

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

Candace M. Hug, et al.

Court of Appeals No. {86}WM-25-024

Appellants

Trial Court No. 24 CI 128

v.

Devin N. Hake, et al.

DECISION AND JUDGMENT

Appellees

Decided: August 21, 2026

* * * * *

Charles E. Boyk, Andrea R. Young, Michael A. Bruno,
and Emily R. Warnimont, for appellants.

Lisa M. Lahrmer and Samuel N. Dodoo, for appellees,
Devin N. Hake and Stacy L. Hake.

J. Mark Trimble and Stephen E. House, for appellee,
Tacia R. Livensparger.

* * * * *

MAYLE, J.

{¶ 1} Appellants, Candace Hug and Jeffrey Hug, appeal the November 25, 2025 decision of the Williams County Court of Common Pleas granting summary judgment in favor of appellees, Devin Hake, Stacy Hake, and Tacia Livensparger. For the following reasons, we affirm.

I. Background and Facts

{¶ 2} The Hakes own property in Edon, Ohio, that includes over 50 acres of land. They farm about 20 acres, and the rest of the land includes their house, a garage, and a shop, and features wooded areas, ponds, a creek, a shooting range, and trails running through the woods.

{¶ 3} On the evening of May 26, 2024, the Hakes invited some people, including Candace and Livensparger, over to their house for a social gathering. Devin was outside at the bonfire, but Stacy was inside the house the whole night.

{¶ 4} The Hakes own a Polaris Ranger 1000 utility vehicle (“UTV”) that was sitting out with the keys in the ignition that night. While it was light out, Livensparger took Candace for a ride on the UTV around the Hakes’ yard. The women did not wear helmets or other safety gear and did not use the seatbelts or safety netting the UTV was equipped with. Candace did not have any complaints about Livensparger’s driving during this ride.

{¶ 5} Later, after dark, around 11:15 or 11:30 p.m., Livensparger and Candace decided to go for another ride on the UTV. A third woman went with them. Livensparger was driving, Candace was in the far-right passenger seat, and the third woman was in the middle. None of the women wore helmets or other safety gear or used the seatbelts or safety netting the UTV was equipped with. Livensparger drove the UTV onto the property, looking for a trail into the woods. She had the UTV’s headlights on, but there was no other lighting on the trail. The grass was too tall on the first path she started down, so she backed up and started heading toward the house. As she was

returning to the house, she saw another trail. Because she was familiar with the area, she went down the second trail. While traveling down the second trail at approximately 7 or 8 m.p.h., the right front tire of the UTV got caught in a washout on the edge of a bridge over a culvert crossing the creek on the property, which caused the UTV to overturn into the creek.

{¶ 6} When the UTV fell into the creek, Candace was trapped underneath it by her hair. Her head was underwater, so to free herself and keep from drowning, she had to rip her hair extensions partway off of her head. After she had done that, Livensparger found her and helped her pull her extensions the rest of the way off her head so that she could completely free herself from under the UTV. Livensparger then helped Candace to the bank of the creek where they waited for help to arrive.

{¶ 7} Candace was life-flighted from the scene. She was ultimately diagnosed with a fractured neck vertebra, a left radial-head fracture, and PTSD.

{¶ 8} Before the UTV accident, Livensparger had been to the Hakes' property approximately 50 times and had driven their UTV about five times, though never at night. She had been around UTVs and all-terrain vehicles ("ATVs") since she was young and believed that she was a good driver. She had never been in a UTV or ATV crash before. Devin had previously been a passenger when Livensparger was driving the UTV and did not have any problems with her driving. He was unaware of her being in any UTV or ATV accidents before this one.

{¶ 9} The Hakes did not charge for UTV rides the night of the accident. They did not give any instruction on using the UTV or guidance regarding the property's features or safe operation of the UTV.

{¶ 10} Based on these facts, the Hakes and Livensparger each moved for summary judgment. In their motion, the Hakes argued that they were not liable to Candace under R.C. 1533.181, the recreational user statute; Candace's claims were barred by primary assumption of the risk; Candace's negligent entrustment claim failed because there was no evidence that they knew Livensparger was an incompetent driver; and Jeffrey's loss of consortium claim, as a derivative claim, failed as a matter of law because none of Candace's other claims could survive summary judgment.

{¶ 11} The Hugs responded that the Hakes failed to timely assert a defense under R.C. 1533.181; R.C. 1533.181 does not apply to the Hakes' property because they do not hold it open to the public and it is not "nonresidential"; Candace was not a "recreational user" under the statute because she was not engaging in a qualifying recreational activity; primary assumption of the risk did not bar the Hugs' claims because the risks Candace encountered were neither foreseeable nor customary to the activity of riding a UTV; even if primary assumption of the risk applied, the Hakes could still be liable to the Hugs based on recklessness; genuine issues of material fact precluded summary judgment on negligent entrustment; and Jeffrey's loss of consortium claim survived because Candace's claims survived summary judgment.

{¶ 12} In her motion, Livensparger argued that she was not liable to Candace under the recreational activity doctrine, and there was no allegation of reckless or

intentional conduct that could defeat application of that doctrine. The Hugs responded that R.C. 1533.181 did not apply to Livensparger because she was not the owner, lessee, or occupant of the premises where Candace was injured; genuine issues of material fact remained regarding whether Livensparger increased the danger of the risks inherent to riding a UTV; a jury could reasonably conclude that Livensparger's conduct was reckless, which would defeat her claim that the recreational activity doctrine applied; a genuine issue of material fact existed regarding the cause of the accident because Livensparger claimed the accident was caused by a washout, but Devin claimed that he did not see any muddy or unstable conditions at the site immediately following the incident; and Jeffrey's loss of consortium claim survived because Candace's claims survived summary judgment.

{¶ 13} In its decision granting the Hakes and Livensparger summary judgment, the trial court first found that the Hakes did not waive their recreational immunity defense. Next, the court found that R.C. 1533.181 applied to shield the Hakes from liability to the Hugs unless the Hakes' actions were intentional or reckless. The court determined that the Hakes were the owners of the property; Candace was a recreational user because she was using the UTV for a recreational activity without paying a fee, and the classification of the UTV did not preclude Candace from being a recreational user; and the part of the Hakes' property where the accident occurred was nonresidential because it was in an undeveloped state and included features typical of recreational areas, such as land, water, trees, grass, and other vegetation. The trial court also found that there was no evidence to

support the Hugs' theory that Livensparger was intoxicated, so the Hakes could not have been reckless by allowing an intoxicated driver to use the UTV.

{¶ 14} Regarding the Hakes failure to warn of hazardous conditions, the court found that Stacy was inside all night and had no knowledge of the activities happening outside, and Devin believed that Livensparger was a competent driver, was not aware of a washout by the bridge where the accident happened, and knew that the only other incident involving the UTV was caused by Devin putting a heavy spray tank on it, which caused it to tip. In short, the court found “no genuine issue of facts that would impute knowledge that the Hakes knew or should have known that such conduct or knowledge or risk, created an unreasonable risk of physical harm to another, but also that any such risk was substantially greater than that which is necessary to make the conduct negligent”

{¶ 15} Regarding negligent entrustment, the trial court found no genuine issues of material fact in the record showing that Livensparger was an incompetent or intoxicated driver or that the Hakes knew that she was an incompetent or intoxicated driver.

{¶ 16} Next, the trial court found that the recreational activity doctrine barred both the Hakes' and Livensparger's liability to the Hugs. The court determined that Candace knew of and assumed the ordinary risks of recreationally riding a UTV, which relieved the other participants of liability for injuries occurring during the recreational activity unless they were acting recklessly or intentionally. The court found that Livensparger was not acting recklessly when she was driving the UTV. It concluded that there was no evidence in the record to support the Hugs' theories that Livensparger was intoxicated, or

that Livensparger was an incompetent or inexperienced driver. It also found that the attendant circumstances the Hugs pointed to (e.g., darkness and riding in the woods) did not increase the risk of riding on a UTV.

{¶ 17} Finally, the court found that Jeffrey's loss of consortium claim failed as a matter of law because all of Candace's claims failed.

{¶ 18} The Hugs now appeal, raising five assignments of error:

A. The trial court erred in granting summary judgment in favor of Defendants Stacy and Devin Hake where genuine issues of material fact exist as to whether the Hakes are entitled to immunity under R.C. 1533.181.

B. The trial court erred in granting summary judgment to Defendant Tacia Livensparger where genuine issues of material fact exist as to whether her conduct and actions increased the risks or dangers inherent in the recreational activity.

C. The trial court erred in concluding the conduct of Defendants Devin and Stacy Hake was not reckless where genuine issues of material fact support a finding of recklessness sufficient to preclude immunity under R.C. 1533.181.

D. The trial court erred in determining, as a matter of law, that Plaintiff's injuries arose from the ordinary risks inherent in the recreational activity.

E. The trial court erred in dismissing the loss of consortium claim.

II. Law and Analysis

A. Summary judgment standard

{¶ 19} We review summary judgment de novo, using the same standard as the trial court. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996); *Lorain Natl. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 129 (9th Dist. 1989). The court can grant a motion for summary judgment only when the moving party demonstrates:

(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) 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, who is entitled to have the evidence construed most strongly in his favor.

Harless v. Willis Day Warehousing Co., 54 Ohio St.2d 64, 66 (1978); Civ.R. 56(C).

{¶ 20} The party seeking summary judgment must specifically delineate the basis upon which the motion is brought and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996); *Mitseff v. Wheeler*, 38 Ohio St.3d 112 (1988), syllabus. When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleadings but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery*, 11 Ohio St.3d 75, 79 (1984). The opposing party must do so using “pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact” Civ.R. 56(C). A “material” fact is one that would affect the outcome of the suit under the applicable substantive law. *Russell v. Interim Personnel, Inc.*, 135 Ohio App.3d 301, 304 (6th Dist. 1999); *Needham v. Provident Bank*, 110 Ohio App.3d 817, 827 (8th Dist. 1996), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

B. The Hakes are immune as landowners under R.C. 1533.181.

{¶ 21} In their first assignment of error, the Hugs argue that there are genuine issues of material fact remaining regarding whether the Hakes are entitled to immunity

under R.C. 1533.181, so the trial court erred by granting them summary judgment under the recreational immunity statute. Specifically, they contend that Candace was not a recreational user because the Hakes' property was not held open to the public and was not "nonresidential."

{¶ 22} The Hakes respond that the trial court properly granted summary judgment because Candace fell within the definition of recreational user. They contend that R.C. 1533.181 does not require that their property be held open to the general public, and their property, when viewed as a whole, is nonresidential within the meaning of the statute.

{¶ 23} Under R.C. 1533.181,

(A) No owner, lessee, or occupant of premises:

(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

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

(3) Assumes responsibility for or incurs liability for any injury to person or property caused by any act of a recreational user.

(B) Division (A) of this section applies to the owner, lessee, or occupant of privately owned, nonresidential premises, whether or not the premises are kept open for public use and whether or not the owner, lessee, or occupant denies entry to certain individuals.

A "recreational user" is "a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, . . . 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." R.C. 1533.18(B).

{¶ 24} On appeal, the Hugs concede that the Hakes owned the property and that Candace was engaged in a recreational pursuit at the time she was injured. They do not dispute that Candace was at the Hakes' home with their permission, without paying a fee, or that Candace otherwise satisfies the statutory definition of "recreational user."¹ Based on our review of the record, we conclude that Candace was indeed a "recreational user" under R.C. 1533.18(B) because the Hakes permitted Candace to enter their property, without paying a fee, to engage in a recreational pursuit.

{¶ 25} Because she was a "recreational user," R.C. 1533.181(A) makes clear that the Hakes did not have a duty to keep their premises safe for Candace's entry or use. This is true whether or not the property is kept open for public use and whether or not the Hakes deny entry to certain people. R.C. 1533.181(B). Contrary to the Hugs' argument, under the plain language of the statute, the Hakes were not required to keep their property open to the public to benefit from the recreational immunity statute. The Hugs rely upon cases that were decided before R.C. 1533.181 was amended to include subsection (B), which clearly states that immunity applies "whether or not the premises are kept open for public use and whether or not the owner, lessee, or occupant denies entry to certain individuals." The cases cited by the Hugs are therefore unpersuasive under the current version of the statute. *See Stiner v. Dechant*, 114 Ohio App.3d 209, 214 (9th Dist. 1996)

¹ Although the Hugs argue that Candace was not a recreational user because the Hakes' property was not held open to the public and was not "nonresidential," this argument conflates the statutory definition of "recreational user" with the requirements for recreational-use immunity. Whether the property was held open to the public or was nonresidential bears on immunity under R.C. 1533.181, not on the definition of "recreational user" in R.C. 1533.18(B).

(After the amendment of R.C. 1533.181, “[s]ince the property was nonresidential in nature, the [owners] were potentially immune from liability pursuant to that statute regardless of whether they held out their property to the general public for recreational use.”).

{¶ 26} The only remaining element of the statute that the Hakes must meet to claim immunity is that the “premises” must be “nonresidential.” R.C. 1533.181(B). “Premises” means “all privately owned lands, ways, and waters, and any buildings and structures thereon” R.C. 1533.18(A). The term “nonresidential” is not defined in the statute. When a term is not defined in the statute, we give the term its plain and ordinary meaning. *Lingle v. State*, 2020-Ohio-6788, ¶ 15. “Nonresidential” means “([o]f an area, building, etc.) not being a place where people live.” *Black’s Law Dictionary* (10th Ed. 2014). In determining whether the recreational immunity statute applies to a property, courts look to the “essential character” of the property. *Pauley v. Circleville*, 2013-Ohio-4541, ¶ 16. The character of the premises envisioned by the recreational user statute involves “the true outdoors,” because “[m]ost of the recreational uses enumerated in R.C. 1533.18(B) are generally conducted in ‘the wide open spaces,’ such as parks or wilderness tracts” *Loyer v. Buchholz*, 38 Ohio St.3d 65, 67 (1988). Recreational premises typically “include elements such as land, water, trees, grass, and other vegetation.” *Miller v. Dayton*, 42 Ohio St.3d 113, 114 (1989). However, “[t]o qualify for recreational-user immunity, property need not be completely natural, but its essential character should fit within the intent of the statute.” *Id.* Properties with homes on them

can still be considered nonresidential, depending upon the character and use of the land. *See Thomas v. Chimera*, 2021-Ohio-4204, ¶ 27 (5th Dist.).

{¶ 27} Here, the property where the accident occurred is properly classified as nonresidential. Looking at the Hakes' property as a whole, the vast majority of the land is either nonresidential farmland or land that was left in its natural state. The accident occurred 300 to 400 yards away from the Hakes' home and outside of their backyard in an area left in its natural state and where no one lives. This is sufficient to show that the property was nonresidential.

{¶ 28} Because the Hakes meet all of the elements of the recreational user statute, they are entitled to immunity under R.C. 1533.181. Therefore, the Hugs' first assignment of error is not well-taken.

C. The evidence does not support a finding that the Hakes were reckless.

{¶ 29} In their third assignment of error, the Hugs argue that genuine issues of material fact remain regarding the Hakes' recklessness, which they claim is an exception to immunity under R.C. 1533.181. Specifically, they contend that the Hakes were reckless when they failed to warn Livensparger and Candace of the hazardous conditions on their property, allowed Livensparger to drive the UTV, and failed to provide safety equipment.

{¶ 30} To the extent the Hugs claim that the Hakes "recklessly" failed to warn Livensparger and Candace of the hazardous condition of their property, this argument is foreclosed by the plain language of R.C. 1533.181. Contrary to the Hugs' argument, R.C. 1533.181 contains no exception for recklessness—or any other theory of liability—

when a recreational user's claim is based on an allegedly unsafe condition on the premises. As the Ohio Supreme Court has observed, "[t]he 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." *Pauley* at ¶ 21. That is, "[t]he language of the recreational-user statute is plain: a property owner owes no duty to a recreational user to keep the property safe for entry or use. Creating an exception to this immunity is a policy decision that comes within the purview of the General Assembly, not the courts." *Id.* at ¶ 38. Simply put, because "there is no duty, no liability can follow." *Id.* at ¶ 21, quoting *Collins v. Sabino*, 1997 WL 531246, *4 (11th Dist. Aug. 29, 1997).

{¶ 31} The Hakes are therefore absolutely immune under R.C. 1533.181 for all premises liability claims, regardless of how they are framed. The Hugs cannot circumvent the Hakes' immunity by recasting a premises liability claim as one for a "reckless" failure to warn of a condition, or a "reckless" failure to make their property safe for use.

{¶ 32} However, the Hugs also contend that the Hakes acted recklessly when they allowed Livensparger to drive their UTV, and when they failed to provide safety equipment. These allegations are not barred by R.C. 1533.181 because they involve the Hakes' conduct in entrusting the UTV to their guests, rather than their liability as recreational landowners for injuries caused by an allegedly unsafe condition of their premises.

{¶ 33} Recklessness means that a person ““does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.”” *Marchetti v. Kalish*, 53 Ohio St.3d 95, 96, fn. 2 (1990), quoting 2 Restatement of the Law 2d, Torts, § 500 (1965).

“Reckless misconduct differs from negligence in several important particulars. It differs from that form of negligence which consists in mere inadvertence, incompetence, unskillfulness, or a failure to take precautions to enable the actor adequately to cope with a possible or probable future emergency, in that reckless misconduct requires a conscious choice of a course of action, either with knowledge of the serious danger to others involved in it or with knowledge of facts which would disclose this danger to any reasonable man. It differs not only from the above-mentioned form of negligence, but also from that negligence which consists in intentionally doing an act with knowledge that it contains a risk of harm to others, in that the actor to be reckless must recognize that his conduct involves a risk substantially greater in amount than that which is necessary to make his conduct negligent. The difference between reckless misconduct and conduct involving only such a quantum of risk as is necessary to make it negligent is a difference in the degree of the risk, but this difference of degree is so marked as to amount substantially to a difference in kind.”

{¶ 34} *Id.* at 100, fn. 3, quoting 2 Restatement of the Law 2d, Torts, § 500, Comment g (1965). Thus, to show that someone was reckless, the plaintiff must show that the other person knew of a specific risk and deliberately ignored it, and that the other person’s conduct was “more egregious than simple carelessness and must create substantially greater risk than ordinary negligence.” *Angelot v. Youngstown Bd. of Edn.*, 1998 WL 668158, *6 (7th Dist. Sept. 18, 1998). In the context of recreational activities,

recklessness means that a person's conduct (1) is outside of the rules or customs of the activity *and* (2) creates an unreasonable risk of physical harm to another. *Taylor v. Mathys*, 2005-Ohio-150, ¶ 17 (3d Dist.).

{¶ 35} The evidence in this case does not support a finding that the Hakes were reckless when they allowed Livensparger to drive the UTV. Livensparger was known to the Hakes as someone who had experience driving UTVs and who was competent to drive them.² And there is no dispute that Livensparger, like Candace, was permitted to enter the Hakes' property, without paying a fee, to engage in a recreational pursuit. She was therefore a recreational user, and the Hakes had no duty to warn Livensparger of any unsafe conditions before she drove Candace on the UTV.

{¶ 36} Finally, the record does not establish that the Hakes had any duty to provide safety equipment. There is no evidence that the use of safety gear such as helmets is customary in UTV riding, so we cannot conclude that the Hakes' failure to provide safety gear was outside of the rules or customs of the activity. In short, the Hugs have not pointed to anything supporting their claim that the Hakes were reckless.

{¶ 37} In sum, the Hugs were not entitled to recover from the Hakes, the Hakes were entitled to judgment as a matter of law, and the trial court properly granted summary judgment in the Hakes' favor. The Hugs' third assignment of error is not well-taken.

² We note that the Hugs have abandoned their argument that Livensparger was intoxicated while driving the UTV.

D. Candace was injured from an ordinary risk inherent in UTV riding.

{¶ 38} In their fourth assignment of error, the Hugs argue that the trial court erred by determining that the Hakes and Livensparger are not liable under the recreational activity doctrine because Candace was injured from an ordinary risk inherent in UTV riding.

{¶ 39} First, because the Hakes, as landowners, are absolutely immune under R.C. 1533.181, it was not appropriate or necessary for the trial court to consider the recreational activity doctrine when assessing their liability. Again, R.C. 1533.181 independently bars all claims arising from an allegedly unsafe condition on the property, however those claims are styled. The recreational activity doctrine is, however, relevant to Livensparger's liability as the driver of the UTV.

{¶ 40} The recreational activity doctrine provides that “[w]here individuals engage in recreational or sports activities, they assume the ordinary risks of the activity and cannot recover for any injury unless it can be shown that the other participant's actions were either ‘reckless’ or ‘intentional’ as defined in Sections 500 and 8A of the Restatement of Torts 2d.” *Marchetti*, 53 Ohio St.3d 95, at syllabus. In other words, no liability attaches for injuries caused by negligence when they happen during a recreational activity. *Gentry v. Craycraft*, 2004-Ohio-379, ¶ 6. This rule “has its genesis in the doctrine of primary assumption of the risk and is based on the rationale that a participant to a sporting event or recreational activity accepts the risks associated with the sport or activity.” *Pope v. Willey*, 2005-Ohio-4744, ¶ 8 (12th Dist.), citing *Gentry* at ¶ 10-11. This limitation on liability is based on the idea that some risks are so inherent in

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an activity that they cannot be eliminated. *Id.* at ¶ 11, citing *Gallagher v. Cleveland Browns Football Co.*, 74 Ohio St.3d 427, 431 (1996), and *Whisman v. Gator Invest. Props., Inc.*, 2002-Ohio-1850 (1st Dist.). Thus, by choosing to participate in the activity, a person implicitly accepts those risks. *Gentry* at ¶ 13. The types of risks associated with the activity are those that are foreseeable and customary risks of the sport or recreational activity. *Curtis v. Schmid*, 2008-Ohio-5239, ¶ 54 (5th Dist.). The doctrine relieves people providing or taking part in a recreational activity from any duty to eliminate the risks that are inherent in the activity or sport because such risks cannot be eliminated. *Id.*

{¶ 41} The Hugs concede that flipping is a known risk that is inherent in the activity of driving or riding a UTV. *Parker v. Patrick*, 2012-Ohio-3312, ¶ 16 (12th Dist.). They argue that “attendant circumstances” exist—including darkness, the condition of the terrain, unmarked trails, and lack of safety gear—that “caused the dangers to UTV riding to be more than the inherent risks.” However, flipping is caused by many different types of circumstances—like speed, terrain, or failure to follow safety procedures. *Brumage v. Green*, 2014-Ohio-2552, ¶ 16 (2d Dist.), citing *West v. Devendra*, 2012-Ohio-6092, ¶ 26 (7th Dist.). “What causes the driver to lose control is better addressed when determining whether the driver acted intentionally, recklessly or negligently”—i.e., *not* as part of whether the risks are inherent to the activity. *West* at ¶ 26.

{¶ 42} Accordingly, Candace was injured due to an inherent, foreseeable, and customary risk of riding a UTV, i.e., the UTV flipping. Although the Hugs point to several factors that they claim increased the risks of UTV riding, those factors are more

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appropriately considered when determining whether Livensparger, as Candace's co-participant, acted negligently, recklessly, or intentionally. *Id.* In other words, the existence of "attendant circumstances" does not alter the risks inherent to this particular recreational activity.

{¶ 43} Accordingly, the trial court did not err by finding that Candace was injured from an ordinary risk of UTV riding. The Hugs' fourth assignment of error is not well-taken.

E. The evidence does not support a finding that Livensparger was reckless.

{¶ 44} In their second assignment of error, the Hugs argue that the trial court erred by granting summary judgment to Livensparger because there is a genuine issue of material fact regarding Livensparger's recklessness. The Hugs point out that Livensparger drove the UTV at night for the first time on the night of the accident; she drove at night despite knowing that the property contained multiple waterways; she attempted to navigate unlit, unmarked, overgrown terrain; and she should have anticipated that the rain earlier in the day would affect the trails and creek. They also point out that Livensparger contradicted herself by saying in her interrogatories that she was unaware of the washout because it was covered by grass and weeds but denying in requests for admission that the area near the creek was overgrown with vegetation and that any obstructions blocked her view.

{¶ 45} Livensparger responds that Candace admitted in her deposition testimony that she knew there were risks inherent to riding a UTV, knew that she assumed those risks by riding in the UTV, and that she failed to take any safety precautions, like using

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the seatbelt or door netting. She also contends that the record does not support a finding that she was reckless because she was not an incompetent, inexperienced driver. She had operated ATVs and UTVs her whole life, had been to the Hakes' property numerous times, had driven and ridden the UTV on the property, used the UTV's headlights while she was driving that night, and did not know about the washout so she had no duty to warn Candace about it.

{¶ 46} Because Candace's injuries were caused by an inherent risk of UTV riding, she cannot recover from Livensparger unless Livensparger's conduct was intentional or reckless. *Marchetti*, 53 Ohio St.3d 95, at syllabus. The Hugs do not allege that Livensparger's conduct was intentional, so they must show recklessness to hold Livensparger liable.

{¶ 47} The evidence in this case does not support a finding that Livensparger was reckless. There is no evidence that Livensparger ignored the risks posed by the darkness and the overgrown trails. Instead, Livensparger used the UTV's headlights and backed away from a trail that was too overgrown, which shows that she was using caution related to the existing risks. Any failure by Livensparger to anticipate that the rain from earlier in the day would affect the terrain does not rise above the level of simple carelessness. Finally, Livensparger's contradictory statements about the area around the washout are not material to the resolution of this case. The evidence shows that Livensparger did not see the washout before the UTV flipped into the creek. Whether she did not see the washout because of vegetation or her own failure to notice it, neither is so egregious that it rises above the level of negligence.

{¶ 48} Because the Hugs cannot show that Livensparger knew of a specific risk that she deliberately ignored or acted in a manner more egregious than simple carelessness, they cannot show that Livensparger was reckless. Thus, Livensparger was entitled to summary judgment as a matter of law, and the trial court properly granted summary judgment in her favor. Accordingly, the Hugs' second assignment of error is not well-taken.

F. Jeffrey's loss of consortium claim cannot survive dismissal of Candace's claims.

{¶ 49} In their final assignment of error, the Hugs argue that the trial court erred by dismissing Jeffrey's loss of consortium claim because the court also erred by dismissing Candace's claims. The Hakes and Livensparger each argue that the court properly dismissed the loss of consortium claim because it cannot survive dismissal of Candace's claims.

{¶ 50} "[A] claim for loss of consortium is derivative in that the claim is dependent upon the defendant's having committed a legally cognizable tort upon the spouse who suffers bodily injury." *Bowen v. Kil-Kare, Inc.*, 63 Ohio St.3d 84, 92-93 (1992). "[W]hen a principal claim fails for substantive reasons, the derivative loss-of-consortium claim fails as well." *McCarthy v. Lee*, 2023-Ohio-4696, ¶ 17.

{¶ 51} We have determined that summary judgment was appropriately granted on Candace's claims against the Hakes and Livensparger. Because all of her principal claims have failed, Jeffrey's derivative loss of consortium claim must fail as well. *Id.* The Hakes and Livensparger were entitled to summary judgment on the loss of

consortium claim as a matter of law, and the trial court did not err by granting judgment in their favor. Therefore, the Hugs’ fifth assignment of error is not well-taken.

III. Conclusion

{¶ 52} Based on the foregoing, the November 25, 2025 decision of the Williams County Court of Common Pleas is affirmed. The Hugs are ordered to pay the costs of this appeal under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Christine E. Mayle, J.

JUDGE

Charles E. Sulek, J.
CONCUR.

JUDGE

Myron C. Duhart, J.
CONCURS AND WRITES
SEPARATELY.

JUDGE

DUHART, J., concurring,

{¶ 53} I concur with the majority opinion. I write separately because I do not believe we can find the Hakes immune under R.C. 1533.181 as a matter of law as I believe there to be a question of fact regarding whether the property at issue is nonresidential. The majority has defined “nonresidential,” as “[o]f an area, building, etc.) *not being a place where people live.*” (Emphasis added.) Here, there is no evidence

that the area of the accident was not on the same plot of land as the Hakes' home. While the accident occurred in an area of the property that was in its natural state, I believe, based on the facts of this case, where the accident occurred 300 – 400 yards from the Hakes' residence, that we should not determine as a matter of law that this property is nonresidential. I note that in *Thomas*, the case cited by the majority in support of its statement that a property with a home on it can be considered nonresidential, depending on the character and use of the land, the court took care to note that “[t]he character of the parcel of property containing the zipline and pond are clearly being used for recreational activities *not associated with the residence on a different parcel of land.*” (Emphasis added.) *Thomas*, 2021-Ohio-4204, at ¶ 27 (5th Dist.). There is no evidence that this is the case here. Thus, I disagree with the majority’s finding that the Hakes are immune under R.C. 1533.181 as a matter of law.

{¶ 54} While I find there to be a question of fact as to the applicability of R.C. 1533.181, I believe the trial court correctly found the recreational activity doctrine applied, and that the Hakes were not reckless. I agree with the majority’s analysis regarding whether Candace was injured from an ordinary risk of UTV riding. Further, I do not find any evidence that the Hakes were reckless.³ The Hugs contend that the Hakes were reckless by allowing Livensparger to drive the UTV and for not warning either Livensparger or Candace of the hazardous conditions on the property, including “the increased risk of nighttime operation . . . , water accumulation in the creek . . . , and a prior

³ The Hugs do not contend that the Hakes’ actions were intentional.

rollover involving the same UTV.” I agree with the majority that the evidence does not support a finding that the Hakes were reckless in permitting Livensparger to drive the UTV. Further, I agree with the trial court’s conclusion that the Hakes were not reckless in failing to warn of conditions on the property. Any increased risk due to driving in the dark would be known to Candace. Additionally, the facts of the prior rollover were not similar to the facts at issue here, and I do not believe that any failure to warn of possible water accumulation in the creek rises to the level of recklessness. For the above reasons, I ultimately agree that the trial court’s judgment should be affirmed.

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:
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