

IN THE COURT OF APPEALS OF IOWA

No. 1-127 / 90-1190

FILED

AUG 27 1991

CLERK SUPREME COURT

WILLIAM E. YOUNG,

Plaintiff-Appellee,

534

vs.

CHARLES GREGG, Individually,

Defendant,

and

CLARMOND COUNTRY CLUB, Clarion, Iowa,

Defendant-Appellant.

Appeal from the Iowa District Court for Wright County,
Timothy J. Finn, Judge.

Clarmond Country Club appeals a \$100,000 judgment in favor of tournament golfer injured by nontournament golfer. **REVERSED AND DISMISSED.**

M. Gene Blackburn of Law Offices of M. Gene Blackburn, P.C., Fort Dodge, until his death, and then James L. Kramer of Johnson, Erb, Latham, Gibb & Carlson, P.C., Fort Dodge, for appellant.

Tito Trevino and Peter J. Leehey of Trevino, Leehey & Schnurr, Fort Dodge, for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

SACKETT, J.

This case addresses the liability of a country club toward a patron hit by a golf ball. The patron was walking toward the clubhouse on a fairway following "shotgun" tournament play. The patron was walking against the play. We find the trial court should have directed a verdict for the country club. We reverse and dismiss.

Plaintiff-appellee William Young was a contestant in a shotgun golf tournament at defendant-appellant Clarmond Country Club. The tournament, that had been approved by the defendant's directors, was sponsored by a club in Clarion.

The tournament was described as a three-man best shot event. The tournament started when all the golfers began their rounds simultaneously by starting on different holes. The golfers were to end their rounds at the hole behind where they started. If the golfers played at approximately the same speed, all groups would be returning to the clubhouse at or near the same time.

Plaintiff and his party started playing on the third hole and finished on the second hole. After completing the second hole, they started up number one fairway toward the clubhouse. They were walking in the opposite direction the fairway is played. Charles Gregg was starting a regular round of golf on the first tee. He hit a ball toward the number one green that hit and injured the plaintiff.

Plaintiff sued defendant, contending defendant was negligent in (1) allowing Gregg to begin playing before the tournament was finished; (2) not warning Gregg players would be returning from outlying holes; and (3) not advising the tournament players the club was open to regular players. The jury heard the evidence and returned a verdict for plaintiff for \$100,000. Defendant was found to be 100 percent at fault for the accident.

Defendant first contends the trial court should have directed a verdict in its favor. The pivotal question is what duty the club owed plaintiff, an invitee on the premises.

Defendant had a duty to exercise reasonable care to have the premises reasonably safe for plaintiff. Foust v. Kinley, 254 Iowa 690, 693, 117 N.W.2d 843, 845 (1962). The defendant was not an insurer of the safety of patrons but owes them ordinary and reasonable care, and had the responsibility to guard against dangers of which defendant had actual notice, as well as those it should have reasonably anticipated. Foust, 254 Iowa at 694, 117 N.W.2d at 846.

The act that caused the harm was an act of a third person. Therefore, the question is whether, by the exercise of reasonable care, defendant should have discovered the act was being done or about to be done, and whether it could have and should have controlled the conduct of the third person. Id.

The act that caused plaintiff's injury, "hitting a ball from the tee down the fairway toward the green" is an act that is expected and anticipated in regular play at a golf course. It is not an act that one would need to warn or advise other golfers about. It is an expected and anticipated part of play.

The question is, did the plaintiff show it became an act such as should be warned against because of the nature of the tournament being played. Clearly, tournament play involved other groups hitting a ball down number one fairway. Plaintiff's apparent premise is he had the right to assume the other tournament players finished when he did, and the course would be free from play.

The question therefore is whether the plaintiff showed the defendant knew or should have known Gregg's presence on the course created an unreasonable risk to plaintiff, because plaintiff had the right to expect at that time and place there would be no play on the fairway. The question then becomes whether the defendant knew or should have known that plaintiff would elect to return to the clubhouse in the opposite direction of play or that Gregg would not give the customary warning "fore."

It was plaintiff's election to proceed on the fairway against the direction of play that put him in peril. The peril could have been from another tournament player or, in this case, a person starting a round of golf. Plaintiff

has not introduced evidence to show the requisite breach of duty. See Foust v. Kinley, 254 Iowa at 698, 117 N.W.2d at 846.

Being hit by a golf ball on the fairway is a risk inherent to the game of golf. Inherent in most sporting events are certain risks and dangers. A participant or spectator in a sporting event generally cannot hold another party responsible for those dangers inherent in the game. See Arnold v. City of Cedar Rapids, 443 N.W.2d 332, 333-34 (Iowa 1989). Patrons of golf courses are well aware of the direction of golf balls. We do not reach to extend liability to the area of consensual sports. There are certain risks inherent in most sports. We reverse and dismiss.

REVERSED AND DISMISSED.

Donielson, P.J., dissents; Schlegel, J., specially concurs.

DONIELSON, P.J. (dissenting)

Justified Jane always drives to work on the same route, Eastward Alley. Eastward Alley is a two-lane, one-way street. Traffic on Eastward Alley normally only travels west to east; to travel west, one normally uses the corresponding two-lane, one-way street, Westward Ho.

W-----E
 Eastward Alley

W-----E
 Westward Ho

On August 25, 1986, Justified Jane is traveling from the west to the east in the northern lane of Eastward Alley--as usual. She knows the rules of the road: driving in the left lane on a one-way street is normally a perfectly legitimate course of travel. Justified Jane believes the usual rules of the road are in effect today.

Cautious Carl normally takes Westward Ho to drive west. But on August 25, 1986, a police officer is blocking Cautious Carl's route. The police officer (a representative of the Powers that Be) informs Cautious Carl that Westward Ho is temporarily closed for repairs and traffic is being rerouted to Eastward Alley. Cautious Carl says, "Isn't that a one-way street with only eastward traffic?" The officer responds, "Normally, yes, but not today. Today you can drive west on the northern lane."

Cautious Carl, knowing that the Powers that Be have temporarily changed the rules of the road, turns west on Eastward Alley, against the normal flow of traffic. Not surprisingly, Justified Jane and Cautious Carl (both following the rules of the road as they understand them to be) run headlong into one another.

Cautious Carl sues Justified Jane and the Powers that Be. The jury misses the evidence that the Powers that Be changed the rules of the road for Cautious Carl. Believing that the normal one-way rules of the road were in effect, the jury applies The Damn Fool Rule¹ and refuses to hold the Powers that Be responsible for Cautious Carl's injuries.

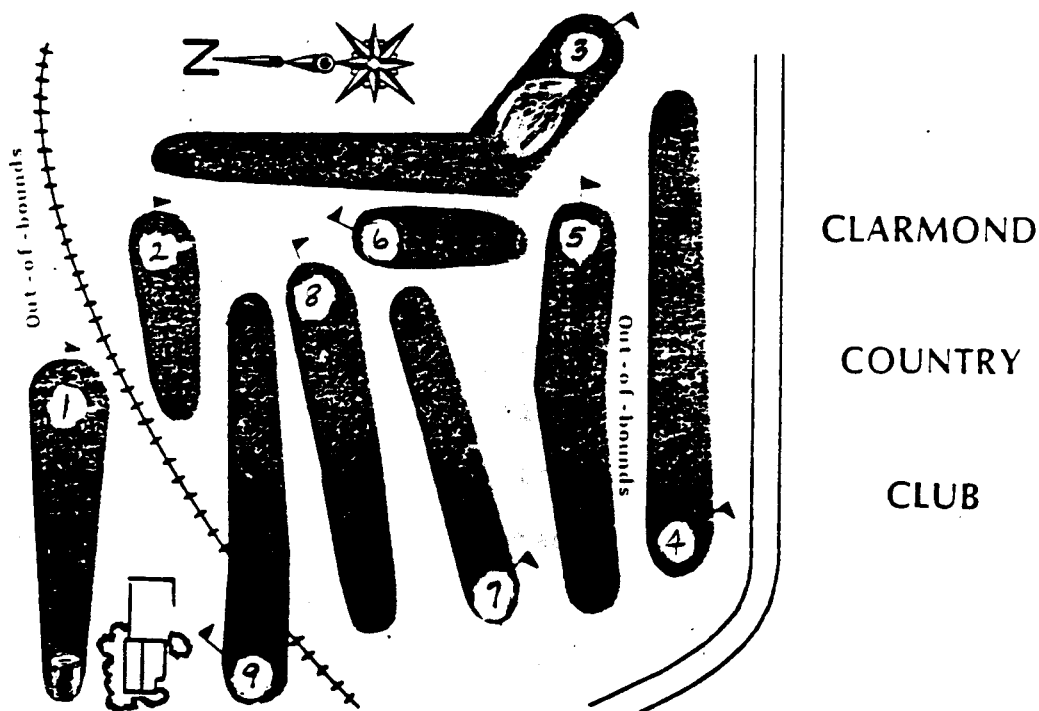
Similarly, in the instant case, the majority, in effect, decides that William Young was a "damn fool" for traveling against the normal traffic flow on the Clarmond Country Club (Clarmond) golf course and, therefore, he cannot hold Clarmond responsible for his injuries. Even if Clarmond had presented the Damn Fool Rule as a basis for reversal, which Clarmond did not do,² the majority has

1. This is known in more legalistic terms as assumption of the risk. When a person is aware that certain behavior is dangerous and might lead to injury, if one ignores the danger and is consequently injured, the person will not be allowed to hold another party liable for the injuries suffered. A nonlawyer would say, "Well you damn fool, you should have expected to get hurt, don't blame anyone but yourself." The principle of assumption of the risk gives the "damn fool" rule legal effect.

2. Clarmond, in fact, raised two issues: (1) Its duty to Young was only to protect him against dangerous conditions on the golf course--it had no duty to protect

somehow ignored that Clarmond changed the rules of the golf course for William Young.

To understand how much Clarmond changed the rules, one must remember that the flow of traffic on a golf course is one-way and, normally, all golfers begin play at the tee of hole number one and proceed around the golf course. The last hole of the course is situated in a manner that provides golfers a quick and unobstructed path back to the clubhouse. Clarmond golf course is no different.



Young against the acts of third persons--and therefore, the court should have directed a verdict in its favor. (This conclusion cannot stand because it is based on a faulty premise. See Martinko v. H-N-W Assoc., 393 N.W.2d 320, 321-22 (Iowa 1986).) (2) The district court's instructions to the jury were erroneous. (This argument is also based on Clarmond's erroneous premise that it cannot be liable for the accidental or negligent acts of third persons on its land.) In fact Clarmond raised the assumption of risk as an issue to the jury by alleging the comparative fault doctrine.

Some tournaments are played like a normal round of golf, that is, all contestants begin at the tee of hole number one and finish at the cup of hole number nine (or eighteen, depending upon the length of the course). However, some tournaments are played from a "shotgun" start where all golfers begin their rounds simultaneously from different holes. The flow of play is still one-way. No group can play faster than the slowest player on the course because a group cannot advance to the next hole until the preceding group is finished. Golfers finish their rounds at the hole immediately behind the one from which they started and then return at approximately the same time to the clubhouse from the various outlying golf holes. The golfers do not finish at the "normal" finish location. This format necessarily requires that the tournament players go against the normal "traffic" at the finish when the golfers are returning to the clubhouse. "Shotgun" formats are a widely-accepted and used format in golf outings.

On August 25, 1986, William Young was a contestant in a shotgun start, three-man best shot golf tournament held at Clarmond and approved by the Clarmond board of directors. Young and his party completed their tournament round on the green of hole number two. At the time he was accidentally hit by a golf ball, Young and another golfer were riding³

3. The majority erroneously states Young was walking. This error of fact is not significant nor is the omission that this was Gregg's second shot.

in Young's golf cart and headed back to the clubhouse using the number one fairway. They were traveling in the opposite direction the fairway is played. As they were cresting a hill, they saw for a split second a golf ball coming directly at them. The ball had been hit by nontournament golfer, Charles Gregg. The ball hit Young in the face and knocked him out of his cart.

Prior to beginning his regular round of golf, Charles Gregg had called the club to learn when the tournament would end. He was told "7:30 p.m." by an unknown individual, and so Gregg arrived to begin playing at about that time. The club's professional was out of town, and his assistant in charge was not in the pro shop when Gregg arrived. Gregg teed off at about 7:30 from the number one tee. There was no indication the course was closed to the public. Young and Gregg, like Justified Jane and Cautious Carl, were each traveling the golf course believing different rules of the road governed.

I do not argue with the majority's statement that hitting a ball from a tee down the fairway toward the green is "an act that is expected and anticipated in regular play at a golf course." I do, however, take umbrage at the following statement of the majority:

It was plaintiff's election to proceed on the fairway against the direction of play that put him in peril. The peril could have been from another tournament player or, in this case, a person starting a round of golf. Plaintiff has not introduced evidence to show the requisite breach of duty.

The premise of this paragraph is fundamentally flawed. It was not Young's election to return to the clubhouse on the route he followed. Rather, Clarmond dictated the route by holding a shotgun-start tournament and requiring tournament players to return to the clubhouse from the outlying holes at which they completed their round of golf. Like Cautious Carl, Young was told by the Powers that Be that the normal rules of the road were temporarily altered. Golf (with a "shotgun start") is simply not played the way the majority sets forth.

In Foust v. Kinley, 254 Iowa 690, 117 N.W.2d 843 (1963), our supreme court addressed "the duty owed by the operator of a place of amusement to protect patrons from injuries caused by acts of third persons." Id. 254 Iowa at 694, 117 N.W.2d at 846.

The law is well established that a proprietor of a place of public amusement or entertainment is held to a stricter account for injuries to patrons than the owner of private premises generally. He is not an insurer of the safety of patrons but owes to them only what, under the particular circumstances, is ordinary and reasonable care. He must guard them not only against dangers of which he had actual notice, but also against those he should reasonably anticipate. Failure to carry out such duty is negligence.

Id. 254 Iowa at 694, 117 N.W.2d at 845-46.

If Young had been injured by another tournament golfer, I might find that Young had suffered an unanticipated injury because Clarmond could not reasonably anticipate that shotgun tournament golfers would not be playing at

approximately the same speed.⁴ But Young was a tournament player injured by a nontournament golfer. When Clarmond held a shotgun-start tournament, it altered the normal route of return to the clubhouse. It could have, and should have, reasonably anticipated that this different route would create different dangers for tournament golfers. Clarmond owed the tournament golfers reasonable care under the unique circumstances it had created. Young alleged Clarmond was negligent in: (1) allowing Gregg to begin golfing before the tournament was completed; (2) failing to warn Gregg that players would be returning from outlying holes; and (3) failing to advise the tournament players that the club had been opened to regular players. The jury agreed, as do I.

I would affirm.

4. Remember that, so long as only tournament golfers were on the course, Young would only be concerned about a ball being hit down the number one fairway by the group of tournament players directly preceding Young's group. Young's group could not have advanced to the second hole until the group preceding them had advanced to hole number one. The two groups should have teed off from their respective holes at about the same time, should have reached their respective greens at about the same time, and should have finished tournament play at about the same time.

SCHLEGEL, J. (specially concurring)

I write in support of the majority opinion but want to point out in this "shotgun" start, while plaintiff's group ended its play on the green of hole number two, someone had to end its play on the green of hole number one. Unless the plaintiff had special knowledge of the completion of the round by that group, driving down the number one fairway would have involved risk of driving against the play of other golfers. From the diagram of the course reproduced in the dissent by Judge Donielson, the safest route for plaintiff to have followed was the number 9 fairway, where any golfers would have been going the same direction.