

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

SCOTT STOYCHOFF and BRIAN QUINTERO,

Plaintiffs–Appellants/Cross-Appellees,

v

IRON COUNTY and IRON COUNTY FAIR  
ASSOCIATION,

Defendants/Cross-Plaintiffs–Appellees/Cross-Appellants,

and

GARY KUNCHYNSKI d/b/a GARY’S MUFFEX,

Defendant/Third-Party Defendant-Appellee.

---

Before: Hood, P.J., and Markman and A. T. Davis,\* JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). Defendants Iron County and Iron County Fair Association cross-appeal. We affirm.

Plaintiffs were participants in a demolition derby sponsored by defendants during which they were injured as the result of careless driving by another one of the participants. Plaintiffs argue that the release of liability they signed before participating in the demolition derby which exempted defendants from responsibility for such accidents were invalid. The release states in pertinent part, that the signer:

[H]ereby releases, waives, discharges and covenants not to sue [defendants] . . . from all liability to the undersigned . . . on account of injury to the person or property or resulting in death of the undersigned, whether caused by the negligence of releasees or otherwise while the undersigned is upon the restricted area.

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiffs argue that they did not “fairly and knowingly” sign the releases because the defendants misrepresented the documents as mere “sign-up” sheets. However, plaintiffs’ own testimony does not support this argument. In particular, plaintiff Stoychoff testified that he did not read the document because he felt rushed and plaintiff Quintero testified that he signed the document because he thought he had to. Plaintiffs’ testimony, thus, reveals that they were not affected by any representations made by defendants. Plaintiffs may not avoid their releases merely because they did not take care in reading them. *Dombrowski v City of Omer*, 199 Mich App 705, 710; 502 NW2d 707 (1993). Such releases constitute contracts and bind the parties as do any other contracts; parties seeking to avoid their obligations under such releases bear a heavy burden in demonstrating to this Court why their apparent terms should not control the legal relationship between the parties. *Paterek v 6600 Ltd*, 186 Mich App 445, 448-50; 465 NW2d 342 (1990). Plaintiffs have not satisfied this burden.<sup>1</sup>

Plaintiffs further argue that the releases were void as a matter of public policy because defendants were grossly negligent. As a result, plaintiffs argue that they should be allowed to amend their pleadings to include gross negligence as a cause of action. However, plaintiffs did not present evidence that the defendants were grossly negligent. There was no evidence that the defendants knew the brakes on the car responsible for their injury were malfunctioning nor did they know that the driver of the car may have been intoxicated at the time. Indeed, defendants had given instructions that no one who smelled of alcohol would be allowed to sign-up for the derby and had asked members of the local fire department to enforce such a rule. Further, plaintiffs were not properly within the area where the accident occurred at the time it occurred. Defendants cannot fairly be said to have been grossly negligent in their conduct, *Jennings v Southwood*, 446 Mich 125, 140; 521 NW2d 230 (1994). The trial court did not err in refusing to allow plaintiffs to amend their pleadings.

Defendants Iron County and the fair association cross-appeal arguing that the fair association should be entitled to governmental immunity because it is a political subdivision of Iron County. Although we affirm the trial court’s grant of summary disposition, we will briefly address this issue as well. Because the fair association is a Michigan corporation, we do not agree with the contention that it is entitled to governmental immunity. “A private entity’s performance of a governmental function does not confer governmental agency status on that entity.” *O’Neill v Emma L. Bixby Hosp*, 182 Mich App 252, 256; 451 NW2d 594 (1990). Moreover, even though Iron County had the power to create such a fair association, it did not, in fact, create the Iron County Fair Association;<sup>2</sup> thus, the association was not entitled to governmental immunity.

Affirmed.

/s/ Harold Hood  
/s/ Stephen J. Markman  
/s/ Alton T. Davis

<sup>1</sup> Plaintiff's affidavits to the contrary are not valid because they may not raise factual issues by asserting facts contrary to their deposition testimony. *Barlow v Crane-Houdaille, Inc*, 191 Mich App 944, 250; 477 NW2d 133 (1991).

<sup>2</sup> In this case, the fair's employees were not municipal employees. In fact, the profits were divided equally with a private citizen, Gary Kunchynski. Moreover, the fair association is run by an executive committee, of which only two members were from the county and, in comparison to the \$8000 received by the fair association from the county, the association collected more than \$32,000 from other sources.