

STATE OF MICHIGAN
COURT OF APPEALS

JEAN ZEIMAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 170986

LC No. 93-452794

SKATE WORLD, INC.,

Defendant-Appellant.

Before: Hoekstra, P.J., and Michael J. Kelly and J.M. Graves, Jr.,*, JJ.

MICHAEL J. KELLY, (concurring).

I agree with the majority that we are bound by the decision in *Skene v Fileccia*, 213 Mich App 1; 539 NW2d 531 (1995). The *Skene* panel relied on the ski area safety act which was passed by the Legislature, at least in part, to promote tourism and to protect the ski industry from frivolous suits. I believe the Roller Skating Safety Act had its genesis under different circumstances, and, but for AO 1990-6 I would be loathe to interpret the skating act as insulating rink operators from liability for tolerating unreasonably dangerous activity.

Toleration in some circumstances is encouragement. It would seem contrary to public policy to require a roller skating patron to assume the risk of highly dangerous, reckless skating on the part of third persons over which the plaintiff has no control when the rink operator has not complied with the safety standards published by the Roller Rink Operator's Association. See MCL 445.1723(b); MSA 18.485(3). One could readily assume that the Legislature intended to prohibit actions involving collisions with other skaters who are inept. Bumping and falling are certainly recognized hazards. However, if the legislation was intended to protect rink owners from the requirements of MCL 445.1723.3(b); MSA 18.485(3) of the Roller Skating Safety Act, as well as the requirements of the Association, *supra*, it's constitutionality would be suspect.

Here, the plaintiff was struck from behind by one of a group of reckless skaters. Plaintiff alleges that these skaters were encouraged, and, the hazard they created, enhanced by defendant's activity.

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

But for *Skene, supra*, I would agree with the trial court that there are dangers in roller skating which are not all that obvious and necessary. Perhaps, the Legislature should be asked to amend the legislation to make the reasonableness of the operator's behavior relevant. As it is the liability section, MCL 445.1726(6); MSA 18.485(6) makes the operator liable for damages from which he is insulated by judicial interpretation of sections 4 and 5 of the Act.

/s/ Michael J. Kelly