FIRST DIVISION
February 27, 2012

No. 1-11-0241

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

TOMASZ SZUMSKI, as Father and Next Friend of Adrian Szumski, a minor, Plaintiff-Appellant, v. FOREST PRESERVE DISTRICT OF COOK COUNTY, Illinois, an Illinois Special District and HAROLD DIEZEL, Individually and as agent of the FOREST PRESERVE DISTRICT OF COOK COUNTY, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Law Division No. 2010 L 09836 Honorable Drella Savage, Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

O R D E R

Held: The circuit court did not err in granting defendants' section 2-615 motion to dismiss plaintiff's complaint on the basis that he failed to sufficiently allege the existence of a duty that would support a cause of action for negligence. And the circuit court did not err in denying plaintiff leave to file an amended complaint.

¶ 1 This case arises out of an accident in which Adrian Szumski was injured when his right foot came into contact with the spinning blades of a lawn mower. Adrian was 5 years old at the time of the accident. The riding-type lawn mower was operated by Mr. Harold Diezel who was employed by the Forest Preserve District of Cook County (District). Plaintiff, Tomasz Szumski, as the father and next friend of Adrian, filed a personal injury complaint on his son's behalf against Mr. Diezel and the District (collectively defendants) for alleged negligence as well as a claim for incurred medical expenses pursuant to the Family Expense Act (750 ILCS 65/15 (West 2002)).

¶ 2 The District filed a motion to dismiss the complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)), on the ground that the negligence claim should be dismissed because plaintiff failed to allege the existence of an owed duty that would support a negligence action where Adrian was under the care and supervision of his mother at the time of the accident. The circuit court later granted Mr. Diezel's motion to join the District's motion to dismiss.

¶ 3 On January 6, 2011, the circuit court granted defendants' motion dismissing the complaint. The circuit court also denied plaintiff's oral request for leave to file an amended complaint. On January 11, 2011, the circuit court denied plaintiff's motion to reconsider and again denied plaintiff's request for leave to file an amended complaint, a copy of which was

presented to the court. Plaintiff timely appealed, seeking reversal of the orders entered on January 6 and 11 of 2011. We affirm.

¶ 4 BACKGROUND

¶ 5 The following facts are taken from plaintiff's original complaint and his proposed amended complaint. On May 10, 2010, Adrian accompanied his mother Katherine Szumski to the Cook County Forest Preserve in Rolling Meadows. Upon arriving at the forest preserve, Katherine sought to take Adrian to the restroom. However, the entrance to the restroom was locked.

¶ 6 Mr. Diezel, who was operating a riding-type lawn mower, noticed that Katherine was unable to enter the restroom. He motioned for her to approach him. Katherine approached while holding Adrian's hand.

¶ 7 Diezel stopped the lawn mower but did not turn off the engine. The mower's blades continued spinning. The protective guard over the chute that covered the spinning blades was in the "up" position. Diezel remained seated on the mower as he stretched out his arm to give the restroom-keys to Katherine. As Katherine reached for the keys, she let go of Adrian's hand. Adrian evidently got too close to the lawn mower's rotating blades and his right foot came into contact with the blades causing injury and requiring amputation of certain portions of his foot.

¶ 8 ANALYSIS

¶ 9 Plaintiff first contends the circuit court erred in granting defendants' section 2-615 motion to dismiss on the basis that he failed to sufficiently allege the existence of a duty that would support a cause of action for negligence. We do not believe the circuit court erred in its ruling.

¶ 10 A motion to dismiss brought under section 2-615 of the Code challenges the legal sufficiency of the complaint. *Jarvis v. South Oak Dodge, Inc.*, 201 Ill. 2d 81, 85 (2002). The critical inquiry is whether the allegations of the complaint, when considered in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted. *Jarvis*, 201 Ill. 2d at 86.

¶ 11 In ruling on a section 2-615 motion, a court must accept as true all well-pleaded facts in the complaint and draw all reasonable inferences therefrom which are favorable to the pleader. *American National Bank & Trust Co. v. City of Chicago*, 192 Ill. 2d 274, 279 (2000). A cause of action should not be dismissed on the pleadings unless it appears that no set of facts can be proved which will entitle the plaintiff to recover. *Loftus v. Mingo*, 158 Ill. App. 3d 733, 738 (1987). We review the dismissal of a complaint under section 2-615 *de novo. Jarvis*, 201 Ill.2d at 86.

¶ 12 To state a cause of action for negligence, a plaintiff must establish the existence of a duty, the defendant's breach of that duty, and that the breach was a proximate cause of plaintiff's resulting injuries. *Harlin v. Sears Roebuck & Co.*, 369 Ill. App. 3d 27, 33 (2006). The primary issue here is whether plaintiff sufficiently alleged the existence of a duty that would support a cause of action for negligence.

¶ 13 The existence of a duty is a question of law to be determined by the court. *Ward v. K Mart*, 136 Ill. 2d 132, 140 (1990). Whether a duty exists depends upon whether the defendant and plaintiff stood in such a relationship to one another that the law imposed upon defendant an obligation of reasonable conduct for the benefit of plaintiff. *Harlin*, 369 Ill. App. 3d at 33.

Whether a relationship exists justifying the imposition of a duty depends upon: (1) the reasonable foreseeability of the injury; (2) the likelihood of the injury; (3) the magnitude of the burden of guarding against the injury; and (4) the consequences of placing that burden on defendant. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 436 (2006).

¶ 14 In this case, Adrian was under the care and supervision of his mother at the time of the accident. When a minor is injured on a landowner's property, the mere allegation that the child was accompanied by a parent is not enough to relieve the landowner of its duty of care toward the minor. *Stevens v. Riley*, 219 Ill. App. 3d 823, 832 (1991); *Harlin*, 369 Ill. App. 3d at 34. However, since the primary responsibility for the safety of a minor rests with the parent, a landowner will be absolved of its duty to protect the minor where the child was injured due to an obvious danger while under the care and supervision of a parent or where the parent knew of the existence of the dangerous condition that caused the child's injury. *Stevens*, 219 Ill. App. 3d at 823; *Harlin*, 369 Ill. App. 3d at 34.

¶ 15 The dangers associated with the operation of a lawn mower are generally obvious to an adult. In the instant case, Adrian was injured by the blades of a lawn mower while under the care and supervision of his mother who was admittedly aware of the fact that the mower's engine had remained running when she momentarily let go of Adrian's hand to get the keys to the restroom.

¶ 16 Under these circumstances we find that defendants were relieved of their duty to protect Adrian from the dangers posed by operation of the lawn mower. See, *e.g.*, *Kay v. Ludwick*, 87 Ill. App. 2d 114, 119-21 (1967). To hold otherwise would imply that defendants owed a duty greater than that which all parents have to supervise and control their minor children.

¶ 17 Finally, we reject plaintiff's contention that the circuit court erred in denying him leave to file his proposed amended complaint. A circuit court has broad discretion in determining whether to allow an amendment to a complaint and its ruling on the matter will not be disturbed absent an abuse of that discretion. *Charleston v. Larson*, 297 Ill. App. 3d 540, 555 (1998).

¶ 18 In determining whether to permit an amendment to the pleadings, a circuit court is to consider four factors: (1) whether the proposed amendment would cure a defect in the pleadings; (2) whether other parties would be prejudiced or surprised by the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether the plaintiff had previous opportunities to amend the pleading. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 355-56 (2002).

¶ 19 In this case, the circuit court specifically addressed plaintiff's argument that the defendants owed a duty of care. The circuit court determined that the proposed amendment would not cure the defective allegations as to duty of care. We do not believe the circuit court erred in this regard. See, *e.g.*, *Charleston*, 297 Ill. App. 3d at 555 (affirming denial of leave to amend complaint where proposed amendment would not cure defective allegations as to duty).

¶ 20 Accordingly, for the reasons set forth above, we affirm the orders of the circuit court of Cook County.

¶ 21 Affirmed.