

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Stephen W., individually and as next friend of J.W., an infant v. Timberline Four Seasons Resort Management Co.

Stephen W. · No. No. 14-1158 (Tucker County 12-C-43) · Decided August 31, 2015

SUMMARY

The West Virginia Supreme Court of Appeals affirmed summary judgment for Timberline Four Seasons Resort Management in a skiing-injury action under the West Virginia Skiing Responsibility Act. The court held that the snowmaking electrical box was visibly marked and that the Act did not require Timberline to pad it. The court also held that the minor skier's age did not alter the statutory assumption of inherent skiing risks.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Brent D. Benjamin; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	August 31, 2015
DOCKET	No. 14-1158 (Tucker County 12-C-43)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Tucker County's order granting Timberline summary judgment in a personal-injury action arising from a minor's skiing accident.
STANDARD OF REVIEW	Summary judgment is reviewed de novo.
PRECEDENTIAL VALUE	Published memorandum decision; the source does not otherwise specify its precedential effect.
PARTIES	Stephen W., individually and as next friend of J.W., an infant v. Timberline Four Seasons Resort Management Co.

TOPICS

summary judgment

assumption of risk

negligence

standard of review

statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a genuine issue of material fact existed regarding whether Timberline marked the snowmaking electrical box with a visible warning sign.
2. Whether the West Virginia Skiing Responsibility Act required Timberline to pad the electrical box in addition to marking it with a visible warning.
3. Whether J.W.'s status as a twelve-year-old child prevented application of the Act's provision that skiers assume the inherent risks of skiing.

HOLDINGS

1. No genuine issue of material fact existed because Timberline presented positive evidence, including deposition testimony and photographs, that a visible caution sign marked the electrical box; the plaintiff's lack of memory constituted only conjecture and speculation.
2. The Act did not require Timberline to pad the electrical box. Because the snowmaking equipment was marked by a visible sign, the Act did not impose liability for a collision with that equipment, and the statute contained no exception for unpadded equipment.
3. J.W.'s age did not prevent application of the West Virginia Skiing Responsibility Act's provision that all skiers assume the inherent risks of skiing. The Act contains no age-based exception.

KEY QUOTATIONS

"This provision does not contain an exception for when an electrical box is unpadded." (at 3)

"It is not for this Court arbitrarily to read into [a statute] that which it does not say." (at 3-4)

FACTUAL BACKGROUND

Twelve-year-old J.W. was injured while skiing at Timberline after leaving the beginner Salamander trail to avoid another skier and colliding with an electrical box used for snowmaking. The box was six to eight feet off the trail, and Timberline presented deposition testimony and photographs showing that a caution sign marked it. J.W. and her father did not recall seeing the sign, and the plaintiff also contended that Timberline should have padded the box and that J.W.'s age prevented her from assuming the risk of skiing.

PROCEDURAL HISTORY

Stephen W. sued Timberline under the West Virginia Skiing Responsibility Act, alleging that Timberline failed to mark snowmaking equipment and failed to maintain the ski area in a reasonably safe condition. The circuit court granted Timberline summary judgment, finding no genuine issue regarding the warning sign, no duty to pad the electrical box, and no liability based solely on the skier's age. The Supreme Court of Appeals affirmed in a memorandum decision.

DISPOSITION

affirmed

CASES CITED

- Shelby J.S. v. George L.H., 181 W. Va. 154, 155 n.1, 381 S.E.2d 269, 270 n.1 (1989)
- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Pino v. Szuch, 185 W. Va. 476, 408 S.E.2d 55 (1991)
- Jordan v. Bero, 158 W. Va. 28, 210 S.E.2d 618 (1974)
- Phillips v. Larry's Drive-In Pharmacy, Inc., 220 W. Va. 484, 647 S.E.2d 920 (2007)
- Miller v. Federal Deposit Ins. Corp., 906 F.2d 972, 974 (4th Cir. 1990)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 2512, 91 L. Ed. 2d 202 (1986)
- Matsushita Elec. Industrial Co. v. Zenith Radio, 475 U.S. 574, 587-88, 106 S. Ct. 1348, 1356-57, 89 L. Ed. 2d 538 (1986)
- Robertson v. White, 635 F. Supp. 851, 870 (W.D. Ark. 1986)
- Baughman v. Cooper-Jarrett, Inc., 530 F.2d 529, 532 (3d Cir. 1976)
- Croker v. Boeing Co., 662 F.2d 975 (3d Cir. 1981)
- Inland Oil & Transp. Co. v. United States, 600 F.2d 725, 727 (8th Cir. 1979)
- Hardwood Group v. Larocco, 219 W. Va. 56, 61 n.6, 631 S.E.2d 614, 619 n.6 (2006)
- Lewis v. Canaan Valley Resorts, Inc., 185 W. Va. 684, 693, 408 S.E.2d 634, 643 (1991)
- Hardin v. Ski Venture, Inc., 848 F. Supp. 58, 61 (N.D. W. Va. 1994)
- Fletcher v. Hale, 548 So. 2d 135 (Ala. 1989)
- Friedman v. Park Dist. of Highland Park, 151 Ill. App. 3d 374, 104 Ill. Dec. 329, 502 N.E.2d 826 (1986)
- Hoots v. Beeson, 272 N.C. 644, 159 S.E.2d 16 (1968)
- Hunter v. City of Cleveland, 46 Ohio St. 2d 91, 75 O.O.2d 160, 346 N.E.2d 303 (1976)
- Berman v. Philadelphia Bd. of Educ., 310 Pa. Super. 153, 456 A.2d 545 (1983)
- Prater v. Burns, 525 S.W.2d 846 (Tenn. App. 1975)
- Grant v. Mays, 204 Va. 41, 129 S.E.2d 10 (1963)