STATE OF MICHIGAN

COURT OF APPEALS

DALE LARSON and SHERRY LARSON,

Plaintiffs-Appellants,

v

RICHARD BENNETT and JEFFREY BENNETT,

Defendants-Appellees,

and

LINDA BENNETT,

Defendant.

UNPUBLISHED
February 12, 2004

No. 244131
Montcalm Circuit Court
LC No. 00-000838-NI

Before: Schuette, P.J., and Meter and Owens, JJ.

PER CURIAM.

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

Plaintiffs frequently snowmobiled on defendant Richard Bennett's property with his permission. As plaintiffs proceeded along a trail at twilight, Dale Larson collided with an iron gate that had been erected across the trail by defendant Jeffrey Bennett, Richard Bennett's son. Dale Larson sustained permanent disabling injuries as a result of the accident.

Plaintiffs filed suit[1] alleging that defendants acted in a grossly negligent manner by placing a barrier across a path they knew was used by snowmobilers, failing to warn of the dangerous condition, and failing to place adequate markers to warn of the dangerous condition. Plaintiffs also alleged that defendants acted negligently by failing to maintain their property in a reasonably safe condition and to warn of the unsafe condition.

[1] Plaintiffs named Linda Bennett, the wife of Richard Bennett, as a defendant. Subsequently the trial court entered a stipulated order dismissing Linda Bennett, only, from the case.

Defendants sought summary disposition based on MCL 324.82126(6), the snowmobiling assumption of risk statute, which provides:

> Each person who participates in the sport of snowmobiling accepts the risks associated with that sport insofar as the dangers are obvious and inherent. Those risks include, but are not limited to, injuries to persons or property that 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; or collisions with signs, fences, or other snowmobiles or snow-grooming equipment. When a snowmobile is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of snowmobiling additionally assumes risks including, but not limited to, entanglement with tracks, switches, and ties and collisions with trains and other equipment facilities.

Defendants asserted that a fence/gate was a danger that the Legislature had specifically determined to be obvious and inherent in the sport of snowmobiling. The trial court granted defendants' motions.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). If the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted. *Cherry Growers, Inc v Agricultural Marketing & Bargaining Bd*, 240 Mich App 153, 166; 610 NW2d 613 (2000).

The language in the snowmobiling assumption of risk statute is virtually identical to the language in the assumption of risk provision in the Ski Area Safety Act (SASA), MCL 408.321, *et seq*. Section 22(2) of the SASA, MCL 408.342(2), provides immunity from tort liability where injuries arise out of risks deemed assumed under the statute, and places the burden of certain risks on skiers rather than ski resort operators. *McGoldrick v Holiday Amusements, Inc*, 242 Mich App 286, 290; 618 NW2d 98 (2000). Limited visibility of hazards does not limit the immunity provided by § 22(2). *Barr v Mt Brighton, Inc*, 215 Mich App 512, 524 n 8; 546 NW2d 273 (1996). The snowmobiling statute also assumes that some hazards are difficult to detect. The SASA does not provide for an exception to immunity for violation of outside safety standards. *McGoldrick, supra*, 292. Similarly, the snowmobiling assumption of risk statute does not preclude immunity when a landowner may have violated a construction code. Finally, plaintiffs' assertion that common law rules applicable to recreational activities preclude immunity under the snowmobiling assumption of risk statute for wanton and willful misconduct is without merit in light of the fact that the Legislature preempted the common law rules by enacting the statute. *Ritchie-Gamester v Berkley*, 461 Mich 73, 85 n 7; 597 NW2d 517 (1999). The trial court correctly concluded that defendants were entitled to immunity under the snowmobiling assumption of risk statute.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens