

Puccio v Boy Scouts of Am.
2019 NY Slip Op 34552(U)
July 2, 2019
Supreme Court, Erie County
Docket Number: Index No. 812808/2016
Judge: Tracey A. Bannister
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

TODD PUCCIO and SUSAN PUCCIO,

Plaintiffs,

vs.

AMENDED
MEMORANDUM DECISION
Index No. 812808/2016

BOY SCOUTS OF AMERICA, GREATER
NIAGARA FRONTIER COUNCIL OF THE
BOY SCOUTS OF AMERICA, CUB SCOUT
PACK 601, BOWMANSVILLE FIRE CO., INC.
MICHAEL FRY, THOMAS DOERING,
DONALD GRANDE JOSEPH TETLOW,
BENJAMIN CUDECK, CONNOR CUDECK,

Defendants.

Appearances:

Daniel Schoenborn, Esq.
DeMarie & Schoenborn
Attorneys for plaintiffs
14 Lafayette Square #500
Buffalo NY 14203

David M. Stillwell, Esq.
Stillwell Midgley
Attorneys for defendants Boy Scouts of America,
Greater Niagara Frontier Council of the Boy Scouts of America,
Bowmansville Fire Co., Inc., Michael Fry,
Thomas Doering and Donald Grande
69 Delaware Avenue #500
Buffalo NY 14202

Melissa Vincton, Esq.
Penino & Moynihan
Attorneys for defendant Joseph Tetlow
1025 Westchester Avenue #403
White Plains NY 10604

Stephanie Mack, Esq.
Kenney Shelton Liptak Nowak
Attorneys for defendants
Benjamin Cudeck and Connor Cudeck
233 Franklin Street
Buffalo NY 14202

Bannister, J.

Plaintiff, Todd Puccio, commenced this action seeking damages for injuries he sustained when he was struck by a sled containing two or three boy scouts during a Cub Pack 601 event at Elma Meadows on January 30, 2014. It is alleged that the event was sponsored by defendants, Boy Scouts of America ("BSA") and Greater Niagara Frontier Counsel of the Boy Scouts of America ("GNFC"). Plaintiff alleges that defendants, Joseph Tetlow (Tetlow), Benjamin Cudeck and Connor Cudeck (Cudeck), who were going downhill on a sled, struck plaintiff when he was at the bottom of the hill after he had descended the hill in an inner tube. Plaintiff was a troop leader and father of a cub scout. All defendants have now moved for

summary judgment dismissing the complaint against them based primarily on the doctrine of assumption of risk.

It has long been recognized, “by engaging in a sport or recreational activity, a participant consents to those commonly appreciated risks [that] are inherent in and arise out of the nature of the sport generally and flow from such participation” (See *Savage v. Brown* 7 N.Y.S.3d 764, quoting *Morgan v. State*, 90 N.Y.2d 471, 484). To establish the defense, “a defendant must show that [the] plaintiff was aware of the defective or dangerous condition and the resultant risk, although it is not necessary to demonstrate that [the] plaintiff foresaw the exact manner in which his [or her] injury occurred” (*Lamey v. Foley*, 188 A.D.2d 157, 164, 594 N.Y.S.2d 490, citing *Maddox v. City of New York*, 66 N.Y.2d 270, 278, 496 N.Y.S.2d 726, 487 N.E.2d 553). Under the doctrine of assumption of risk, “a person who voluntarily participates in a sporting activity generally consents, by his or her participation, to those injury-causing events, conditions and risks [that] are inherent in the activity (See *Morgan v. State* at 484).

Here, similarly, by taking part in the activity of sledding, and having observed other people going down the hill, plaintiff assumed the risk of being struck by a sled. Plaintiff testified at his deposition that this was not his first time sledding. When asked if he understood snow was slippery and that sleds go

downhill, plaintiff responded “yes”. Plaintiff stated he had previously warned his son to walk on the side of the hill to avoid people descending on sleds, so that his son would “stay out of harm’s way”, thus indicating his *actual* knowledge of the risks inherent to sledding.

Plaintiff’s argument is premised on the contention available to most negligence cases, that the BSA and the GNFC failed to adhere to rules and regulations promulgated by the BSA to ensure the safety of the cub scouts and those participating in a cub scout activity. Plaintiff, in particular, argued that there is a question of fact as to whether the very basic supervision at the top of the hill by troop personnel who by their own rules, should have been supervising the participants, could have prevented the collision. But by plaintiff’s own admission and observation, neither the BSA or the GNFC, supervised or controlled the subject sledding event or any of its participants. Plaintiff’s argument is further hindered by the fact that the plaintiff himself, at the time of the incident, was the den leader of at least two of the boys in attendance and was present during the meetings in which the planning for the sledding event was undertaken.


Plaintiff asserted that he had “every reason to believe that other Cub leaders were supervising kids at the top of the hill and enforcing safety rules including proper usage of the sled,” though when questioned if at any time that

night he had given any instruction to any of the boys regarding the safety rules for sledding activities, he responded "no," thus contradicting the reasoning upon which his argument relies.

In addition, however, when an assumption of risk defense has been raised, the Court of Appeals has said that "the risk assumed has been defined a number of ways but in its most basic sense it "means that the plaintiff, in advance, has given his *** consent to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone" (*Turcotte v. Fell*, 68 N.Y.2d 432). "The result is that the defendant is relieved of legal duty to the plaintiff; and being under no duty, he cannot be charged with negligence." (*Id* at 438).

In light of the foregoing, and upon an examination of the uncontroverted facts, this court concludes that the plaintiff did assume the risks of the activity, relieving defendants of potential negligence-type liability. Accordingly, the defendants' motions for summary judgment are granted, and the plaintiff's complaint is dismissed.

Please submit order accordingly.



HON. TRACEY A. BANNISTER

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