

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KATHLEEN GORDON and NELS)	No. 27754-2-III
GORDON, husband and wife,)	
)	
Appellants,)	
)	
v.)	
)	Division Three
BOY SCOUTS OF AMERICA, INC.,)	
INLAND NORTHWEST COUNCIL)	
BOY SCOUTS OF AMERICA, INC.,)	
and MIKE HELLER,)	
)	
Respondents.)	UNPUBLISHED OPINION

Korsmo, J. — A cub scout caroling with his troop deliberately tripped Kathleen Gordon, injuring her. The trial court dismissed her suit against the regional and national scouting organizations. We affirm.

FACTS

Ms. Gordon was working at the Newport Community Hospital on December 21, 2004. Cub Scout Pack No. 696 was Christmas caroling at the connected River Mountain

Village Assisted Living Facility. When Ms. Gordon passed the carolers, one of the scouts stuck out a leg and tripped her.

She sued an individual scout,¹ the regional Inland Northwest Council Boy Scouts of America, and the national Boy Scouts of America. She alleged that the regional and national organizations exercised apparent authority over the local scout packs and their organizers. She did not sue the local scout pack, the scoutmaster, or the community sponsor.

The regional and national organizations moved for summary judgment, arguing that they did not have supervisory authority over local activities. Relying on *Mauch v. Kissling*, 56 Wn. App. 312, 783 P.2d 601 (1989), the trial court agreed and dismissed the action. Ms. Gordon timely appealed to this court.

ANALYSIS

This court reviews a summary judgment *de novo*, performing the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts, and all reasonable inferences to be drawn from them, are viewed in the light most favorable to the nonmoving party. *Id.* If there is no genuine issue of material fact, summary judgment will be granted if the moving party is entitled to judgment as a matter

¹ The named scout was subsequently dismissed from the litigation because he was not present that day.

of law. *Id.*

Mauch involved an action by the estate of a scout killed in an airplane accident while flying with his scoutmaster over the regional scout camping site. The boy had worked on restoring the plane and earned the right to fly with the scoutmaster. The flight was also an optional requirement for his aviation merit badge. 56 Wn. App. at 313-314. The estate sued the pilot's estate (which eventually settled) and, as here, the regional and national boy scout organizations. The trial court dismissed the regional and national organizations on summary judgment. *Id.* at 313.

This court affirmed the judgment of dismissal. Assuming, without deciding, that the doctrine of apparent authority was applicable to tort actions, this court nonetheless determined that there was no evidence that regional and national scout organizations controlled the activities of the local organizations. *Id.* at 316-317.

We agree with the trial court that *Mauch* is controlling in this case. As was the case there, no evidence was presented here that regional or national organizations control the activities of local scout organizations. Rather, the evidence presented was similar to that in *Mauch*. The national scouting organization charters regional organizations, which in turn charter local organizations. The local groups organize and control themselves, selecting leaders and making decisions on activities for the scouts. They do not act at the

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direction of regional or national scout organizations.

There is no factual basis for finding that Pack No. 696 or its leaders were acting at the behest of the regional or national scouting organizations when the caroling activity was scheduled or conducted. Thus, while questions of apparent authority are typically factual in nature, summary judgment was proper here because there was no evidentiary basis for finding apparent authority. The fact that Pack No. 696 was chartered by a national organization did not mean that it was acting under the control of that organization. There was no evidence presented that would allow a rational person to conclude otherwise.

The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Korsmo, J.

WE CONCUR:

Kulik, A.C.J.

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Sweeney, J.