

STATE OF MICHIGAN
COURT OF APPEALS

GERALD HUTCHINSON, Personal
Representative of the Estate of KATHERINE
HUTCHINSON, the Estate of CHRISTINE
HUTCHINSON, and the Estate of TIFFANY
HUTCHINSON,

UNPUBLISHED
August 14, 2003

Plaintiff-Appellant/Cross-Appellee,

v

No. 240136
Mackinac Circuit Court
LC No. 98-004476-NO

TOWNSHIP OF PORTAGE, WILLIAM J.
BROWN, H. WATTS STAMPER, and WAYNE
SUIDA,

Defendants-Appellees/Cross-
Appellants,

and

CRAIG OUTWATER, GREG KEMPPAINEN and
ROCKY WOODWARD,

Defendants-Appellees.

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

SMOLENSKI, P.J. (*concurring in part and dissenting in part*).

I concur with the majority's result regarding defendants, Brown, Stamper and Outwater. However, I respectfully dissent in part from the majority's result and would reverse the trial court's directed verdict in favor of defendant Suida. I would find that, viewing the evidence in the light most favorable to plaintiff, reasonable minds could differ on whether Suida's actions or lack thereof constituted gross negligence.

Before dredging, the lake water near shore was so shallow that one had to go out nearly 300 feet in order to encounter water three feet deep. An aquatic safety consultant testified at trial that the hazard created by the overdredging in a lake, the bottom of which was otherwise completely flat, posed "a horrific threat of drowning and dying" to children. Suida himself had observed the conditions at the lake and admitted that he never gave any thought to whether the lake was used for swimming or whether the dredging would pose a danger to swimmers, despite

the fact that there was a sign posted at the lake that stated the water was shallow. Logic and common sense indicate that a sudden eight-foot drop-off in an otherwise shallow and flat-bottomed lake posed a significant danger to anyone without swimming skills. Additionally, logic and common-sense also indicate that in a public park with a boat launch, it is highly likely that individuals would play in the lake, despite the lack of an officially designated swimming area. In fact, Suida was informed of a near-drowning incident at the lake involving several children one month before decedents' deaths, and thus, was aware that children used the lake for swimming. Yet, despite this information, Suida made no attempt to inform the township that the lake had been overdredged by four feet or to assist in posting signs or placing a water marker in the lake to warn the public of the danger, actions which required a permit issued by the DNR. Apparently, Suida never gave any thought at all to whether the dredging would create a hazard.

Additionally, I believe that a jury could have found that without this condition present, the lake bottom dropping off eight feet in otherwise shallow water, the decedents would not have drowned. Reasonable minds could have determined that, regardless of how the children ended up in the area, the suddenly deep water caused by the overdredging was "the" proximate cause of the decedents' deaths and that Suida's lack of concern and forethought for safety constituted reckless behavior demonstrating indifference as to whether an injury resulted. I simply cannot agree with the majority that lack of parental supervision was "the" proximate cause of the drownings. Accordingly, I would hold that the trial court erred in directing a verdict in favor of Suida.

/s/ Michael R. Smolenski