

NOTICE  
Decision filed 03/05/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 170493-U

NO. 5-17-0493

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

AMBER RADY,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Williamson County.
	)	
v.	)	No. 17-L-87
	)	
SOUTHERN ILLINOIS RACEWAY, INC.,	)	Honorable
	)	Brad K. Bleyer,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.  
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Williamson County circuit court's order dismissing the plaintiff's claim under section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 2016)) is affirmed where a valid exculpatory clause signed by the plaintiff barred her claim for negligence against the defendant, Southern Illinois Raceway, Inc.

¶ 2 The plaintiff, Amber Rady, brought a personal injury claim in the circuit court of Williamson County charging the defendant, Southern Illinois Raceway, Inc., with negligence. The defendant filed a motion to dismiss under section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2016)). The trial court granted the defendant's motion, and the plaintiff appeals. For the following reasons, we affirm.

¶ 3

## BACKGROUND

¶ 4 On July 25, 2015, the plaintiff, Amber Rady, attended a racing event hosted by the defendant, Southern Illinois Raceway, Inc. Her husband was participating as a driver in the event, and she wanted to watch the race from the pit area. In order to be admitted into the restricted pit area, the plaintiff signed a release titled " 'EVENT' ADULT RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK, AND INDEMNITY AGREEMENT" (release). In relevant part, the release stated:

"IN CONSIDERATION of being permitted in RACING PROGRAMS, to enter, for any purposes, the RESTRICTED AREAS (herein defined as including, but not limited to, the racing surface, pit areas, infield, burn-out area, approach area, shut-down area, any area where there are tow vehicles or race vehicles, either running or non-running, and all walkways, concessions and other appurtenant areas where any activity related to the Event(s) shall take place, or where special authorization, permission, or credentials are required, or where admittance to the general public is restricted or prohibited), or to compete, officiate, observe, work for, or for any other purpose participate in any way in the Event(s), each of the Undersigned for himself/herself and for his/her personal representatives, assigns, heirs, and next of kin:

\*\*\*

2. HEREBY RELEASES, WAIVES, DISCHARGES, AND COVENANTS NOT TO SUE the promoters, participants, racing associations, sanctioning organizations or any subdivision thereof, track operators, track owners, officials, car owners, drivers, pit crews, Participants, any persons in the Restricted Areas, rescue personnel, sponsors, advertisers, owners and lessees of Premises on which the Event is conducted, premises inspectors, surveyors, underwriters, consultants, and others who offer recommendations, directions, or instructions, or engage in risk evaluation or loss control activities regarding the premises or Event(s) and each of them, their officers, directors, agents, and employees, all for the purposes herein referred to as 'RELEASEES', from all liability to the Undersigned, the Undersigned's personal representatives, assigns, heirs, and next of kin FOR ALL LOSS OR DAMAGE SUSTAINED BY THE UNDERSIGNED, AND ANY CLAIM OR DEMANDS RESULTING THEREFROM, ON ACCOUNT OF INJURY TO THE PERSON OR PROPERTY OR RESULTING IN DEATH OF THE UNDERSIGNED, WHETHER CAUSED BY THE NEGLIGENCE OF RELEASEES OR OTHERWISE, while the Undersigned is in or upon the Restricted Areas and/or

competing, officiating, observing, working for, or for any purpose participating in such event;

\*\*\*

4. HEREBY ASSUMES FULL RESPONSIBILITY FOR THE RISK OF BODILY INJURY, DEATH, OR PROPERTY DAMAGE due to negligence of Releasees or otherwise while in or upon the Restricted Areas, and/or while competing, officiating, observing, or working for, or for any purpose participating in such Event(s);

\*\*\*

6. FURTHER expressly agrees that the foregoing Release and Waiver of Liability, Assumption of Risk, and Indemnity Agreement extends to all acts of negligence by the Releasees, INCLUDING NEGLIGENT RESCUE OPERATIONS and is intended to be as broad and inclusive as is permitted by the law of the province or state in which the Event(s) is conducted, and that if any portion thereof is held invalid, it is agreed that the balance, notwithstanding, shall continue in full legal force and effect.

I AM 18 YEARS OF AGE OR OLDER, HAVE READ AND UNDERSTAND THE TERMS OF THIS AGREEMENT, UNDERSTAND THAT I AM GIVING UP SUBSTANTIAL RIGHTS BY SIGNING THIS AGREEMENT, HAVE SIGNED IT VOLUNTARILY AND WITHOUT ANY INDUCEMENT OR ASSURANCE OF ANY NATURE, ORAL OR WRITTEN, AND INTEND THIS AGREEMENT TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW."

The plaintiff signed the release and was permitted into the restricted pit area. While in the pit watching her husband race, the plaintiff fell in a hole filled with water.

¶ 5 On May 30, 2017, as a result of the fall, the plaintiff filed a complaint in the Williamson County circuit court alleging that the defendant "negligently failed to provide a safe environment for its customers and failed to warn [the] Plaintiff of a dangerous condition, being a hole filled with water and the Plaintiff subsequently fell in the hole and was injured."

¶ 6 On July 31, 2017, the defendant filed a motion to dismiss under section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)), arguing that the plaintiff's claim was barred because the "Plaintiff released and waived any such claim when she signed the [release]."

¶ 7 On October 24, 2017, a hearing was held on the motion to dismiss, and the trial court took the motion under advisement. On November 20, 2017, the court entered an order by docket entry granting the defendant's motion and dismissing the case. The plaintiff appeals.

¶ 8 ANALYSIS

¶ 9 On appeal, the plaintiff argues that the trial court erred in dismissing her negligence complaint because the danger from which she sustained injuries—a hole in the ground filled with water—was not a foreseeable danger typically associated with the event of auto racing and was not contemplated by the parties. We disagree.

¶ 10 Section 2-619 of the Code allows for dismissal of a claim that is barred by an affirmative matter or defense that negates the claim. 735 ILCS 5/2-619 (West 2016). The existence of a valid release is an affirmative matter defeating a plaintiff's claim. *Oelze v. Score Sports Venture, LLC*, 401 Ill. App. 3d 110, 116 (2010). It is a plaintiff's burden to attack the validity of an exculpatory clause. *Id.* The court must then determine "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." [Citation.]" *Id.* at 116-17. We review a dismissal under section 2-619 *de novo*. *Id.* at 117.

¶ 11 A party is free to contract to avoid liability for its own negligence through the use of an exculpatory agreement. *Id.* "An exculpatory agreement constitutes an express assumption of risk wherein one party consents to relieve another party of a particular obligation." *Platt v. Gateway International Motorsports Corp.*, 351 Ill. App. 3d 326, 330 (2004). In order for an exculpatory clause to be valid and enforceable, it "must contain clear, explicit, and unequivocal language referencing the type of activity, circumstance, or situation that it encompasses and for which the plaintiff agrees to relieve the defendant from a duty of care." *Id.*

¶ 12 "The foreseeability of a danger is an important element of the risk a party assumes and will often define the scope of an exculpatory agreement. [Citation.]" *Id.* at 331. A plaintiff must be put on notice of the types of danger for which they are assuming the risk of injury so that they can then minimize those potential risks by exercising greater caution. *Id.* Though it is not necessary that the parties contemplated the precise occurrence at the time they entered into the contract, the injury must fall within the scope of possible dangers ordinarily accompanying the activity and therefore reasonably contemplated by the plaintiff. *Id.*

¶ 13 Here, the plain language of the contract indicates that the risk involved in this case—*i.e.* stepping in a hole filled with water—is within the range of foreseeable dangers associated with this type of event. The clause clearly and explicitly states that the plaintiff released the defendant for liability for any harm or bodily injury resulting from the defendant's negligence while in the restricted pit area. By adopting the broad language of the exculpatory clause, the parties contemplated the similarly broad range of

accidents that occur at auto racing events. The plaintiff was put on notice that the restricted pit area was potentially more dangerous than the common areas available to the public and was only granted access to the area in exchange for releasing the defendant from liability for injuries sustained in the pit area. As both parties recognized in oral argument, the plaintiff was familiar with these events as her husband was a participant and drove a racecar. It is common at these events to watch for debris or other hazardous conditions that are commonly associated with auto racing. Due to the pit's area having a ground made of dirt/gravel, it was foreseeable that the area may not be perfectly smooth due to both foot traffic and/or car traffic in the restricted areas. The plaintiff's injury fell within the scope of possible dangers ordinarily accompanying auto racing and was therefore reasonably contemplated by the plaintiff. Therefore, we affirm the circuit court's order dismissing the plaintiff's claim under section 2-619 of the Code.

¶ 14

#### CONCLUSION

¶ 15 For the foregoing reasons, the order of the circuit court of Williamson County is hereby affirmed.

¶ 16 Affirmed.