FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-140 / 89-695

JERRAMY C. ROCKMAN, By Next Friend, RODNEY ROCKMAN,

Appellant,

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vs.

REAH DELORES RUST, the STATE OF IOWA, and the CITY OF OKOBOJI,

Appellees,

and

CITY OF OKOBOJI and RODNEY ROCKMAN,

Third-Party Defendants.

Appeal from the Iowa District Court for Dickinson County, Tom Hamilton, Judge.

Plaintiffs appeal an order granting of defendant's motion for summary judgment. **AFFIRMED.**

Harold D. Dawson of Corcoran, Skiver, Zito, DeKoter & Thole, Sibley, for plaintiff-appellant.

Thomas J. Miller, Attorney General; John R. Perkins, Deputy Attorney General; and Robin G. Formaker and Richard E. Mull, Assistant Attorneys General; for defendant-appellee State of Iowa.

Joseph L. Fitzgibbons of Fitzgibbons Brothers, Estherville, for defendant-appellee City of Okoboji.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ. Sackett, J., takes no part.

SCHLEGEL, J.

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Plaintiff appeals a district court order granting defendants' motion for summary judgment. We affirm the trial court.

The facts concerning the accident are largely undisputed. On the date of the accident, the Rockman family had been boating on East Okoboji Lake. To take their boat out of the water they were using the Hattie Elston Access boat launch near Sanborn Avenue located in the City of Okoboji. Sanborn Avenue proceeds to the east and forms a T-intersection with U.S. Highway 71, a two-lane road which runs north-south. It was May 25, 1986, a Memorial Day weekend. Traffic was heavy. There is a stop sign for Sanborn Avenue located approximately twenty feet from the edge of the traveled way.

Since there were no restroom facilities at the boat launch area, Jerramy Rockman, then age ten, after seeking his parents' permission, left the boat launch, crossed Highway 71 alone, used the restroom at a convenience store, and started to return by running back across Highway 71. As he was in the process of returning to the launch area he was killed by a southbound automobile driven by Ms. Rust. Ms. Rust's vehicle left approximately 35 feet of skid marks.

Rockman claims the City and State were negligent because the stop sign was improperly installed, and that because of the heavy traffic, other precautions should have

been undertaken to protect pedestrians. His expert suggested a fence to concentrate pedestrian movement, additional warning signs, pedestrian crosswalks, flashers over the intersection, a safety island, and a traffic control officer. Rockman believes the boat launch, which was developed across the highway from a convenience store and gas station, constituted an attractive nuisance. Rockman also contends the boat launch should have provided adequate restroom facilities so that its users would not have to cross the highway to use the restroom. Finally, Rockman challenges the trial court's failure to grant a continuance to allow for further discovery.

The State and municipality contend that they are immune by operation of Iowa Code section 668.10(1) from allegations of negligence concerning the traffic control devices. Since the decision to supply restrooms at the boat launch is a discretionary one, they also contend they are immune from tort liability under Iowa Code section 25A.14(9).

The trial court granted both entities summary judgment and dismissed Rockman's action as to them. Rockman's suit against Ms. Rust remains.

Because the trial court's ruling did not dispose of this entire case, the State believes that this appeal is interlocutory and should be dismissed.

I. Jurisdiction. We must first address the defendants' contention that we are without subject matter jurisdiction

over this appeal. Defendants claim this appeal is interlocutory and therefore permission to take such an appeal is required. Ordinarily our appellate jurisdiction is limited to review of judgments or orders which finally dispose of the entire case as to all parties. Argenta v. City of Newton, 382 N.W.2d 457, 458 (Iowa 1986). We must determine whether this appeal is from a final judgment. The court in Argenta went on to set out the following analysis for determining whether the judgment is final:

> The question is whether the determination of the issues as to any defendant depends on or affects the determination of the issues as to the other defendants. If the claimed basis of liability of the dismissed defendants is connected with, or so related to, the claimed basis of liability of the remaining defendants that one may affect the other, a judgment as to the discharged defendants is not appealable until the issues as to the remaining defendants are settled.

Id.

In Argenta, as in our case, all of the claims are based in tort. However, the claims against the city and State are separate and distinct from any claim against Rust. There is a distinct line of demarcation between the plaintiff's claims against the city and State, and his claims against the other defendant. Id. The summary judgment terminating the plaintiff's claims against the appellants was a final order appealable as of right because those claims were separate and distinct from the claims plaintiff asserted against the other defendant. Id. at 458-59.

II. Summary Judgment. In reviewing the grant or denial of summary judgment motions, we view the underlying facts contained in the pleadings and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, and give to such party the benefit of any doubt as to the propriety of granting summary judgment. Meylor v. Brown, 281 N.W.2d 632, 634 (Iowa 1979). Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied, and to reverse the grant of summary judgment if it appears from the record there is an unresolved issue of material fact. Id.

a. Placement of Stop Sign. Appellant argues that the improper placement of the stop sign by the State is not exempt under Iowa Code section 668.10(1). Section 668.10(1) states as follows:

> In any action brought pursuant to this chapter, the state or municipality shall not be assigned a percentage of fault for any of the following:
> 1. The failure to place, erect, or install a stop sign, traffic control device, or other regulatory sign as defined in the uniform manual for traffic control devices adopted pursuant to section 321.252. However, once a regulatory device has been placed, created or installed, the state or municipality may be assigned a percentage of fault for its failure to maintain the device.

There is argument from both parties as to whether the placement of the stop sign was improper. However, we hold that under these facts a stop sign placed twenty feet off of the roadway is not a "failure to maintain the device."

The case of Saunders v. Dallas County, 420 N.W.2d 468 (Iowa 1988), controls this situation. In Saunders, as here, the negligence asserted complains of a decision concerning placement of road signs. Id. at 472. The court in Saunders stated:

> No matter how the challenged county activity is defined or labeled, it comes down to a choice of whether or where to place signs. A decision whether to replace this sign, to move it, or to supplant it with one or more other signs, is not a matter of maintenance under the statute. On the contrary such an action is a matter of deciding to place signs, for which the county cannot be held liable. (Emphasis added.)

Id.

Even if we assume the placement was improper under the Manual on Uniform Traffic Control Devices, such placement is not a matter of maintenance under Iowa Code section 668.10(1). For immunity to be lost it must appear, at a minimum, that the signs were erected in such a manner as to mislead or endanger the driver. Id. "We think the allegations here all come down to decisions about whether or where to place traffic signs." Id. Negligent decisions of this kind are precisely the ones which section 668.10(1) immunizes from liability. Id. The trial court was correct in granting summary judgment on this issue.

b. Other Devices. Appellant also contends the government entities had a duty to use means other than signs to provide a safe area. Appellant argues that, given the busy traffic during the Memorial Day weekend, a traffic control officer should have been on duty. In addition,

appellant contends the boat launch area should have been fenced and the commercial driveway access points should have been controlled.

Appellant bases his contention regarding the use of a traffic control officer on the following holding in Hershberger v. Buena Vista County, 391 N.W.2d 217, 220 (Iowa 1986):

> A state of facts might be envisioned, however, in which the exigencies are such that ordinary care would require the state or municipality to warn of dangerous conditions by other than inanimate devices. Such a situation would not fall within the scope of section 668.10(1).

We hold that the court in Hershberger did not "envision" Memorial Day traffic as an exigency requiring the stationing of a traffic officer at various intersections around the state. The trial court correctly granted defendant's motion for summary judgment on this issue.

Appellant also contends the placement of the fence and control over driveway access points are not "traffic control devices" within the meaning of section 668.10(1). The court in Metier v. Cooper Transport Co. Inc., 378 N.W.2d 907, 913 (Iowa 1985), discussed and recognized the broad definition of traffic control devices.

> The purpose of traffic control devices and warrants for their use is to help insure highway safety by providing for the orderly and predictable movement of all traffic, motorized and non-motorized, throughout the national highway transportation system, and to provide such guidance and warnings as are needed to insure the

safe and informed operation of individual elements of the traffic stream.

The fence and driveway controls suggested by appellant would clearly be intended to provide "predictable movement" of nonmotorized traffic, and therefore fall within the meaning of traffic control devices as intended by Iowa Code section 668.10(1).

Finally, we are persuaded by application of our case law principles that a legislative enactment presumes a reasonable result is intended and that our interpretation should avoid impractical or absurd results. Metier, at 913. The appellant's interpretation of traffic control device would allow the State to escape assignment of fault for failing to post a stop sign at the intersection of two busy highways, but not for failing to erect a fence at a relatively out-of-the-way boat launching area. Id. The above rationale also controls appellant's contention that several other regulatory devices should have been used by the State. They are also included under the definition of traffic control device. We hold that summary judgment was properly granted on this issue.

c. Restroom Facilities. The appellant also contends the decision not to build a restroom at the boat launch is not immunized from tort liability. We hold that under the discretionary function, exception in Iowa Code section 25A.14(1), such a decision is immunized in these particular circumstances. Iowa Code section 25A.14(1) states:

> The provisions of this chapter [the Tort Claims Act] shall not apply with respect to any claim against the state, to:
>
> 1. Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statue or regulation, whether or not such statue or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the state agency or an employee of the state, whether or not the discretion be abused.

The Iowa Supreme Court explained the discretionary function exception as follows:

> The discretionary function or duty that cannot form a basis for suit under the Tort Claims Act includes more than the initiation of programs and activities. It also includes determinations made by executives or administrators in establishing plans, specifications or schedules of operations. Where there is room for policy judgment and decisions there is discretion.

Nordbrock v. State, 395 N.W.2d 872, 876 (Iowa 1986).

The decision of whether or not to install restroom facilities at a boat launch area is purely discretionary and clearly within the exception. The boat launch area was only intended to provide easy access to the water, not as a long-term recreation area. In addition, there were several restroom facilities provided around the lake. The decision not to install a restroom at this particular site was a decision "establishing specifications" as defined in Nordbrock. The trial court was correct in granting summary judgment on this issue.

d. Attractive Nuisance. The appellant also contends the State and city created an attractive nuisance. The

facts in this case do not remotely begin to satisfy the elements of attractive nuisance set out in Rosenau v. City of Estherville, 199 N.W.2d 125, 136 (Iowa 1972). Children are not likely to trespass at a boat launch. Even the appellant bases his claim on the area attracting parents and hence their children, and not just children. There is nothing to suggest that the area presents an unreasonable risk of harm to children, or that the children, because of their youth, would fail to discover the condition or realize the risk involved. See id. There is no genuine issue of material fact present to support the application of the doctrine of attractive nuisance.

e. **Motion for Continuance.** Finally, appellant challenges the trial court's denial of his motion for continuance to conduct further discovery. The grant or denial of a continuance is within the sound discretion of the trial court. Countryman v. McMains, 381 N.W.2d 638, 640 (Iowa 1986). A district court's ruling on such matters is presumptively correct, and a party challenging the ruling has a heavy burden to overcome the presumption. Id. There is nothing in the record to suggest the trial court abused its discretion by denying the continuance. We affirm the district court in toto.

AFFIRMED.