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Tyler James Watson
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***Turner v. Mandalay Sports Entertainment*, 124 Nev. Adv. Op. No. 20
(April 17, 2008)¹**

TORT LAW – LIMITED DUTY RULE IN NEGLIGENCE CLAIMS

Summary

Appeal from a district court order granting summary judgment in a tort case brought against Mandalay Sports Entertainment, owner of the Las Vegas 51s.

Disposition/Outcome

Affirmed the district court's grant of summary judgment as to all claims in Mandalay Sports Entertainment's favor.

Factual and Procedural History

Mandalay Sports Entertainment, LLC, is the owner and operator of the Las Vegas 51s, a minor league baseball team that plays its home games at Cashman Field in Clark County. From 2000 to 2002, appellants Kathleen and Michael Turner owned season tickets for Las Vegas 51s home games. On May 4, 2004, Mrs. Turner was struck in the face with a foul ball while she was eating in the "Beer Garden." The Beer Garden is several hundred feet from the field and provides only a limited view of the field. Mrs. Turner was rendered unconscious, suffered a broken nose, and a facial laceration. She asserts that she never saw the ball approaching before she was hit.

Mr. and Mrs. Turner admit to being aware of the fact that the 51s print a disclaimer on their tickets stating that they are not responsible for injuries caused by foul balls. Additionally, warning signs are printed on the gates and the announcer issues a warning before each game. Despite the 51s disclaimers and warnings, the Turners sued the 51s for negligence, loss of consortium, and negligent infliction of emotional distress. The negligence claim is based on Mrs. Turner's injuries and the loss of consortium and negligent infliction of emotional distress claims are based on Mr. Turner's injuries.

The 51s filed a motion for summary judgment. The district court granted the 51's motion. The Turner's filed this appeal.

Discussion

The court reviewed the order granting summary judgment de novo.² In Nevada, a negligence claim requires a plaintiff to satisfy four elements: (1) an existing duty of care, (2) breach, (3) legal causation, and (4) damages.³ In this case, the question is what scope of care does a baseball stadium owner owe to its customers. To answer this question, the court adopted the "limited duty rule" which contains two requirements: (1) the stadium

¹ By Tyler James Watson

² Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

³ Jordan v. State Dep't of Motor Vehicles, 121 Nev. 44, 74, 110 P.3d 30, 51 (2005).

owner must provide protected seats for those patrons that desire such seating and (2) stadium owners must provide protected seating for the most dangerous parts of the stadium with high risk of injury from foul balls, such as directly behind home plate.⁴

In this case, the court concluded that the “Beer Garden” is an area with a limited risk of injury. The Turners failed to demonstrate that other spectators had suffered injuries as a result of balls landing in the Beer Garden. Thus, there is no genuine issue of material fact and the award of summary judgment is affirmed.

Dissenting Opinion

GIBBONS, C.J., with whom DOUGLAS and CHERRY agree, DISSENT:

Gibbons disagrees with the majority’s application of the limited duty rule. He argues that there are genuine issues of material fact. Due to the fact that the Turners were not in the stands, but in the Beer Garden, the limited duty rule should not apply. The majority approach virtually eliminates liability for foreseeable and preventable injuries. Fairness and public policy considerations illustrate that the majority reached the wrong conclusion. Therefore, general tort concepts should apply.

Conclusion

Since the record demonstrates that the 51s satisfied the requirements of the limited duty rule as a matter of law, and thus no genuine issue of material fact remains with regard to Mrs. Turner’s negligence claim, the court concluded that the district court was correct to enter summary judgment in the 51s’ favor on that claim. Further, the court concluded that the district court properly entered summary judgment on Mr. Turner’s claims for loss of consortium and negligent infliction of emotional distress. Accordingly, the court affirmed the district court’s order.

⁴ Schneider v. American Hockey, 777 A.2d 380, 384 (N.J. Super. Ct. App. Div. 2001).