IN THE COURT OF APPEALS OF IOWA

No. 2-295 / 91-1437

FILED
SEP 29 1992
CLERK SUPREME COURT

KARLA McINTOSH, Individually and as Next Friend of Plaintiff **NOAH McINTOSH**, A Minor,

Plaintiff-Appellant,

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vs.

LYLE DROLLINGER, d/b/a **CITY PARK RIDES and DROLLINGER RIDES**, and **DELMAR WELLS**,

Defendants-Appellees.

Appeal from the Iowa District Court for Johnson County, Larry J. Conmey, Judge.

McIntosh appeals following an adverse jury verdict in a personal injury action seeking damages on behalf of her five-year-old son who was struck by defendant's amusement ride train. **AFFIRMED BY OPERATION OF LAW.**

Tom Riley and Martin A. Diaz of Tom Riley Law Firm, P.C., Iowa City, for appellant.

Patrick M. Roby of Shuttleworth & Ingersoll, Cedar Rapids, for appellee.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ., but decided en banc.

PER CURIAM

The court being equally divided, the judgment is affirmed by operation of law. Iowa Code § 602.5106(1) (1991).

AFFIRMED.

For affirmance: Donielson, Sackett, and Habhab, JJ.

For reversal: Oxberger, C.J., and Schlegel and Hayden, JJ.