2015 IL App (5th) 140113-U

NO. 5-14-0113

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

GREGORY GVILLO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Madison County.
	)	
v.	)	No. 08-L-871
	)	
DeCAMP JUNCTION, INC., and JIM MOULTRIE,	)	Honorable
	)	A. A. Matoesian,
Defendants-Appellees.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Schwarm and Moore* concurred in the judgment.

ORDER

¶ 1 *Held*: Summary judgment was not proper on the basis of an immunity provision in the Recreational Use of Land and Water Areas Act because under the version of the Act in effect at the time plaintiff was injured, the immunity provision was applicable only to property open to the public for use for hunting and recreational shooting and related activities.

*Justice Spomer was originally assigned to participate in this case. Justice Moore was substituted on the panel subsequent to Justice Spomer's retirement, and has read the briefs and listened to the tape of oral argument.

¶ 2 The plaintiff, Gregory Gvillo, was injured during a softball game. The trial court granted summary judgment in favor of the defendants, DeCamp Junction, Inc., and its employee, Jim Moultrie. The basis of this ruling was a provision in the Recreational Use of Land and Water Areas Act (Recreational Use Act) (745 ILCS 65/1 *et seq*. (West 2006)) providing immunity from liability to any landowner who allows others to use his or her land for recreational or conservation purposes (745 ILCS 65/3 (West 2006)). The plaintiff appeals, arguing that at the time his injury occurred, the Recreational Use Act defined "recreational or conservation purposes" to include only hunting, recreational shooting, and activities related to hunting and shooting. See 745 ILCS 65/2 (West 2006). We reverse and remand for further proceedings.

¶ 3 The defendants were the organizers of an informal softball tournament held each summer. The plaintiff was the coach and first baseman on one of the teams in the tournament. He was injured playing first base when a base-runner collided with him. As a result of the collision, the plaintiff suffered nerve damage and a fracture. In his complaint, the plaintiff alleged that the defendants set up the softball field in an unreasonably dangerous manner, which led to the collision that caused his injuries.

¶ 4 The defendants filed a motion for summary judgment, arguing that (1) under the contact sports exception, they could not be held liable for ordinary negligence; and (2) the facts alleged and evidence in the record did not support a finding that their conduct was willful or wanton. See *Pfister v. Shusta*, 167 Ill. 2d 417, 419 (1995) (explaining that participants in contact sports are not liable to other participants for injuries resulting from ordinary negligence, though they are liable for injuries resulting from willful and wanton

conduct). The trial court initially denied the motion for summary judgment. However, the court subsequently granted the defendants' motion to reconsider and entered summary judgment in favor of the defendants.

¶ 5 The plaintiff appealed that ruling, and this court reversed, finding that the contact sports exception was not applicable to the defendants, as organizers of the tournament, under the facts presented. We remanded the matter for further proceedings. *Gvillo v. DeCamp Junction, Inc.*, 2011 IL App (5th) 100262, ¶ 21.

¶ 6 On remand, the defendants again filed a motion for summary judgment. This time, they argued that a provision of the Recreational Use Act provided immunity from liability for ordinary negligence. The court agreed and entered summary judgment in favor of the defendants on that basis. The plaintiff filed a motion to reconsider, which the court denied. This appeal followed.

¶ 7 Summary judgment is considered a drastic measure. *United National Insurance Co. v. Faure Brothers Corp*., 409 Ill. App. 3d 711, 716 (2011). As such, it is appropriate only in cases where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). Moreover, summary judgment is only proper if that party's right to judgment is "clear and free from doubt." *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). We review *de novo* the trial court's rulings on both motions for summary judgment and motions to reconsider summary judgment. *Pence v. Northeast Illinois Regional Commuter R.R. Corp.*, 398 Ill. App. 3d 13, 16 (2010).

¶ 8 Resolution of this case calls for us to interpret a provision of the Recreational Use Act. Our primary goal in construing a statute is to ascertain and effectuate the legislature's intent. The best evidence of legislative intent is the language of the statute itself, which should be given its plain and ordinary meaning. *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 13. Where the statutory language is clear and unambiguous, it must be given effect as written, and we need not look beyond the language of the statute. Only if the language is not clear may we look beyond the statute to other tools of statutory construction. *Bettis*, 2014 IL 117050, ¶ 13. Statutory construction is a question of law, which we review *de novo*. *Bettis*, 2014 IL 117050, ¶ 12.

¶ 9 The stated policy underlying the Recreational Use Act is "to encourage owners of land to make land and water areas available to *** the public for recreational or conservation purposes by limiting their liability" to people who enter their property for these purposes. 745 ILCS 65/1 (West 2006). Section 3 of the Act provides that landowners do not have any duty "to keep the premises safe for entry or use by any person for recreational or conservation purposes, or to give any warning of a natural or artificial dangerous condition." 745 ILCS 65/3 (West 2006). At issue in this appeal is the meaning of the phrase "recreational or conservation purposes."

¶ 10 When the Recreational Use Act was first enacted, section 2 defined "recreational or conservation purposes" to include "any activity undertaken for conservation, resource management, exercise, education, relaxation, or pleasure." 745 ILCS 65/2(c) (West 2004). Both this court and our supreme court have noted that this language was intended to be broad and " 'sweeping in its scope.' " *Vaughn v. Barton*, 402 Ill. App. 3d 1135,

1140 (2010) (quoting *Hall v. Henn*, 208 Ill. 2d 325, 331 (2003)). As the supreme court stated, the statutory phrase " '[e]xercise, education, relaxation, or pleasure' encompasses just about every purpose, absent commerce, for which a person is invited onto another's property." *Hall*, 208 Ill. 2d at 331 (quoting 745 ILCS 65/2(c) (West 2002)). In *Vaughn*, this court specifically held that this statutory definition included the game of baseball. *Vaughn*, 402 Ill. App. 3d at 1146.

¶ 11 Effective August 18, 2005, section 2 was amended. As amended, the statute defined "recreational or conservation purposes" to include "entry onto the land of another to conduct hunting or recreational shooting or a combination thereof or any activity solely related to *** hunting or recreational shooting." 745 ILCS 65/2(c) (West 2006); Pub. Act 94-625, § 5 (eff. Aug. 18, 2005). Subsequently, section 2 was amended again. The current version of the statute went into effect on January 1, 2014. Pub. Act 98-522, § 5 (eff. Jan. 1, 2014). It defines "recreational or conservation purposes" as either (1) any use of another person's property for hunting, recreational shooting, or any activity "solely related" to hunting or shooting; or (2) "entry by the general public onto the land of another for any activity undertaken for conservation, resource management, educational, or outdoor recreational use." 745 ILCS 65/2(c) (West Supp. 2013).

¶ 12 The plaintiff was injured on August 30, 2007. As he points out, the version of section 2 in effect at that time expressly defined "recreational or conservation purposes" to include only hunting, recreational shooting, and associated activities. He argues that this is the version of the statute that applies to this case because substantive amendments are not applied retroactively. See *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 331

(2006). Thus, he contends, under the plain language of the provisions at issue, the immunity provision does not apply here. We agree.

¶ 13 The defendants argue, however, that the statute is ambiguous due to what they consider to be a conflict with another subsection, which defines a "charge" for the use of property. The Recreational Use Act does not provide immunity to landowners who charge for the use of their property. 745 ILCS 65/6 (West 2006). The statute defines a charge as an admission fee for use of the land. It specifically excludes from this definition "the sharing of game, fish or other products of recreational use." 745 ILCS 65/2(d) (West 2006). The defendants argue that this language is an indication that the legislature intended a broader definition for "recreational or conservation purpose" than the language of subsection (c) would indicate. Presumably, this is because fish would not likely be a product of hunting or recreational shooting.

¶ 14 As the defendants correctly note, statutory language "should be considered in light of other relevant provisions of the statute" rather than viewed in isolation. *Bettis*, 2014 IL 117050, ¶ 13. The defendants argue that interpreting subsection (c) to define "recreational or conservation use" as including only hunting, recreational shooting, and associated activities would render the quoted language in subsection (d) meaningless. We are not persuaded.

¶ 15 The language in subsection (d) referring to "fish or other products of recreational use" might reasonably raise a question as to whether the legislature intended the definition of "recreational or conservation use" to encompass fishing–an activity far more closely related to hunting than playing a game of softball. However, the 2005

amendment clearly and specifically narrowed the scope of the activities covered by the Recreational Use Act to hunting and recreational shooting and activities incidental to these two activities. To interpret the provision as broadly as the defendants urge would completely obliterate this very clear and specific language.

¶ 16 Moreover, even if we were to accept the defendants' invitation to look beyond the clear statutory language and consider the legislative history of the amendment, we would find no support for the defendants' position. The defendants quote at length from a portion of the legislative debate related to the 2005 amendment. It is true, as the defendants note, that some legislators did voice their concerns about the breadth of the statutory definition. However, their questions to the legislation's sponsor showed that their concern was with making sure the definition was sufficiently broad to include activities that are incidental to hunting and shooting such as setting up a deer stand. See 94th Ill. Gen. Assem., Senate Proceedings, May 30, 2005. There is simply no indication that the legislature intended the definition in the 2005 amendment to include an activity as far removed from hunting or recreational shooting as softball.

¶ 17 The defendants further contend that the trial court correctly found that this court's prior decision in *Vaughn v. Barton* controlled its decision. As we have already noted, we held in *Vaughn* that the game of baseball was a "recreational or conservation purpose" within the meaning of the Recreational Use Act. *Vaughn*, 402 Ill. App. 3d at 1146. In *Vaughn*, however, the plaintiff was injured while watching a baseball game in May 2005, three months before the statutory definition was amended. *Vaughn*, 402 Ill. App. 3d at 1137. Thus, our holding in *Vaughn* interpreted an earlier and much different version of

the statute. We reached the result we did there because of the very broad language of the version of the statute then in effect. *Vaughn*, 402 Ill. App. 3d at 1140. As such, *Vaughn* does not control our decision in this case. In short, nothing in *Vaughn* requires us to give the language of section 2 subsection (c) anything other than its plain and ordinary meaning.

¶ 18 The definition of the statute in effect when the plaintiff was injured clearly and unambiguously limited "recreational or conservation purposes" to hunting, recreational shooting, and activities associated with hunting and recreational shooting. Thus, the Recreational Use Act provides no immunity to the defendants here. For this reason, we reverse the judgment of the trial court granting summary judgment to the defendants. We remand for further proceedings consistent with this decision.

¶ 19 Reversed and remanded.