

Court of Claims of Ohio

The Ohio Judicial Center
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RICHARD COMBS

Plaintiff

v.

OHIO DEPARTMENT OF NATURAL RESOURCES

Defendant

Case No. 2013-00428

Judge Patrick M. McGrath
Magistrate Holly True Shaver

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On November 8, 2013, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). With leave of court, on December 2, 2013, plaintiff filed a response. Defendant's motion is now before the court for a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." See *also*

Gilbert v. Summit Cty., 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶4} On July 28, 2011, at approximately 7:00 a.m., plaintiff was fishing with a friend on the premises of Pew Island, located in Indian Lake State Park. Plaintiff did not pay a fee to enter the premises. At the same time, Jerry Leeth, an employee of defendant, was operating a “boom mower” on Pew Island to trim overgrown weeds and brush. As plaintiff was walking toward the lake to begin fishing, he was struck in the right eye by a rock that had been thrown from the blades of the boom mower. Plaintiff asserts that defendant’s employee’s negligence proximately caused his injuries.

{¶5} In its motion, defendant contends that plaintiff’s claim is barred as a matter of law by R.C. 1533.181, Ohio’s recreational user statute.

{¶6} R.C. 1533.181 states, in part:

{¶7} “(A) No owner, lessee, or occupant of premises:

{¶8} “(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

{¶9} “(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use;

{¶10} “(3) Assumes responsibility for or incurs liability for any injury to person or property caused by any act of a recreational user.”

{¶11} R.C. 1533.18 states, in part:

{¶12} “As used in sections 1533.18 and 1533.181 of the Revised Code:

{¶13} “(A) ‘Premises’ means all privately owned lands, ways, and waters, and any buildings and structures thereon, and all privately owned and state-owned lands, ways, and waters leased to a private person, firm, or organization, including any buildings and structures thereon.

{¶14} “(B) ‘Recreational user’ means a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state, or a lease payment or fee paid to the owner of privately owned lands, to enter upon premises to hunt, fish, trap, camp, hike, or swim, or to operate a snowmobile, all-purpose vehicle, or four-wheel drive motor vehicle, or to engage in other recreational pursuits.”

{¶15} In support of its motion, defendant filed the deposition of plaintiff, who acknowledges that he was on Pew Island to go fishing, and that he did not pay a fee to enter the premises. In response to the motion, plaintiff filed his own affidavit and the depositions of Leeth, Raymond Gaines, Jr., (park ranger), and Frank Giannola, (park manager). Plaintiff concedes that he was a recreational user, but contends that the recreational user statute does not preclude his claim because the cause of his injury was not a condition of the premises, but, rather, Leeth’s alleged negligent mowing. Plaintiff argues that the recreational user statute does not apply to injuries sustained as a result of the “active negligence” of a landowner’s employee.

{¶16} The Supreme Court of Ohio recently addressed the recreational user statute in *Pauley v. Circleville*, 137 Ohio St.3d 212, 2013-Ohio-4541. In *Pauley*, the court stated: “Under R.C. 1533.181(A)(1), ‘[n]o owner owes *any duty* to a recreational user to keep the premises safe for entry or use.’ (Emphasis added.) A duty is ‘[a] legal obligation that is owed or due to another and that needs to be satisfied.’ Generally speaking, ‘[i]f there is no duty, no liability can follow.’ Consequently, an owner cannot be held liable for injuries sustained during recreational use ‘even if the property owner affirmatively created a dangerous condition.’ * * * The determination of whether R.C. 1533.181 applies depends not on the property owner’s actions, but on whether the person using the property qualifies as a recreational user.” (Internal citations omitted) *Id.* at ¶ 21.

{¶17} In addition, “[i]n determining whether a person is a recreational user under R.C. 1533.18(B), the analysis should focus on the character of the property upon which the injury occurs and the type of activities for which the property is held open to the public.” *Id.*, at ¶ 29, quoting *Miller v. Dayton*, 42 Ohio St.3d 113 (1989), paragraph one of the syllabus.

{¶18} Construing the evidence most strongly in plaintiff’s favor, the only reasonable conclusion is that plaintiff was a recreational user at the time he was injured. Plaintiff was on state-owned land for the purpose of fishing. Plaintiff did not pay a fee to enter the premises. Indian Lake State Park, including Pew Island, is held out to the public for recreational uses such as fishing. Accordingly, pursuant to R.C. 1533.18 and 1533.181, defendant owed no duty of care to keep the premises safe for entry or use by plaintiff, and, consequently, plaintiff’s claim of negligence is barred as a matter of law. The fact that a rock was thrown by a mower blade operated by defendant’s employee does not change the fact that plaintiff was a recreational user when he was injured on defendant’s premises. See *Mitchell v. City of Blue Ash*, 181 Ohio App.3d 804, 2009-Ohio-1887 (1st Dist.2009) (plaintiff who was injured when park employee negligently operated fence gate was barred from recovery on a theory of negligence pursuant to R.C. 1533.181). Based upon the foregoing, defendant’s motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

Case No. 2013-00428

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ENTRY

cc:

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