

STATE OF MICHIGAN  
COURT OF APPEALS

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PATRICK N. ANDERSON,

Plaintiff-Appellant,

V

BOYNE USA, INC.,

Defendant-Appellee.

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UNPUBLISHED

September 11, 2012

No. 306060

Charlevoix Circuit Court

LC No. 10-028423-NO

Before: SERVITTO, P.J., and FITZGERALD and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting plaintiff's motion for summary disposition. We affirm.

Plaintiff filed a complaint against defendant after he was paralyzed as the result of a snowboarding accident involving a jump in the terrain park at Boyne Mountain Ski Resort. The trial court found that the Ski Area Safety Act (SASA), MCL 408.341 *et seq*, barred plaintiff's claim because the jump was an inherent, obvious, and necessary danger of snowboarding.

We review a trial court's decision on a motion for summary disposition *de novo*. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Defendant filed its motion under both MCR 2.116(C)(8) and (C)(10), but the trial court did not specify the rule it was applying when it granted the motion. "However, where, as here, the trial court considered material outside the pleadings, this Court will construe the motion as having been granted pursuant to MCR 2.116(C)(10)." *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 273; 744 NW2d 10 (2007). "A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *BC Tile & Marble Co, Inc v Multi Building Co, Inc*, 288 Mich App 576, 582-583; 794 NW2d 76 (2010). All documentary evidence supporting a motion under (C)(10) must be viewed in a light most favorable to the nonmoving party. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 278; 769 NW2d 234 (2009). When reviewing a motion pursuant to MCR 2.116(C)(10), summary disposition may be granted if the evidence establishes that "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." MCR 2.116(C)(10). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in a light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). In addition, this issue requires us to

“determine whether a set of circumstances falls within the scope of MCL 408.342(2),” which is a question of law that is also reviewed de novo. *Anderson v Pine Knob Ski Resort, Inc*, 469 Mich 20; 664 NW2d 756 (2003).

MCL 408.342 provides:

- (1) While in a ski area, each skier shall do all of the following:
  - (a) Maintain reasonable control of his or her speed and course at all times.
  - (b) Stay clear of snow-grooming vehicles and equipment in the ski area.
  - (c) Heed all posted signs and warnings.
  - (d) Ski only in ski areas which are marked as open for skiing on the trail board described in section 6a(e).
- (2) Each person who participates in the sport of skiing accepts the dangers that inhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; collisions with ski lift towers and their components, with other skiers, or with properly marked or plainly visible snow-making or snow-grooming equipment.

The parties primarily rely on *Anderson* to support their positions. In *Anderson*, the plaintiff was in a ski competition at Pine Knob Ski Resort when he “‘caught an edge’ as he neared the finish line and lost his balance.” *Anderson*, 469 Mich at 22. As a result, “he collided with the shack housing the race timing equipment.” *Id.* Our Supreme Court noted that SASA provided for two types of dangers inherent in skiing: natural and unnatural hazards. *Anderson*, 469 Mich at 24. The examples listed in the statute “are employed to give the reader guidance about what other risks are held to be assumed by the skier[.]” but are not limited to those listed. *Id.* at 25. The Court applied the doctrine of ejusdem generis<sup>1</sup> and “conclude[d] that the commonality in the hazards is that they all inhere in the sport of skiing and, as long as they are obvious and necessary to the sport, there is immunity from suit.” *Id.* The question then became “whether the timing shack was within the dangers assumed by plaintiff as he engaged in ski racing at Pine Knob.” *Id.* The Court held that it was. *Id.* The Court stated that the timing equipment was necessary for ski racing, and for it to function it had to be protected from the weather. *Id.* The shack provided that protection and “was obvious in its placement at the end of the run.” *Id.* The Court stated that the shack was “a hazard of the same sort as the ski towers and snow-making and grooming machines to which the statutes refers us.” *Id.* at 25-26. Further,

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<sup>1</sup> Under ejusdem generis, general terms include those “of the same kind, class, character, or nature as those specifically enumerated.” *Anderson*, 469 Mich at 25, n 1 (quotation marks and citation omitted).

the Court rejected the plaintiff's argument that the shack was larger than other alternatives that could have been used for timing-equipment protection. *Id.* at 26. The Court stated, "We find nothing in the language of the statute that allows us to consider factors of this sort. Once hazards fall within the covered category, only if they are unnecessary or not obvious is the ski operator liable." *Id.* The Court stated that the Legislature enacted the statute to remove these matters "from the common-law arena" and to grant immunity to ski-area operators. *Id.* Therefore, the reasonableness of the placement of the shack was not a consideration for the fact-finder. *Id.*

As noted in *Anderson*, the list of examples in SASA is not exhaustive and is provided as guidance to determine what other risks a skier assumes. Here, the jump was a danger assumed by plaintiff as he snowboarded in the terrain park. Whether it was created by defendant or not, it was still a variation in the terrain that a snowboarder would expect to see if he or she entered a terrain park. Even if the jump were not inside the terrain park, it would still be a danger inherent in the sport of skiing; a snowboarder accepts the risks associated with snowboarding, regardless of whether he is snowboarding down a slope or performing tricks in a terrain park. See *Barrett v Mount Brighton, Inc*, 474 Mich 1087; 1087, 719 NW2d 154 (2006) (indicating that the particular form of skiing does not matter).

While it is true one can snowboard without jumps, a snowboarder enters a terrain park expecting to use jumps, rails, and boxes. Without those features, there would not be a terrain park. If a snowboarder did not want to use those features, he or she would not enter a terrain park. Instead, the snowboarder would simply propel down a ski hill. Therefore, a jump is a necessary feature of a terrain park.

Further, the jump was in an obvious placement in the terrain park. Plaintiff was aware of the original jump the previous day, but failed to inspect the premises on the second day, even though he knew features of the park could change. There were signs posted at the entrance of the terrain park stating that skiers were responsible for familiarizing themselves with the terrain throughout its use, especially because the features change constantly due to snow conditions, weather, and usage. The jump was not a hidden feature of the park, and plaintiff would have seen it had he heeded all posted signs and warnings, as required by the statute. See MCL 408.342(1)(c).

In addition, plaintiff argues that the jump was not obvious because he was unaware of the danger it created by being improperly constructed; he relies on his expert witness to support the assertion that the jump should have been constructed in a safer way. However, whether there was a safer alternative for creating the jump appears to be irrelevant for purposes of SASA. See *Anderson*, 469 Mich at 26. The Legislature enacted the statute to remove these matters "from the common-law arena" and to grant immunity to ski-area operators; therefore, reasonableness of the placement of the jump would not be a consideration. *Id.*

Affirmed.

/s/ Deborah A. Servitto  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot