

Court of Appeals, State of Michigan

ORDER

Jean Powe v Julio Antonio Amill

Kirsten Frank Kelly
Presiding Judge

Docket No. 312820

Christopher M. Murray

LC No. 12-006699-NI

Michael J. Riordan
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court further orders that the October 2, 2012, order of the Wayne County Circuit Court is REVERSED to the extent that the trial court denied the motion for summary disposition with respect to plaintiff's negligence claim. The release signed by plaintiff before she participated in the trail ride unambiguously indicates that plaintiff agreed to release the defendant horse club and defendant Flood "from any liability arising from accident, injury, . . . or damages" to plaintiff and "for any injury or damage which the rider may sustain while participating" in the trail ride. Therefore, plaintiff's negligence claim is barred by the release and the trial court erred in failing to dismiss this claim. See *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 13-16; 614 NW2d 169 (2000). Contrary to plaintiff's argument, the release is not ambiguous and does not contain a misstatement of the law. See MCL 691.1666(3). However, plaintiff apparently also asserted a claim of gross negligence in her complaint and amended complaint, which notably have not been provided to this Court. Because "a party may not insulate himself for gross negligence or willful and wanton misconduct," *Lamp v Reynolds*, 249 Mich App 591, 594; 645 NW2d 311 (2002), defendants were not entitled to summary disposition of this claim under MCR 2.116(C)(7) based on the release. Accordingly, this matter is REMANDED for further proceedings not inconsistent with this order.

In all other respects, the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

FEB 01 2013

Date


Chief Clerk