

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH RAHE,

Plaintiff-Appellant,

v

NORTH COUNTRY CLUB a/k/a NORTH
COUNTRY SNOWMOBILE CLUB,

Defendant-Appellee.

UNPUBLISHED

June 5, 2001

No. 224796

Ontonagon Circuit Court

LC No. 99-000018-NO

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's grant of summary disposition to defendant pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff's negligence claim arises from injuries sustained in a snowmobiling accident. On February 17, 1996, plaintiff was snowmobiling on a portion of the Michigan trailways system located in Ontonagon County. While traveling on trail five, which is maintained by defendant pursuant to contract with the State of Michigan, plaintiff decided to stop at a nearby gas station. Plaintiff noticed snowmobile tracks leading toward the gas station and decided to follow those tracks. While negotiating the short-cut, about thirty to forty yards off trail five, plaintiff encountered a gully. His snowmobile became airborne and he collided with the far bank of the gully, suffering injuries. Plaintiff brought suit against defendant, alleging simple negligence, gross negligence and willful and wanton misconduct. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10), holding that plaintiff's accident did not occur on defendant's snowmobile trail and that the Recreational Use Act (RUA), MCL 324.73301; MSA 13A.73301, bars plaintiff's claim. Plaintiff appeals as of right.

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The moving party must specifically identify the issues as to which it believes there is no genuine issue of material fact. MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The moving party bears the initial burden of supporting its position by suitable documentary evidence. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The burden then shifts to the nonmoving party to establish that a genuine issue of disputed fact exists. *Id.* at 455. The nonmoving party may not rely on mere allegations or

denials in the pleadings, but must present documentary evidence establishing the existence of a material factual dispute. *Id.* When deciding a motion for summary disposition under MCR 2.116(C)(10), the trial court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the nonmoving party. *Maiden, supra* at 120. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff first argues that the trial court erroneously granted summary disposition because a genuine issue of material fact exists regarding whether plaintiff's accident occurred on defendant's snowmobile trail. We disagree. Defendant provided documentary evidence which indicated that the gully was thirty to forty yards from snowmobile trail five, outside defendant's maintenance responsibilities. Defendant supported this position with an affidavit from the president of the snowmobile club and the investigating police officer's deposition testimony. Upon production of these proofs, the burden shifted to plaintiff to provide documentary evidence creating a genuine issue of material fact for trial. *Smith, supra* at 455. Plaintiff failed to meet this burden. He provided no documentary support for his position that defendant's trail continued across the gully. Further, plaintiff's unsupported belief that he was on the trail when the accident occurred is insufficient as a matter of law to present a genuine issue of material fact. MCR 2.116(G)(4); *Maiden, supra* at 121. The trial court properly granted defendant's motion for summary disposition because there was no genuine issue of material fact regarding the location of plaintiff's accident.

Plaintiff next argues that the trial court erroneously granted summary disposition because a genuine issue of material fact exists regarding defendant's negligence. Plaintiff argued that defendant owed him a duty to erect adequate warning signs along the snowmobile trail. Plaintiff claims that he followed existing snowmobile tracks into the gully. Therefore, plaintiff concludes that defendant knew or should have known about the gully and that defendant owed snowmobilers using its trail a duty to protect them from injury in the gully. Plaintiff further alleges that defendant could have fulfilled this duty by erecting warning signs on the trail or by erecting a fence to separate the trail from the gully. Plaintiff's argument is without merit. "[T]he law does not ordinarily impose a duty of care upon the occupier of land beyond the area over which he has possession or control." *Rodriguez v Detroit Sportsmen's Congress*, 159 Mich App 265, 271; 406 NW2d 207 (1987). Plaintiff presented no documentary evidence in support of the contention that defendant exercised any type of possession or control over the gully where plaintiff's accident occurred. The trial court properly granted defendant's motion for summary disposition because defendant owed plaintiff no duty to protect him from a danger that was not on defendant's property.

Plaintiff next argues that the trial court erroneously granted defendant summary disposition under the RUA. The statute provides:

- (1) Except as otherwise provided in this section, a cause of action shall not arise for injuries to a person who is on the land of another *without paying to the owner, tenant, or lessee of the land a valuable consideration* for the purpose of . . . snowmobiling, or any other outdoor recreational use or trail use, with or without

permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(2) A cause of action shall not arise for injuries to a person who is on the land of another *without paying to the owner, tenant, or lessee of the land a valuable consideration* for the purpose of entering or exiting from or using a Michigan trailway . . . or other public trail, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. [MCL 324.73301; MSA 13A.73301 (emphasis added).]

Plaintiff argues that he falls within one of the exceptions to the RUA’s grant of immunity from suit because he paid “valuable consideration” for use of trail five. We disagree.

In *Ballard v Ypsilanti Twp*, 457 Mich 564, 577-578; 577 NW2d 890 (1998), our Supreme Court described the RUA as follows:

[T]he recreational land use act is a liability-limiting, as contrasted with a liability-imposing, act. It did not create a cause of action against landowners where none existed before. Instead, it eliminated liability for negligence, and left liability only for gross negligence and wilful and wanton misconduct.

Further, this Court has held that the RUA “should be given a liberal construction to carry out the Legislature’s intent to further recreational activities in Michigan by making certain areas available for such purposes while codifying tort law principles limiting the liability of landowners to those who come gratuitously upon their lands.” *Syrowik v City of Detroit*, 119 Mich App 343, 347; 326 NW2d 507 (1982).

Plaintiff testified that, on the date in question, he rented a snowmobile from a local service center. He also testified that the snowmobile carried a valid trail permit sticker, as required by MCL 324.82118; MSA 13A.82118. Plaintiff argues that a portion of the price that he paid for the snowmobile rental went toward the purchase of the trail permit sticker and ultimately funded the operation of the Michigan trailways system, including trail five. Therefore, plaintiff argues that his payment for the snowmobile rental constitutes payment of “valuable consideration” to the owner, tenant, or lessee of the land as described in the RUA. We disagree.

This Court has held that the “valuable consideration” exception to the RUA requires payment of “a specific fee for the use of a particular recreational area,” which is not satisfied by receipt of other consideration by the landowner or lessee. *Syrowik, supra* at 347.¹ In the present case, plaintiff paid the snowmobile rental fee to a third party who was completely unrelated to defendant. Although the snowmobile dealer may have arguably used a portion of plaintiff’s

¹ See also *Bessler v Huron-Clinton Metropolitan Authority*, 180 Mich App 397, 401; 447 NW2d 811 (1989) and *Schiller v Muskegon State Park*, 153 Mich App 472, 474-476; 395 NW2d 75 (1986).

rental fee to purchase the snowmobile trail permit, the permit fee was divided between the agent selling the permit, the state, and the recreational snowmobile trail improvement fund. MCL 324.82118; MSA 13A.82118. None of the permit fee was paid directly to defendant. Plaintiff argues that defendant indirectly benefited through the payments from the trail improvement fund for maintenance provided on trail five. However, we conclude that this attenuated form of payment does not constitute payment of a specific fee for the use of a specific recreational area. *Syrowik, supra* at 347.

Plaintiff next contends that the trial court erroneously granted summary disposition under the RUA because defendant's conduct was either grossly negligent or willful and wanton misconduct. MCL 324.73301; MSA 13A.73301. Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Jennings v Southwood*, 446 Mich 125, 136; 521 NW2d 230 (1994). Further, in order to prove that defendant committed willful and wanton misconduct, plaintiff was required to demonstrate that "the conduct alleged shows an intent to harm or, if not that, such indifference to whether harm will result as to be the equivalent of a willingness that it does. *Id.* at 138.

Plaintiff argues that defendant knew or should have known about the hazard presented by the gully and knew or should have known that snowmobilers using trail five would attempt to traverse the gully in order to reach the nearby gas station. Plaintiff further argues that defendant failed to take appropriate steps to protect the public from the hazardous gully, such as erecting warning signs or fences. As set forth above, the hazard that plaintiff encountered was not on trail five. Defendant owed plaintiff no duty to discover hazards on property that defendant neither owned nor maintained. Further, failure to place warning signs, absent actual notice of a dangerous condition, alleges ordinary negligence at best, not willful and wanton misconduct. *Montgomery v Dep't of Natural Resources*, 172 Mich App 718, 721-722; 432 NW2d 414 (1988). Based on the record, we conclude that plaintiff failed to support his position by documentary evidence and failed to establish a genuine issue of material fact. Accordingly, the trial court properly entered judgment for defendant as a matter of law.

Affirmed.

/s/ David H. Sawyer
/s/ Michael R. Smolenski
/s/ William C. Whitbeck