

TORT NOTES

By: James J. Morici, Jr.

STATUTE LIMITING LIABILITY FOR INCIDENTS OCCURRING ON PREMISES USED FOR RECREATIONAL PURPOSES LIMITED BY SUPREME COURT DECISION

The Illinois legislature passed the Recreational Use of Land and Water Areas Act to encourage the owners of land to make land and water areas available to the public for recreational or conservation purposes by limiting their liability toward persons entering thereon for such purposes. 745 ILCS 65/1 (West 2002). Under the statute, land owners owe no duty of care to keep the premises safe for entry or use for the above purposes or to provide any warning of natural or artificially dangerous conditions, structures, uses or activities. Id. In such instances, the Act allows a recovery only against land owners who engage in wilful and wanton conduct. Id.

The Illinois Supreme Court in a recent opinion in the case of Hall v. Henn, 2003 WL 22967272 (Ill.) written by Justice Robert Thomas ruled that the Act applies “Only to those land owners who open their property to the public” Id. at Page 3. The Hall case arose in the context of an injury occurring during the use of a backyard sled run. During the winter of 2000-2001, the Defendant built a sled run for use in the co-Defendants backyard. It included steps and a platform, all of which were constructed out of snow and sprayed with water which hardened into ice. Id. at Page 2. The run was not open to the general public, but the co-Defendant made it available to certain friends and neighbors. Testimony showed that those using the run were required to first ask and receive permission, and were allowed to use the run only when the owner was present to supervise. Id.

On January 6, 2001, the Plaintiff was visiting with her children. During the visit, permission was received to use the sled run. During the course of the activity, the Plaintiff slipped and fell down the icy stairs, falling unconscious, and suffering a fractured arm and a torn anterior cruciate ligament in her left knee. Id. Page 2.

The Plaintiff filed a cause of action sounding in negligence against the land owner and the builder of the sled run. The Defendants moved for summary judgment arguing that they were immunized by the aforementioned act from negligence. The trial court agreed and granted the motion. It was reversed by the Appellate Court in a Rule 23 Order which explained that the Defendants were not entitled to the Act’s protection because they had not opened their land for recreational use by the public. The Illinois Supreme Court granted Defendants’ petition for leave to appeal. Id. Page 2.

The Illinois Supreme Court agreed with the Plaintiff that the Act applies only to land owners who open their property to the public. Making reference to Section 1 of the Act, the Court paid special attention to the language of the Act which states that its purpose is “to encourage owners of land to make land and water areas available *to the public* for recreational or conservation purposes” (Emphasis supplied in original.). The Court

concluded that the Act immunizes land owners from negligence liability only in situations where that property is open to the public.

More importantly, however, the Court noted that “the Act’s protections are not available to land owners who restrict the use of their property to invited guests only.” The Court concluded that were they to ignore the expressed caveat in the Act, that the property in question be made available to such purposes to the public that they would largely eliminate premises liability in the State of Illinois and found that that was clearly not the Legislature’s intent. *Id.* at Page 3. The significance of this case is very important to Plaintiff’s lawyer representing individuals in cases where the Act cited in an attempt to defeat causes of simple negligence. It is clear that in many instances, including those where sports stadiums, convention halls, and conference centers even though owned by the public and considered to be recreational property are not “open to the public.” That the Court correctly noted that where the use of the property was not open to the “general public”, but “to invited guests only” the negligence standard should apply.

It is the impression of the author that this case and its language should be used in defense of motions for summary judgment brought under the aforementioned statute in any instance where the injured party is specifically invited, or required to pay an admission fee such as at sporting events and/or exhibitions in convention centers where the use of the property is not open to the general public without invitation or fee.

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