STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH FRANK JAYE,

Plaintiff-Appellant,

v

HOUSE ARREST SERVICES, INC.,

Defendant-Appellee.

UNPUBLISHED
January 13, 2009

No. 282015
Macomb Circuit Court
LC No. 2007-001571-NI

Before: Zahra, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Plaintiff Joseph Frank Jaye appeals as of right from the circuit court's order granting summary disposition to defendant House Arrest Services, Inc. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As part of a criminal sentence, plaintiff was required to wear a secure continuous remote alcohol monitor (SCRAM) tether. Defendant was responsible for strapping the device to plaintiff's leg. Plaintiff claimed that defendant, over his protestations, fastened the tether too tightly, causing a serious laceration. Plaintiff sued defendant for damages in negligence. Defendant persuaded the trial court to grant summary disposition on the ground that a limitation on liability set forth in the parties' agreement insulated defendant from liability for negligence.

We review de novo a trial court's decision regarding a motion for summary disposition as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). We likewise construe clear contractual language de novo according to its plain and ordinary meaning, avoiding technical or constrained constructions. *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995). The provision at issue in the parties' agreement reads as follows:

> Under no circumstances shall House Arrest Services (HAS) . . . be liable to the participant or any other person for any consequential, incidental, economic, direct, indirect, special or exemplary damages arising out of any breach of this agreement or of the transactions contemplated hereunder, even if HAS . . . has been appraised of the likelihood of such damages. Under no circumstances shall the total liability of HAS . . . for all claims arising out of or related to this agreement (including warranty claims allowable by applicable law) exceed the total amount paid by the defendant to HAS . . . under this agreement.

Plaintiff argues that this language does not sufficiently indicate that the agreement bars claims in ordinary negligence. We disagree. The provision clearly states, "Under no circumstances shall [defendant] . . . be liable to [plaintiff] . . . for any consequential, incidental, economic, direct, indirect, special or exemplary damages arising out of any . . . of the transactions contemplated hereunder, even if [defendant] has been appraised of the likelihood of such damages." Regardless, whether the term "transactions" includes fastening the tether to plaintiff's person or more generally describes the relationship between the parties, the provision can only be read as broadly insulating defendant from any liability arising from applying the tether to plaintiff. Although the provision does not include such signaling words as "waiver" or "disclaim," no such words are needed to establish a valid release. See *Klann v Hess Cartage Co*, 50 Mich App 703, 705-706; 214 NW2d 63 (1973).

Plaintiff notes that the language that follows the general disclaimer speaks of mere limitations on liability, and he argues that defendant was not trying to wholly eliminate its exposure to liability, but to merely limit its liability for damages it might cause. However, we read that provision as an alternative one, put in place in case the general disclaimer of liability were held inoperable in some situations, such as situations in which warranty issues might arise. That alternative protection does not vitiate the general disclaimer of liability that precedes it. Rather, it underscores defendant's determination to shield itself from liability to the fullest extent possible.

Affirmed.

/s/ Brian K. Zahra
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood