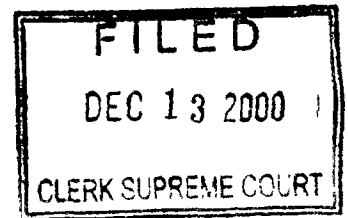


IN THE COURT OF APPEALS OF IOWA

No. 0-670 / 00-0458
Filed December 13, 2000



CHRISTEEN SCALCO,
Plaintiff-Appellant,

vs.

**DES MOINES SEMI-PRO BASEBALL, an Iowa Corporation, and THE DES
MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,
Judge.

On appeal following the grant of summary judgment dismissing her
personal injury action against a school district and a semi-professional baseball
league, plaintiff contends the court erred in concluding the defendants fully
discharged their duty to her. **AFFIRMED.**

Marc S. Harding, Des Moines, for appellant.

Timothy J. Walker and Roscoe A. Ries, Jr., of Whitfield & Eddy, P.L.C.,
Des Moines, for appellee-Des Moines Semi-Pro Baseball.

Andrew J. Bracken and Nathan J. Overberg of Ahlers, Cooney, Dorweiler,
Haynie, Smith & Allbee, P.C., Des Moines, for appellee-Des Moines Independent
Community School District.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

Plaintiff Christeen Scalco appeals from the grant of summary judgment by the district court in favor of the defendants Des Moines Semi-Pro Baseball ("DMSPB") and the Des Moines Independent School District ("the District") dismissing her personal injury action. Scalco contends the district court erred in concluding DMSPB and the District fully discharged their duty to her. Further, Scalco argues baseball should not get a special privilege or immunity no other sport or property owner is granted to relieve them of liability for their negligent acts. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS

The District owns and maintains a baseball field on which DMSPB plays league games. The District allows DMSPB to use the field for ten Sundays out of the year. Scalco was sitting on a blanket directly behind the bleachers located behind home plate during one of these Sunday games. She was injured when a foul ball that was hit over the fence protecting the home plate bleachers struck her in the face. The District had erected protective barriers around the baseball field, including a fence behind home plate that is approximately fifteen feet high. The District further provided seating for spectators behind this fence. It is undisputed that Scalco was not sitting in the protected seating behind home plate provided by the District.

Scalco filed suit against both the District and DMSPB alleging that their negligence, in failing to warn of dangers that were not open and obvious and failing to provide adequate protective barriers, caused her injuries. The District and DMSBP both moved for summary judgment. The district court granted

summary judgment and dismissed the action based on the Iowa Supreme Court's decision in *Arnold v. City of Cedar Rapids*, 443 N.W.2d 332 (Iowa 1989). The district court held that because Scalco was not seated in the bleachers provided by the District behind the protective fence, there was no fact issue as to whether the screen was of sufficient extent to provide adequate protection for her.

Scalco appeals the grant of summary judgment contending the court erred in finding there was no question of fact regarding whether the fencing behind home plate was adequate to protect her. We disagree. Scalco further asks us to either distinguish or overrule the earlier decision in *Arnold*. We find any difference between the facts in *Arnold* and this case to be of no legal significance and decline Scalco's request to overrule *Arnold*.

II. STANDARD OF REVIEW

We review a summary judgment ruling for correction of errors of law. *Howell v. Merritt Co.*, 585 N.W.2d 278, 280 (Iowa 1998). Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* "We will review the record before the district court to determine whether an issue of material fact exists, and if not, whether the district court properly applied the law." *Id.* The facts are reviewed in the light most favorable to the nonmoving party. *Id.*; see also *Shriver v. City of Okoboji*, 567 N.W.2d 397, 400 (Iowa 1997).

III. MERITS

We believe the *Arnold* decision to be precisely on point and controlling in the case at hand. In *Arnold* our supreme court stated,

The principle seems well established that the owner or operator of a ballpark *fully discharges any obligation* to protect

spectators from thrown or hit balls by providing seating in a fully protected area. Where a spectator rejects the protected seating and opts for seating that is not, or is less, protected the owner or operator is *not liable*.

Arnold, 443 N.W.2d at 333 (emphasis added)(citations omitted). The supreme court set out a two-prong test in *Arnold* regarding the duty of a baseball park owner or operator to protect spectators: (1) the proprietor need only provide screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest; and (2) such screening must be of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game. *Id.* The court ultimately found in *Arnold* that because the defendants had screened the most dangerous parts of the spectator stands, behind home plate, and there was sufficient seating there for the plaintiff, the defendants owed *Arnold* nothing further. *Id.* at 333-34.

It is undisputed that the District provided seating in a protected area behind home plate and that Scalco did not sit there, but instead on a blanket behind that area. At the least the area where she opted to sit was a *less* protected area if not completely unprotected. By providing such protected seating both the District and DMSPB fully discharged any obligation they had to protect Scalco as a spectator. Because Scalco rejected the protected seating and opted for other less protected seating, neither the owner nor operator of the park can be held liable to her.

Scalco seems to claim that the district court granted summary judgment to the District and DMSPB based on some special immunity, arguing they are receiving a special immunity that other professional teams do not get. However,

nowhere in either the trial court's decision or in *Arnold* is there any mention of a special immunity for the owners or operators of baseball ballparks. The supreme court's decision in *Arnold* turned on the question of duty. It held that under the undisputed facts the owner had satisfied both prongs of the two-prong test regarding duty and had thus fully discharged its duty to the plaintiff. The district court in this case based its decision entirely on this same duty analysis. There was no special immunity or privilege given or suggested, in *Arnold* or in this case, for injuries to baseball spectators.

IV. CONCLUSION

We conclude the district court was correct in concluding there were no genuine issues of material fact and that DMSPB and the District were entitled to judgment as a matter of law. We affirm the district court's grant of summary judgment.

AFFIRMED.