STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF MCLEOD | FIRST JUDICIAL DISTRICT

Sandra Becker,
Plaintiff,

v.

Lester Prairie Independent School District 424

and

Seating and Athletic Facility Enterprises L.L.C.,
Defendants.

ORDER GRANTING SUMMARY JUDGMENT

Court File No. 43-CV-17-1033

The above-entitled matter came before the undersigned Judge of District Court on April 18, 2018 at the McLeod County Court House, in Glencoe, Minnesota on Defendant Lester Prairie Independent School District 424 and Defendant Seating and Athletic Facility Enterprises L.L.C. summary judgment motions. Plaintiff was represented by her attorney Thomas Edward Kiernan, 1630 Anderson Ave., Suite 400, P.O. Box 433, Buffalo, MN. Defendant Lester Prairie Independent School District 424 was represented by its attorney Margaret A. Skelton, 730 Second Ave. S., Suite 300, Minneapolis, MN and Defendant Seating and Athletic Facility Enterprises L.L.C. was represented by its attorney Michelle Draewell, 1740 W. Saint Germain St., St. Cloud, MN.

This Court, having reviewed the submissions filed by the parties, having heard the arguments of counsel and being duly advised in the premises now makes the following:

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

FINDINGS OF FACT

1. Plaintiff is Sandra Becker.
2. Defendant Lester Prairie Independent School District 424 (hereinafter "Defendant Lester Prairie") is located at 131 Hickory St. N., Lester Prairie, McLeod County, Minnesota 55354. Defendant Seating and Athletic Facility Enterprises L.L.C. (hereinafter "Defendant Seating") has a corporate address of 79554 325th St., Ellendale, Steele County, Minnesota 56026.
3. Defendant Lester Prairie contacted Defendant Seating about purchasing telescopic bleachers for the Lester Prairie High School gymnasium in March, 2014. Defendant Seating acted as an intermediary between Defendant Lester Prairie and the manufacturer of the bleachers, Interkal. Defendant Seating presented options from the manufacturer, Interkal, to Defendant Lester Prairie and discussed options for wheelchair seating to comply with the Americans with Disabilities Act (ADA). An option was to have a "cut-out" in certain sections of the bleachers and the "cut-out" could have a guardrail installed around it.
4. Defendant Lester Prairie chose telescopic bleachers with a "cut-out" at the bottom of the middle bleacher section, without a guardrail, to accommodate wheelchair seating. The bleachers were installed in 2014. The "cut-out" height is 27 1/8 inches from the bottom bleacher to the floor and the distance (horizontally) of the "cut-out" is twenty six feet.
5. The bleachers were built to code. No guardrail was required to be installed around the "cut-out" as the height of the "cut-out" was less than 30 inches.

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

6. Defendant Seating was the intermediary between Defendant Lester Prairie and the manufacturer of the bleachers. Defendant Seating did not manufacturer, install, or maintain the bleachers.
7. On January 5, 2016, Plaintiff attended her daughter's basketball game at the Lester Prairie High School, in Lester Prairie, Minnesota. Plaintiff was injured when she stepped off the bleachers in the "cut-out" section after a fire alarm sounded. This was the second fire alarm that sounded (the first alarm was a false alarm) and Mike Bjork requested the spectators to leave as the fire department was enroute.
8. Plaintiff did not use the bleacher "stairs" to descend, but, used the bleachers as steps without looking down at the bleachers. Nothing blocked or obscured Plaintiff's view when she descended the stairs.
9. Defendants filed motions for summary judgment pursuant to Minn. R. Civ. P. 56 and Plaintiff filed a responsive motion opposing summary judgment.
10. Defendant Lester Prairie's duty to Plaintiff is to provide a safe route to ascend or descend its' bleachers.

CONCLUSION OF LAW

1. Summary Judgment shall be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03.
2. "Summary judgment is appropriate when the evidence, viewed in the light most favorable to the non-moving party, shows that there is no genuine issue of material fact and the

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

moving party is entitled to judgment as a matter of law." *Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 370 (Minn. 2008); (quoting *Anderson v. State, Dep't of Natural Res.*, 693 N.W. 2d 181, 186 (Minn. 2005)).

3. Summary judgment is a "blunt instrument" *Republic Nat'l Life Ins. Co. v. Lorraine Realty Corp.*, 279 N.W.2d 349, 356 (Minn. 1979) and is "inappropriate when reasonable persons might draw different conclusions from the evidence presented." *DLH, Inc. v. Russ,* 556 N.W.2d 60, 69 (Minn. 1997). "To survive a summary judgment motion, the nonmoving party must therefore establish that there is a genuine issue of material fact through 'substantial evidence'." *DLH*, 556 N.W.2d at 70.

4. In Minnesota, the tort of negligence has four (4) elements. They are:

    a. The existence of a duty of care;

    b. A breach of that duty;

    c. An injury; and

    d. The breach of that duty being the proximate cause of the injury.

Engler v. Illinois Farmers Ins. Co., 706 N.W.2d 764 (Minn. 2005) (citing *Funchness v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001)).

5. "General negligence law imposes a general duty of reasonable care when the defendant's own conduct creates a foreseeable risk of injury to a foreseeable plaintiff." *Domagala,* 805 N.W.2d at 23. "A defendant owes a duty to protect a plaintiff when action by someone other than the defendant creates a foreseeable risk of harm to the plaintiff and the defendant and plaintiff stand in a special relationship." *Bjerke v. Johnson,* 742 N.W.2d 660, 665 (Minn. 2007).

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

6. Whether a duty of care exists is ordinarily an issue that the court determines as a matter of law. *Larson v. Larson,* 373 N.W.2d 287, 289 (Minn. 1995).

7. "Inaction by a defendant-such as a failure to warn- constitutes negligence only when the defendant has a duty to act for the protection of others." *Domagala v. Rolland*, 805 N.W.2d 14, 23 (Minn. 2011).

8. Minn. Stat. § 466.03, "Exceptions", Subdivision 1 states, "Section 466.02 does not apply to any claim enumerated in this section. As to any such claim every municipality shall be liable only in accordance with the applicable statute and where there is no such statute, every municipality shall be immune from liability."

   § 466.03 Subdivision 6e "Parks and recreation areas" states,

   > Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services,....if the claim arises from a loss incurred by a user of park and recreation property or services. Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person, except as provided in subdivision 23.

   § 466.03 Subdivision 23, "Recreational use of school property and facilities" states,

   > (a) Any claim for a loss or injury arising from the use of school property or a school facility made available for public recreational activity.
   > (b) Nothing in this subdivision:
   > (1) limits the liability of a school district for conduct that would entitle a trespasser to damages against a private person; or
   > (2) reduces any existing duty owed by the school district.

10. "Recreational use immunity is subject to the exception that is does not provide immunity 'for conduct that would entitle a trespasser to damages against a private person.'" *Prokop v. Independent School Dist. 625*, 754 N.W. 709, 714 (Minn. Ct. App. 2008) (quoting Minn. Stat. § 466.03 subd. 6e). To survive summary judgment on this issue, a plaintiff must demonstrate a question of material fact on the issue of whether the defendant's conduct would cause a private person to be liable to a trespasser. *Zacharias*

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

v. Minn. Dep't of Natural Res., 506 N.W.2d 313, 320 (Minn. Ct. App. 1993). "Minnesota courts use the standard for liability to adult trespassers set forth in the Restatement (Second) of Torts § 335 (1965)." *Prokop*, 754 N.W. 2d at 714; *Green-Glo Turf Farms, Inc. v. State*, 347 N.W.2d 491, 494 (Minn. 1984). Under that standard, defendant will be liable "only if (1) the artificial condition is likely to cause death or serious bodily harm; (2) the landowner has actual knowledge of that danger; and (3) the danger is concealed or hidden from the trespasser". *Lundstrom v. City of Apple Valley,* 587 N.W.2d 517, 520 (Minn. Ct. App. 1998).

11. "A possessor of land is not liable to his invitee for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness." *Baber v. Dill*, 531 N.W.2d 493, 496 (Minn. 1995); *Peterson v. W.T. Rawleigh, Co.,* 144 N.W.2d 555, 557 (Minn. 1966) (quoting *Restatement (Second) of Torts* § 343A (1965)). "Under this rule a landowner has a continuing duty to protect an entrant from harm, however, this duty is not absolute. Thus, even for obvious dangers, a possessor has a duty to warn if harm to an invitee should be anticipated despite the obviousness of the danger." *Baber,* 531 N.W.2d 493, at 496; *Peterson,* 144 N.W.2d at 557–58 (defendant had a duty to make safe or warn of the anticipated slippery conditions on his premises); *Betzold v. Sherwin,* 404 N.W.2d 286, 289 (Minn. Ct. App. 1987), *pet. for rev. denied,* (Minn. June 25, 1987) (holding "[a] landowner is not relieved of the duty to warn at night merely because a condition is open and obvious during the day"). A possessor of land, however, has no duty to an invitee where the anticipated harm involves dangers so obvious that no warning is necessary. *Peterson,* 144 N.W.2d at 558. *See e.g., Sperr v.*

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

Ramsey County, 429 N.W.2d 315, 317–18 (Minn. Ct. App. 1988) (holding no duty exists to protect pedestrian of low hanging branch that is clearly visible), *pet. for rev. denied,* (Minn. Nov. 23, 1988); *Lawrence v. Hollerich,* 394 N.W.2d 853, 856 (Minn. Ct. App.1986) (holding steepness of the hill so obvious no warning was required), *pet. for rev. denied,* (Minn. Dec. 17, 1986); *Bisher v. Homart Dev. Co.,* 328 N.W.2d 731, 733–34 (Minn.1983) (holding no duty to warn patrons about a large planter because it presented an obvious danger); *Hammerlind v. Clear Lake Star Factory Skydiver's Club,* 258 N.W.2d 590, 593–594 (Minn. 1977) (holding a lake was an obvious danger to parachutists); *Munoz v. Applebaum's Food Market, Inc.,* 196 N.W.2d 921, 921–22 (Minn. 1972) (holding store owner had no duty to warn of dangers associated with a pool of water that was 20 feet square and one-quarter inch deep because "[t]he dimensions of the pool were such that the hazard was obvious and no other warning was required for defendant"). The rationale underlying this rule is that "no one needs notice of what he knows or reasonably may be expected to know." *Sowles v. Urschel Lab., Inc.,* 595 F.2d 1361, 1365 (8th Cir.1979).

12. "Primary assumption of the risk acts as a complete bar to a plaintiff's recovery." *Schneider ex rel. Schneider v. Erickson*, 654 N.W.2d 144, 148 (Minn. Ct. App. 2002); *Armstrong v. Mailand*, 284 N.W.2d 343, 348 (Minn. 1979). "Primary assumption of risk applies when a party voluntarily enters into a relationship in which the plaintiff assumes well-known, incidental risks." *Schneider,* 654 N.W.2d at 148; *Olson v. Hansen*, 216 N.W.2d 124, 127 (Minn. 1974). As to those risk, the defendant has no duty to protect the plaintiff. *Id.* Thus, if the plaintiff's injury arises from those risks, the defendant is not negligent. *Id.* "Primary assumption of the risk defines the limits of a

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

defendant's duty to the plaintiff." *Andren v. White-Rodgers Co.*, 465 N.W.2d 102, 105 (Minn. Ct. App. 1991), (citing *Armstrong,* 284 N.W.2d at 351), *review denied* (Minn. Mar. 27, 1991). By voluntarily entering into a situation where there are well-known, incidental risks, the plaintiff consents to look out for himself and relieve the defendant of his duty. *Id.*

Based upon the above Findings of Fact and Conclusions of Law, the Court hereby makes the following:

ORDER

1. Defendant Lester Prairie's motion for Summary Judgment is **GRANTED.**
2. Defendant Seating's motion for Summary Judgment is **GRANTED.**
3. The jury trial scheduled on **July 31, 2018 at 8:30** at the McLeod County Courthouse, Glencoe, MN is stricken from the calendar.
4. The attached Memorandum is incorporated into this Order.

Dated this 26th day of June, 2018.

BY THE COURT

Jody L. Winters
Judge of District Court

MEMORANDUM

The Court grants Defendant Lester Prairie's motion for summary judgment and grants Defendant Seating's motion for summary judgment. Plaintiff's cause of action against Defendant

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

Lester Prairie fails as Plaintiff does not allege facts, viewed in the light most favorable to Plaintiff, that establishes Defendant Lester Prairie had a duty of care that extended beyond providing a safe route for Plaintiff to ascend and descend the bleachers. Plaintiff has failed to allege facts that Defendant Lester Prairie owed a duty to Plaintiff to install a guardrail around the "cut-out" section of the bleachers. "Summary judgment dismissing a negligence action is appropriate when the record lacks evidence of a duty of care, a breach of that duty, an injury, or proximate causation. *Bjerke v. Johnson,* 727 N.W.2d 183, 189 (Minn. Ct. App. 2007); *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

The extent of the duty of care that Defendant Lester Prairie owed to Plaintiff in connection with the bleachers was to provide a safe passage to ascend and descend. Plaintiff has not offered any facts that Defendant Lester Prairie failed to do so. Even if this Court determined Defendant Lester Prairie owed a duty to Plaintiff, Plaintiff's claim would fail as recreational immunity applies and Plaintiff has not presented any facts that stepping off the bleachers in the "cut-out" section was hidden or concealed to the "trespasser", who in this case would be the Plaintiff. Furthermore, Plaintiff has not alleged facts that the 26 foot "cut-out" in the bleachers is not "open and obvious" in the gymnasium. The "cut-out" is open for anyone present to see and is unobstructed. Even if Defendant Lester Prairie owed "more" of a duty than to provide a safe passage on the bleachers and recreational immunity did not apply, Plaintiff assumed the risk of walking down the bleachers in an improper manner. Spectators at sporting events have a responsibility to be aware of their surroundings and take notice of well-known, incidental risks. Inherent in watching a high school basketball game is the obvious danger of an improper ascent or descent on the bleachers. Therefore, as a matter of law, the Court is granting Defendant Lester Prairie's motion for summary judgment.

Filed in First Judicial District Court
6/26/2018 8:50 AM
McLeod County, MN

Defendant Seating has no duty of care to Plaintiff. A "special relationship" does not exist between the parties. In the Court's mind, the only connection that Defendant Seating has in this matter is that Defendant Seating was the 3rd party "middle-man" between Defendant Lester Prairie and the manufacturer of the bleachers, Interkal. Plaintiff has not alleged facts that Defendant Seating manufactured, installed, or maintained the bleachers or the "stairs" in any way which may have created a duty to the Plaintiff.

Plaintiff's case is dismissed.

J.L.W.