

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER FRANZEL and CURTIS FRANZEL,

Plaintiffs-Appellants,

UNPUBLISHED
January 23, 2014

v

METRO SKATE, INC., d/b/a LAPEER SKATING
CENTER,

No. 310348
Lapeer Circuit Court
LC No. 10-043459-NO

Defendant-Appellee.

Before: METER, P.J., and JANSEN and WILDER, JJ.

PER CURIAM.

In this action involving a fall at a roller skating center, defendant appeals by leave granted the trial court's denial of its motion for summary disposition. We reverse and remand for entry of judgment in favor of defendant.

At issue is whether the trial court erred by concluding that plaintiff had established a genuine issue of material fact concerning whether defendant breached its duties under the Roller Skating Safety Act (RSSA), MCL 445.1721 *et seq.* Plaintiff was injured when she fell after anticipating a potential collision with another skater who allegedly skated out in front of her. Plaintiff claims that defendant breached its duties because its floor guards did not properly direct other skaters from congregating around the entrance/exit of the skating rink as required under the RSA Roller Skating Center Safety Standards. In support of its motion for summary disposition, defendant argued that plaintiff had failed to state a claim because she assumed the risk of her injury. Defendant also argued that plaintiff had failed to raise a genuine issue of material fact as to whether defendant violated its duties under the RSSA.

We review *de novo* the trial court's decision on a motion for summary disposition. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008).

MCL 445.1725 provides that “[e]ach person who participates in roller skating accepts the danger that inheres in that activity insofar as the dangers are obvious and necessary.” Among the enumerated dangers are “injuries that result from collisions with other roller skaters or other spectators” and “injuries that result from falls.” MCL 445.1726 provides that civil liability is available to an injured party against any roller skater, spectator, or operator for damages caused by the actor's violation of the RSSA.

Under MCL 445.1723, roller skating center operators must:

(a) Post the duties of roller skaters and spectators as prescribed in this act and the duties, obligations, and liabilities of operators as prescribed in this act in conspicuous places.

(b) Comply with the safety standards specified in the roller skating rink safety standards published by the roller skating rink operators association, (1980).

(c) Maintain roller skating equipment and roller skating surfaces according to the safety standards cited in subdivision (b).

(d) Maintain the stability and legibility of all required signs, symbols, and posted notices.

The Roller Skating Rink Safety Standards referred to in MCL 445.1723(b) and (c) require an operator to employ identifiable floor guards to direct and supervise skaters. These standards, however, do not set forth any guidelines or requirements for exercising such supervision.

As explained previously, plaintiff was injured when she fell after anticipating a potential collision with another skater who allegedly skated out in front of her. Plaintiff claims that defendant breached its duties because its floor guards did not properly direct other skaters from congregating around the entrance/exit of the skating rink as required under the Roller Skating Center Safety Standards. However, plaintiff's injury was not directly caused by the congested area. Instead, it was caused by a near collision with another skater and plaintiff's subsequent fall. A collision between skaters is an inherent risk assumed by roller skaters under MCL 445.1725, which clearly states that the dangers for which a roller skater assumes the risk include injuries resulting from collisions with other skaters and falling. Plaintiff has not provided any evidence to support her allegation that defendant violated any of its duties under MCL 445.1723. Although the Roller Skating Center Safety Standards require that identifiable floor guards be present whenever a skating center is open for skating, plaintiff admitted that defendant's floor guards wore black and white shirts and whistles and thus were identifiable and present. Other than failing to prevent congestion near the entrance/exit, plaintiff has not identified any duties that the floor guards failed to perform which may have caused her injury. Plaintiff's injury was not caused by defendant's alleged violation of its duties but by her reaction to another skater. Plaintiff has also failed to provide any evidence that the number of skaters on the night in question exceeded the center's maximum capacity or that the alleged crowd near the entrance/exit caused her to fall. A mere possibility that the claim might be supported by evidence at trial is insufficient to withstand summary disposition. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999); *Bennett v Detroit Police Chief*, 274 Mich App 307, 317; 732 NW2d 164 (2006). Plaintiff has failed to establish a genuine issue of material fact concerning whether defendant violated any of its statutory duties. Accordingly, the trial court erred by failing to grant defendant's motion for summary disposition. See *Dale v Beta-C, Inc*, 227 Mich App 57, 70; 574 NW2d 697 (1998). We reverse the order denying defendant's motion for summary disposition and remand for entry of judgment in favor of defendant.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder