 holds that "[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."

was even reported to defendant. However, to reach this conclusion, defendant ignores the statements from plaintiff's witnesses. When the statements from these witnesses are considered, however, it is evident that the trial court should have denied defendant's motion for summary disposition.[2] Both provided supporting evidence for defendant's own testimony that he slipped or skidded on a foreign substance present on the skating floor. In particular, we find the statements concerning the second witness' attempts to obtain assistance from defendant's employees in removing the substance highly damaging to defendant's claim that it is entitled to summary disposition. This statement provides support for a conclusion that defendant's employees knew about the substance for a relatively lengthy period of time before the fall, and yet did not remedy the situation. If the jury believes this testimony, it could reasonably find that defendant violated its duties under MCL 445.1723. Summary disposition in defendant's favor was inappropriate under the circumstances.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis

[2] Although defendant argues on appeal that these witnesses should not be permitted to testify, we note that the trial court did not decide whether any of defendant's objections are valid. Nor did the trial court rule on plaintiff's own objections to defendant's pretrial actions in plaintiff's attempts to obtain the testimony of defendant's employees. The parties are free to pursue these issues on remand.