STATE OF MICHIGAN

COURT OF APPEALS

CRYSTAL RODGERS,

Plaintiff-Appellant,

v

CHRISTIE SYDOW,

Defendant-Appellee.

UNPUBLISHED
December 30, 2024
9:36 AM

No. 358698
Kalkaska Circuit Court
LC No. 2020-013348-NO

ON REMAND

Before: JANSEN, P.J., and REDFORD and YATES, JJ.

PER CURIAM.

On March 2, 2023, this Court issued an unpublished opinion concluding that the trial court erred in awarding summary disposition under MCR 2.116(C)(7) to defendant, Christie Sydow, on the gross-negligence claim asserted by plaintiff, Crystal Rodgers. This Court also determined that the trial court correctly granted summary disposition under MCR 2.116(C)(7) to defendant on the claims of negligent entrustment and owner's liability. Each of those rulings was based upon this Court's application of the Recreational Land Use Act (RUA), MCL 324.73301(1). On March 20, 2023, our Supreme Court issued an opinion in *Milne v Robinson*, 513 Mich 1; 6 NW3d 40 (2024), interpreting and applying the RUA. Then, our Supreme Court remanded this case to this Court for additional consideration of our decision on plaintiff's claims of negligent entrustment and owner's liability, but not our ruling on plaintiff's gross-negligence claim. *Rodgers v Sydow*, 10 NW3d 858 (Mich 2024). Upon further review, we conclude that defendant is entitled to summary disposition under MCR 2.116(C)(7) on plaintiff's claim of negligent entrustment, but plaintiff may pursue her owner's-liability claim if, but only if, she can establish gross negligence on defendant's part. Thus, we reverse the award of summary disposition under MCR 2.116(C)(7) not only on plaintiff's gross-negligence claim, but also on her owner's-liability claim, albeit with the restriction that she cannot recover on her owner's-liability claim unless she establishes gross negligence on defendant's part.

I. FACTUAL BACKGROUND

On June 9, 2018, plaintiff drove to defendant's house and then went with defendant to pick up Josh Kowalewski for a social visit. For two hours, plaintiff, defendant, and Kowalewski drank beer. Then, at about midnight, defendant showed off her ORV and asked Kowalewski and plaintiff if Kowalewski wanted to take plaintiff for a ride. They both agreed, so plaintiff and Kowalewski climbed into the ORV. Kowalewski drove the ORV on a dirt path on defendant's property at high speed with plaintiff in the passenger's seat. As they rounded a curve, the ORV tipped over onto the passenger's side. Kowalewski and defendant lifted plaintiff out of the ORV and saw that she was bleeding from her forehead. Then defendant's mother took plaintiff to the hospital, where she remained for several days because of her injuries.

Plaintiff filed suit against defendant on March 12, 2020, alleging negligence, but plaintiff's second amended complaint filed on July 24, 2020, modified and expanded her theories to include a claim for negligent entrustment of the ORV to Kowalewski, a claim for gross negligence, and a claim for owner's liability under MCL 257.401. Defendant responded to those claims by moving for summary disposition, which the trial court granted pursuant to MCR 2.116(C)(7) by relying on the RUA, MCL 324.73301(1). The trial court memorialized its ruling from the bench in a written final order entered on September 13, 2021.

II. LEGAL ANALYSIS

We review de novo the trial court's ruling on defendant's motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The trial court based its award of summary disposition upon MCR 2.116(C)(7), which affords relief when a claim is foreclosed by "immunity granted by law[.]" When reviewing a motion under MCR 2.116(C)(7), the "contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). When "no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court." *Dextrom v Wexford Co*, 287 Mich App 406, 429; 789 NW2d 211 (2010). But when "a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate." *Id.* Applying these standards, we must decide whether plaintiff's claims for negligent entrustment and owner's liability are barred by immunity under the RUA.

When it applies, the RUA, MCL 324.73301(1), immunizes a landowner "from liability for injuries occurring on the land 'unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner[.]' " *Rott v Rott*, 508 Mich 274, 292; 972 NW2d 789 (2021). But immunity pursuant to the RUA "is only triggered when someone is injured while on the land of another for certain purposes and under certain conditions." *Id.* at 293. As MCL 324.73301(1) makes clear,

> a cause of action does not arise for injuries to a person who is on the land of another without paying the owner . . . a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner . . . unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner[.]

That language yields several principles. First, "the RUA applies 'to individuals who, *at the time of the injury, are on the land* of another *for a specified purpose*.' " *Rott*, 508 Mich at 295. Thus, "the initial purpose for which one 'enter[s]' the land [is] not the proper focus." *Id.* Second, under the RUA, immunity is "limited to include only those outdoor recreational uses of the same kind, class, character, or nature as those specifically enumerated in MCL 324.73301(1)." *Id.* (quotation marks omitted). Therefore, the use must be similar to "motorcycling, snowmobiling," or another type of activity expressly identified in MCL 324.73301(1). Third, such similar uses are limited to activities (1) "that could not be engaged in indoors" and (2) "require[ ] nothing more than access to the land[.]" *Id.* at 296-297.

Here, applying those three principles leads to the conclusion that plaintiff was engaging in an activity subject to immunity under the RUA when she suffered her injuries. Plaintiff was riding in an ORV at the time she was injured. The fact that she initially went to defendant's home for a social visit does not matter. *Id.* at 295. What matters is that she was riding in an ORV at the time of her injuries. *Id.* In addition, plaintiff was engaging in an activity contemplated by the RUA at the time of her injuries. Although riding in an ORV is not an activity identified in the RUA, riding in an ORV is quite similar to the listed activities of motorcycling and snowmobiling. See *Milne*, 513 Mich at 8 ("Plaintiff essentially concedes that riding an ORV is an 'other outdoor recreational use or trail use' under the RUA because it is similar to 'motorcycling' and 'snowmobiling,' which are explicitly listed recreational activities in the statute."). Beyond that, riding in an ORV cannot be done indoors, and it requires nothing more than access to the land. *Rott*, 508 Mich at 296-297. Finally, because the ORV tipped over on land owned by defendant, the RUA may be interposed as a defense to civil claims in this case.

To be sure, the applicability of the RUA does not completely absolve defendant of liability because the immunity conferred by the RUA does not extend to "injuries . . . caused by the gross negligence or willful and wanton misconduct of the owner[.]" See MCL 324.73301(1). The RUA does, however, afford defendant immunity from any "cause of action" based on conduct that does not rise to the level of "gross negligence or willful and wanton misconduct." *Id.* We explained in our decision issued on March 2, 2023, that defendant is not entitled to summary disposition under MCR 2.116(C)(7) on plaintiff's gross-negligence claim, and our Supreme Court's order of remand does not require us to revisit that decision. *Rodgers*, 10 NW3d 858. Instead, we must determine whether plaintiff's negligent-entrustment and owner's-liability claims are viable under the RUA, as interpreted in *Milne*, 513 Mich 1.

A. NEGLIGENT ENTRUSTMENT

Plaintiff's first claim asserts that defendant negligently entrusted her ORV to Kowalewski, who negligently drove the ORV on defendant's land and thereby caused plaintiff's injuries. "[T]he tort of negligent entrustment imposes liability on one who supplies a chattel for the use of another whom the supplier knows or has reason to know is, because of youth, inexperience, or otherwise, likely to use it in a manner involving unreasonable risk of physical harm." *Bennett v Russell*, 322 Mich App 638, 643; 913 NW2d 364 (2018). A claim for negligent entrustment has two elements: (1) "the entrustor [was] negligent in enstrusting the instrumentality to the entrustee"; and (2) "the entrustee . . . negligently or recklessly misuse[d] the instrumentality." *Allstate Ins Co v Freeman*, 160 Mich App 349, 357; 408 NW2d 153 (1987), aff'd 432 Mich 656; 443 NW2d 734 (1989), mod 433 Mich 1202; 446 NW2d 291 (1989). "To establish negligent entrustment, a plaintiff need show

only simple negligence in the entrustment and in the behavior which caused the activity" resulting in the injury. *Hendershott v Rhein*, 61 Mich App 83, 89-90; 232 NW2d 312 (1975). Because that claim rests on proof of simple negligence, see *id.*, it cannot survive the immunity conferred by the RUA, MCL 324.73301(1).

Plaintiff contends the immunity afforded to land owners by the RUA, MCL 324.73301(1), only applies to premises-liability claims. Our Supreme Court rejected that argument in *Milne*, 513 Mich at 9, stating: "We reject plaintiff's argument that the RUA only limits a landowner's potential common-law premises liability." As a result, plaintiff's argument for a narrow application of the RUA necessarily fails. Instead, *Milne* instructs us to engage in a broader application of the RUA, which "limits a landowner's liability under specified circumstances to gross negligence or willful and wanton misconduct if an injury occurs to someone they allowed to use their property for certain recreational purposes." *Id.* at 15. Affording the RUA that broader application, we conclude that the trial court appropriately granted summary disposition under MCR 2.116(C)(7) to defendant on plaintiff's negligent-entrustment claim.

B. OWNER'S LIABILITY

Plaintiff's owner's-liability claim under MCL 257.401 is restricted by our Supreme Court's decision in *Milne*, 513 Mich 1. The question posed in that case was "whether the RUA applies to a statutory owner-liability claim under MCL 257.401(1) when a landowner owns a motor vehicle that they allow another to use for recreational purposes on their property." *Milne*, 513 Mich at 10. Our Supreme Court answered that question, stating that "the Legislature intended the RUA to limit an owner-liability claim." *Id.* at 17. Therefore, "[t]he RUA applies to plaintiff's proposed owner-liability claim and requires her to demonstrate that defendant was grossly negligent or engaged in willful and wanton misconduct to prevail." *Id.* at 20.

Here, in contrast to *Milne*, plaintiff has come forward with evidence of gross negligence, so her owner's-liability claim is not entirely foreclosed by the RUA. But in her second amended complaint, plaintiff repeatedly alleges that "Kowalewski negligently operated the ORV," causing her injuries. Under *Milne*, 513 Mich at 20, such allegations of simple negligence cannot support plaintiff's owner's-liability claim. Because the RUA applies to plaintiff's owner's-liability claim, plaintiff must "demonstrate that defendant was grossly negligent or engaged in willful and wanton misconduct to prevail." *Id.* Thus, on remand, plaintiff must amend her owner's-liability claim to allege gross negligence, as opposed to simple negligence. And, at trial, plaintiff cannot prevail on her owner's-liability claim unless she can establish gross negligence on defendant's part. Hence, we reverse the trial court's award of summary disposition under MCR 2.116(C)(7) on the owner's-liability claim and remand the case for further proceedings on the claims of gross negligence and owner's liability.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ James Robert Redford
/s/ Christopher P. Yates