

IN THE COURT OF APPEALS OF IOWA

No. 3-249 / 92-1108

FILED

DEC 29 1993

CLERK SUPREME COURT

REBECCA ANN DePHILLIPS, MARK STEVEN DePHILLIPS, BRADLEY JOHN DePHILLIPS, A Minor, by MARK STEVEN DePHILLIPS, His Father and Next Friend, and MARK STEVEN DePHILLIPS, JR., A Minor, by MARK STEVEN DePHILLIPS, His Father and Next Friend,

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Appellants,

vs.

WHITE WATER UNIVERSITY, INC., PHYLLIS R. SMITH, CRAIG SMITH, INC., CRAIG SMITH, JENNIFER K. SCOTT, HAZEL E. SCOTT, and JESSICA SCOTT,

Appellees.

Appeal from the Iowa District Court for Polk County,
Joel Novak, Judge.

Plaintiffs appeal from a district court order sustaining defendants' motion for summary judgment in plaintiffs' action for damages in a slip and fall case.

AFFIRMED.

Jerold Wanek and David A. Morse of Garten & Wanek,
Des Moines, for appellants.

Richard G. Blane II of Hansen, McClintock & Riley,
Des Moines, for appellees.

Heard by Oxberger, C.J., and Schlegel, J., and
McCartney S.J.*

*Senior judge from the 2nd Judicial District serving on
this court by order of the Iowa Supreme Court.

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OXBERGER, C.J.

Rebecca Ann DePhillips took her children to White Water University, a water amusement park. Prior to entering the park, DePhillips signed the following release:

SMITH'S SUPER SHUTE, INC. d/b/a WHITE WATER UNIVERSITY
READ CAREFULLY - THIS AFFECTS YOUR LEGAL RIGHTS

In return for the use of property, facilities and services ("facilities") of White Water University,

I AGREE TO:

1. OBSERVE AND OBEY all posted rules and warnings.

2. ASSUME ALL RISKS arising from my use of or presence upon the facilities. I understand there is risk of injury in using the following activities and rides: waterslides, hot tub, Tadpole pool, Cannon Balls, Tube-R-Roo, Drifting Do-nuts, Typhoon Slides and other attractions. I also recognize there is a risk of injury from negligent, reckless or intentional acts of third parties in using the facilities and I assume this risk.

3. RELEASE White Water University and waive any claim for injury or damage arising out of my use of or presence upon the facilities, whether caused by the fault of myself, White Water University, or third parties.

4. INDEMNIFY AND DEFEND White Water University against all claims, causes of action, damages, judgements [sic], costs or expenses, including attorney's fees, which in any way arise from my use of or presence upon the facilities.

...
 The undersigned, as parent or guardian of the minor(s), agrees on behalf of both the minor(s) and myself to all of the terms and conditions in this Agreement.

I HAVE READ THIS AGREEMENT AND UNDERSTAND IT. I UNDERSTAND THAT BY SIGNING THIS AGREEMENT I SURRENDER CERTAIN LEGAL RIGHTS. I DO SO FREELY AND VOLUNTARILY.

While stepping down from a hot tub, DePhillips slipped in a pool of water and fell. She allegedly did not realize the extent of her injuries until several days later and neglected to inform White Water employees of the accident.

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DePhillips sued, seeking damages for her injuries. Defendants raised an affirmative defense based upon the signed release.

The district court granted summary judgment. The court ruled that the risk of slipping on water was within the contemplation of the parties when the release was signed, and that DePhillips' failure to read or understand the release before she signed it did not void the waiver.

DePhillips appealed.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 237(c); see Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact, Milne, 424 N.W.2d at 423, and the evidence must be viewed in the light most favorable to the resisting party, Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). The procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the resisting party. Id.; Sherwood v. Nissen, 179 N.W.2d 336, 339 (Iowa 1970). A fact issue is generated if reasonable minds can differ on how the issue should be resolved, but if the conflict in the

record consists only of the legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423; Gott, 387 N.W.2d at 343. We now turn to the facts, all of which appear to be undisputed, as viewed in a light most favorable to the party resisting the motion for summary judgment.

Neither party disputes the following facts: DePhillips entered White Water University with her children; she signed the above-noted release; she slipped in a puddle of water near a hot tub and fell; she did not report her fall to White Water University staff on the day the fall occurred. Although few, these are the undisputed material facts of the case.

Thus, the key question is whether the district court was correct in determining the release signed by DePhillips bars her from recovery. We affirm.

DePhillips argues the release was not valid, binding nor enforceable. However, we find the recent Iowa Supreme Court decision Huber v. Hovey, 501 N.W.2d 53 (Iowa 1993), dispositive on these issues. In Huber, the court upheld summary judgment in a case involving a release signed by a spectator injured at a race track. Id. at 58. The court refused to make a distinction between a participant and a spectator, where the release did not treat the two categories differently. Id. at 56. The court found, as it has in the past, contracts exempting a party from its own negligence enforceable and not contrary to public policy.

Id. at 55. The court also refused to allow the plaintiff to avoid the effect of the release because he did not read it.

Id. The court noted that, "absent fraud or mistake, ignorance of a written contract's contents will not negate its effect". Id. Finally, the court concluded the release signed was a contract and its enforcement governed by principles of contract law. Id.

Huber disposes of the claims raised by DePhillips. We will not make distinction between DePhillips and a participant since the release did not create separate categories. We do not find the release signed by DePhillips, which was in substance identical to the release in Huber, contrary to public policy. The fact that DePhillips did not read the release before she signed does not abrogate its effect. Finally, the release was in no way ambiguous as to the type of injuries it released.

We affirm the district court's decision granting summary judgment.

AFFIRMED.