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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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KENNETH L. RIERSON, and DONNA D. RIERSON,	Filed September 21, 1982
Plaintiffs-Appellants,	
vs.	2-213 2-67019
STATE OF IOWA, and FRED A. PRIEWERT,	
Defendants-Appellees.	

Appeal from Palo Alto District Court, James H. Andreasen, Judge.

Plaintiffs appeal from judgment for defendants in an action for specific negligence and premise liability. AFFIRMED.

David A. Scott, Spencer, for plaintiffs-appellants.

Thomas J. Miller, Attorney General, and John R. Scott and Thomas A. Evans, Jr., Assistant Attorneys General, for defendants-appellees.

Considered en banc.

Plaintiff Kenneth L. Rierson was injured and paralyzed when he dove from a dock into shallow water at Lost Island Lake. In their action against the State and Fred A. Priewert, Director of State Conservation Commission, Kenneth and his wife Donna allege that the defendants acted negligently when a dock construction permit was issued to the dock owners. The owners of the dock are not parties to this action. After a trial to the court, judgment was entered for the defendants.

On appeal, plaintiffs claim the trial court erred in (a) finding that Iowa Code § 111.4 (1981) imposes no duty of due care on the defendants, (b) finding that no substantial evidence supports plaintiffs' claim of negligence, and (c) finding that the plaintiffs' specification of negligence falls within the discretionary exception of Iowa Code 25A.14 (1981). We find no merit in plaintiffs' contention and affirm the trial court.

I. Standard of Review

Plaintiffs' action is one at law. Our review is thus limited to assigned errors. Iowa R. App. P. (4).

II. Statutory Duty

Iowa Code § 111.4 (1981) provides that "[n]o person. . . shall build or erect any pier. . . over any state-owned land or water under the jurisdiction of the [state conservation] commission, without first obtaining from such commission a written permit." The plaintiffs urge us to hold that this section imposes a duty on the director of the State Conservation Commission to erect warning signs where the water is shallow and to engage in various protective actions such as use or construction restriction when issuing permits. We decline to so hold.

The statute is silent as to the duties urged by the plaintiffs. See Iowa Code § 111.4 (1981). In the absence of legislative specification, we must turn to rules of

construction to ascertain whether the legislature intended to impose any such duties on the director. See generally State v. Williams, 315 N.W.2d 45, 49 (Iowa 1982)("meaning of statute may be 'ascertained by reference to prior judicial decisions, similar statutes, the dictionary, or common generally accepted usage.' ").

"Duty can be created by statute if the legislature purposed or intended to protect a class of persons to which the victim belongs against a particular harm which the victim has suffered." Wilson v. Nepstad, 282 N.W.2d 664, 667 (Iowa 1979). The inquiry is thus whether the plaintiffs belong to a class of persons that the legislature intends to protect. We hold that they do not.

The original version of § 111.4 was introduced as "An Act... relating to the powers and duties of the board of conservation and public parks." 1927 S.J. 434; see Act of March 29, 1927, ch. 40, § 1, 1927 Iowa Acts 32. In particular, § 111.4 states that "the duty of the commission [is] to adopt and enforce rules governing and regulating the building or erection of any... pier... for the best interest of the public." Iowa Code § 111.4 (1981)(emphasis added)(enacted by Act of March 29, 1927, ch. 40, § 1, 1927 Iowa Acts 32: "It shall be the duty of the board to adopt and enforce rules and regulations governing and regulating the building or erection of any such pier... for the best interest of the public."). While § 111.4 does not define "best interest of the public," § 111.3 states that "[t]he commission shall have the power to maintain, improve or beautify state-owned bodies of water." Iowa Code § 111.3 (1981)(emphasis added). When §§ 111.3 and 111.4 are read together, it is clear that the legislative purpose is to "maintain, improve and beautify" lakes such as Lost Island Lake. See generally Rush v. Sioux City, 240 N.W.2d 431, 445 (Iowa 1976)(when statutes relate to same subject matter, they must be construed, considered, and examined in light of their common purpose).

The legislature's intent is further reflected in the functional purpose of piers, docks, and wharfs. In Peck v. Alfred Olsen Constr. Co., 216 Iowa 519, 523-24, 245 N.W. 131, 133 (1932), the court stated that the "very purpose of a. . . pier is to afford means of transfer of persons or commodities from land transportation to water transportation or vice versa." Accord Renwick v. Davenport & N.W. Ry. Co., 49 Iowa 664, 670 (1878)(riparian owner may erect piers that do not obstruct navigation). Administrative rules promulgated to regulate the length, size, location, and construction of piers reflect the same purpose. See Iowa Admin. Code § 290-33.2.

Based on our examination of the legislative history of § 111.4 and the common-law purpose of its enactment, we hold that § 111.4 is intended to promote navigation on state-owned waters, not to protect those persons who use the docks for a diving board. Having so concluded, the defendant owes no duty to the plaintiffs when a dock permit is issued pursuant to § 111.4. See Wilson, 282 N.W.2d at 667.

III. State Ultimate Owner

In the last portion of their brief, plaintiffs assert that the "trial court further erred in failing to consider whether defendants owed the same duty to plaintiffs that a private owner of land owes or would owe to invitees." Plaintiffs did not cite any authority to support their assertion.

Iowa R. App. P. 14(a)(3) provides that "[f]ailure in the brief to. . . cite authority in support of an issue may be deemed waiver of that issue." Because the plaintiffs failed to cite any authority to support their claim, we deem it waived. Accord, e.g., McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 184 (Iowa 1980)(absence of citation to authority precludes consideration of arbitrary administrative action claim); State v. O'Connell, 275 N.W.2d 197, 200 (Iowa 1979)(failure to cite constitutional provisions waives speedy trial issue); Arthur

Elevator Co. v. Grove, 236 N.W.2d 383, 393 (Iowa 1975)(reviewing court need not consider assignment of error when complaining party cites no authority).

IV. Discretionary Function

Our conclusions in Divisions II and III, supra, render the issue of the discretionary function exception to the Tort Claims Act moot.

Plaintiffs' assignments of errors are without merit. The judgment of the trial court is affirmed.

AFFIRMED.