

STATE OF MICHIGAN
COURT OF APPEALS

LINDA L. REVETT,

Plaintiff-Appellant,

v

ROBERT ALSGAARD,

Defendant-Appellee.

UNPUBLISHED

August 19, 1997

No. 193309

Saginaw Circuit Court

LC No. 94-004820-NO

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of defendant in this negligence action arising from the sport of golf. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff herself was undoubtedly negligent in proceeding with her husband to a position in advance of defendant before defendant had struck his tee shot. Plaintiff was also negligent in failing to exercise due care for her own safety by paying careful attention to the actions of other golfers in her immediate vicinity, inasmuch as the dangers presented were open and obvious, even for a person whose total experience at the game consisted of the prior nine holes. Nonetheless, summary disposition was inappropriately granted because defendant acknowledged in his deposition that he was aware both of plaintiff's position and of her inattentiveness, and his subsequent negligence in striking the ball without warning the other members of his foursome and alerting them to the danger, while hitting the ball in their direction, was a breach of his duty of ordinary care and beyond any risk assumed by plaintiff as a participant in the sport. *Schmidt v Youngs*, 215 Mich App 222, 225, 228; 544 NW2d 743 (1996). The resulting factual issue of comparative negligence is properly one for the jury and may not be resolved on motion for summary disposition.

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

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell