

STATE OF MICHIGAN
COURT OF APPEALS

DAQUIRI HINES, a Minor, by his Next Friend,
SHARITA HINES,

UNPUBLISHED
November 17, 2009

Plaintiff-Appellee,

v

SKATELAND ARENA,

No. 282390
Genesee Circuit Court
LC No. 06-083899-NO

Defendant-Appellant.

Before: Hoekstra, P.J., and Murray and M. J. Kelly, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order denying its motion for summary disposition under MCR 2.116(C)(10). Because there were no issues of fact concerning whether defendant violated any duties owed by a roller skating center operator under MCL 445.1723, we conclude that the trial court erred when it denied defendant's motion. For that reason, we reverse and remand for entry of summary disposition in favor of defendant.

The minor plaintiff, Daquiri Hines alleged that he was injured in a collision with defendant's employee, Kelly Maule, while skating at defendant's roller skating rink. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that plaintiff's claim was barred by the Roller Skating Safety Act of 1998 (RSSA). See MCL 445.1721 *et seq.* In support of its motion, defendant relied on plaintiff's deposition testimony wherein he stated that the collision occurred during a game of dodge ball. According to plaintiff, Maule, a floor guard, was on the rink floor monitoring a dodge ball game. Plaintiff testified that he saw Maule and noticed that she was focused on the dodge ball game. He stated that he stopped paying attention to Maule and turned to watch the game when the two collided. Defendant argued that plaintiff assumed the risk of a collision with another roller skater and, therefore, his claim was barred under MCL 445.1725. The trial court denied defendant's motion, concluding that there was an issue of fact whether Maule was negligent in causing the collision.

This Court reviews a trial court's summary disposition decision de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) tests the factual support for a claim. The court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(5). Summary disposition should be granted if, except as to the amount of

damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

Under MCL 445.1725, “[e]ach person who participates in roller skating accepts the danger that inheres in that activity insofar as the dangers are obvious and necessary.” The dangers that inhere in roller skating “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” *Id.* However, both “roller skaters” and “operators” are liable for violations of the duties imposed under the RSSA: “A roller skater, spectator, or operator who violates this act shall be liable in a civil action for damages for that portion of the loss or damage resulting from the violation.” MCL 445.1726.

A “roller skater” is defined as “a person wearing roller skates while that person is in a roller skating center for the purpose of roller skating.” MCL 445.1722(c). An “operator” is defined as “a person or entity who owns or controls or who has operational responsibility for a roller skating center.” MCL 445.1722(b). The parties do not dispute that plaintiff was a “roller skater” and that defendant was an “operator” at the time of plaintiff’s injury.

MCL 445.1723 addresses the duties owed by “operators”; under this section, each operator must:

- (a) Post the duties of roller skaters and spectators as prescribed in this act and the duties, obligations, and liabilities of operators as prescribed in this act in conspicuous places.
- (b) Comply with the safety standards specified in the roller skating rink safety standards published by the roller skating rink operators association, (1980).
- (c) Maintain roller skating equipment and roller skating surfaces according to the safety standards cited in subdivision (b).
- (d) Maintain the stability and legibility of all required signs, symbols, and posted notices.

In *Dale v Beta-C, Inc*, 227 Mich App 57, 66-67; 574 NW2d 697 (1997), a special panel of this Court held that the Legislature did not intend to provide absolute immunity to roller skating rink operators. Rather, while 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 the prescribed duties” outlined in MCL 445.1723. *Id.* at 70. Thus, if an injured roller skater can show a violation of MCL 445.1723, the operator of a roller skating rink is liable for damages under MCL 445.1726. *Id.* at 67.

Among the duties of a roller skating operator prescribed in MCL 445.1723 is to “[c]omply with the safety standards specified in the roller skating rink safety standards published by the roller skating rink operators association, (1980).” Here, plaintiff did not present a copy of those published standards, either below or on appeal, and instead relies on *Wright v Plainfield Skating Rink*, unpublished opinion per curiam of the Court of Appeals, issued January 19, 2006

(Docket No. 257623), slip op at 3, which refers to the safety standard requiring that a floor guard “use good judgment while being firm and maintaining the respect of the skaters.”¹ Even assuming that this standard relates to a floor guard’s skating, we conclude that defendant was entitled to summary disposition.

Plaintiff “assume[d] the risks of obvious and necessary dangers inherent in the sport of roller skating,” which included the possibility that he might be injured in a “collision[] with other roller skaters.” MCL 445.1725; *Dale, supra* at 70. Plaintiff’s deposition testimony indicates that he was aware that Maule was on the rink and that she was monitoring the dodge ball game that was in progress. Plaintiff admitted that he too was watching the game and admitted that he had stopped watching Maule. After reviewing the record evidence,² we conclude that there was no genuine issue of material fact with respect to plaintiff’s claim that Maule did not use good judgment while supervising the game. Accordingly, plaintiff failed to establish a violation of the duties prescribed in MCL 445.1723.

Plaintiff additionally argues that even if defendant did not violate any duties under MCL 445.1723, defendant is not entitled to summary disposition because Maule was a “roller skater” at the time of the collision, and there is a genuine issue of material fact whether she violated her duties as a roller skater as prescribed in MCL 445.1724. However, even if Maule may be individually liable for breaching a duty owed by a roller skater, Maule is not a party to this case. Defendant’s liability, if any, is dependent on whether it breached a prescribed duty owed by an “operator” under MCL 445.1723. As explained previously, plaintiff failed to establish a genuine issue of material fact regarding defendant’s breach of a duty under MCL 445.1723.

The trial court erred in denying defendant’s motion for summary disposition. Accordingly, we reverse the trial court’s order and remand for entry of summary disposition in favor of defendant.

Reversed and remanded for entry of summary disposition in favor of defendant. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Christopher M. Murray
/s/ Michael J. Kelly

¹ We note that unpublished opinions are not precedentially binding. MCR 7.215(C)(1).

² Plaintiff presented additional documentary evidence on appeal that was not submitted in the trial court. Enlargement of the record on appeal is not permitted. *Isagholian v Transamerica Ins Corp*, 208 Mich App 9, 18; 527 NW2d 13 (1994). Accordingly, we have confined our review to the evidence that was properly submitted to the trial court.