

STATE OF MICHIGAN
COURT OF APPEALS

DOMINIC J. MOCERI, JR.,

Plaintiff-Appellant,

v

RM MOTORSPORTS and ADAM BALDWIN,

Defendants-Appellees.

UNPUBLISHED
October 12, 1999

No. 212307
Wayne Circuit Court
LC No. 98-803310 NO

Before: Griffin, P.J., and Zahra and S.L. Pavlich*, JJ

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In the course of his employment, plaintiff accompanied defendant Baldwin, an employee of defendant RM Motorsports, to a race track in Georgia. Plaintiff signed a release which provided that in consideration of his being allowed to enter the so-called "restricted area" of the race track, which included the infield and walkways, he released all car owners, sponsors, participants, and their officers and employees from liability for all claims for injury or damages, and assumed the risk for all injuries. Plaintiff sustained injuries when he was thrown from a golf cart being driven by Baldwin. The cart had fishtailed when Baldwin braked suddenly after traveling down an incline and encountering a speed bump.

Plaintiff's first amended complaint alleged that Baldwin operated the cart in a negligent manner, and that his actions constituted gross negligence and willful and wanton misconduct. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that plaintiff's claim was barred by the release, and that in any event no genuine issue of fact existed as to whether Baldwin's actions constituted gross negligence and/or willful and wanton misconduct. The trial court granted the motion, finding that this case was one of ordinary negligence.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff effectively concedes that his claim of ordinary negligence was barred by the release, MCR 2.116(C)(7); *Kirkos v Goodyear Tire & Rubber Co*, 108 Mich App 781, 790-791; 311 NW2d 139 (1981), but argues that the trial court erred by granting summary disposition of his claims of gross negligence and willful and wanton misconduct. We disagree and affirm. Plaintiff's complaint asserted that Baldwin's actions constituted both gross negligence and willful and wanton misconduct as a matter of law. In an affidavit, plaintiff indicated that Baldwin drove the cart at an excessive speed, that he did not keep a proper lookout and thus did not observe a speed bump on the route, that upon seeing the speed bump he braked the cart suddenly, and that when the cart began to fishtail he exited without warning. The trial court's conclusion that the instant case sounded in ordinary negligence indicates that the court concluded that reasonable minds could not differ on the issue of whether Baldwin's actions constituted either gross negligence or willful and wanton misconduct. Gross negligence is conduct that is so reckless that it demonstrates a substantial lack of concern as to whether an injury results. SJI2d 14.10; *Jennings v Southwood*, 446 Mich 125, 136; 521 NW2d 230 (1994). Willful and wanton misconduct requires an intent to harm or such indifference as to whether harm will result as to be the equivalent of a willingness that it does result. *Id.*, 140. Plaintiff makes no showing that facts similar to those present in the instant case have been found to have created a genuine issue of fact as to whether such behavior constituted gross negligence or willful and wanton misconduct. The trial court properly granted summary disposition of plaintiff's entire complaint. *Kirkos, supra*; MCR 2.116(C)(10).

Affirmed.

/s/ Richard Allen Griffin
/s/ Brian K. Zahra
/s/ Scott L. Pavlich