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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Ski Area Safety Act Protection May Not Be Absolute

By Nicole Wright

In *Rusnak v Walker*, __ Mich App__ (2006), the Court of Appeals was presented with an issue of first impression regarding whether the assumption of risk provision of the Ski Area Safety Act (SASA), MCL § 408.342(2), grants absolute immunity to skiers who injure other skiers on the slopes as a matter of law. In a *per curiam* opinion, the Court begrudgingly affirmed the decision of the trial court because of prior case law.

In this personal injury action involving a collision between two skiers at Boyne Mountain Ski Resort, Plaintiff appealed the trial court's granting of Defendant's motion for summary disposition pursuant to the SASA. The Court of Appeals held that it was constrained to find no error in the trial court's granting of summary disposition because of existing case law.

Prior published decisions interpret the SASA to grant absolute immunity to ski area operators and skiers for injuries resulting from statutorily enumerated damages. The purpose of the SASA is to promote safety on the slopes, reduce litigation and stabilize the economic conditions in the ski resort industry. In *Rusnak*, the Court disagreed with the reasoning of prior decisions and suggested that courts follow the reasoning in *Dale v. Beta-C Inc*, 227 Mich App 57 (1997) (hereinafter referred to *Dale II*).

In *Dale II*, the Court of Appeals addressed an analogous provision under the Roller Skating Safety Act (RSSA). Based on the Court's interpretation of the Act in *Dale II*, the skater assumes the risk of obvious and necessary dangers inherent in the sport of roller skating, but does not assume the risk of an operator violating the prescribed duties under the RSSA. *Dale II*, 227 Mich App at 70. The *Dale II* Court reasoned that an integral feature of the RSSA is the balancing of risk assumed by the skater with the responsibilities of the operator. *Id.* At 66. Accordingly, the *Dale II* Court held that the argument that an operator's behavior is irrelevant is contrary to the statutory scheme.

Further, the Court in *Dale II* held that to preserve the legislative

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This case sends a message larger than the SASA or RSSA. There continues to be a defense-orientated trend in decisions of the Michigan Court of Appeals and Michigan Supreme Court. However, there are many judges who continue to go against the trend as much as possible within the bounds of precedent. The message is this: the outcome of your case greatly depends on the trial judge and the three judges who may sit on the Court of Appeals' panel deciding your case. Different judges can easily yield different results in the same case.

Trends change, and judges have different opinions on similar issues. Therefore, your best defense continues to be to operate and maintain your businesses and properties as reasonably as possible.

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purpose underlying the RSSA, the assumption of risk provision must be read in conjunction with the provision that addressed the duties of operators and the provision that creates civil liability for operators. According to the Rusnak Court, the reconciliation of these provisions led the *Dale II* Court to hold that a skater does not assume the risk of an operator violating the duties prescribed under RSSA. If a violation of the provision addressing the duties of operators is alleged and proved, then the operator who violates the Act shall be liable in a civil action for damages for that portion of the loss or damage resulting from the violation. *Id.* at 67.

The Rusnak Court's review of precedent under the SASA reveals that the incongruity between *Dale II* and cases under the SASA stems from decisions that preceded *Dale II*. The language of the assumption of risk provisions of both the RSSA and SASA, which grant immunity for dangers that are obvious and necessary, are identical. However, previous decisions interpret these identically worded provisions differently as described above.

In view of the prior holdings relating to the SASA, the Court of Appeals reluctantly affirmed the trial court's granting of Defendant's motion for summary disposition. However, the Court urged that further consideration be given regarding whether SASA provides unqualified immunity under the SASA.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

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CONTRIBUTORS

Premises Liability Practice Group Chair

Mark F. Masters

Editor

Carina Nelson

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