COURT OF APPEALS
DECISION
DATED AND FILED

March 26, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1508 **Cir. Ct. No. 2013CV391**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

PATTI J. ROBERTS AND DAVID ROBERTS,

PLAINTIFFS-APPELLANTS,

V.

T.H.E. INSURANCE COMPANY, SUNDOG BALLOONING, LLC, KERRY M. HANSON AND JODI L. HANSON,

DEFENDANTS-RESPONDENTS,

DEAN HEALTH PLAN, INC.,

DEFENDANT.

APPEAL from a judgment of the circuit court for Dodge County: JOSEPH G. SCIASCIA, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

¶1 KLOPPENBURG, J. The question on appeal is whether the operator of a tethered hot air balloon ride at a charity event is immune from liability for injuries to a person waiting in line for a ride when a gust of wind snapped a tether, sending the balloon and its basket sliding across the land, where it crashed into the person and knocked her down. The injured person, Patti Roberts, brought negligence claims against the balloon ride operator and its insurer: Sundog Ballooning, LLC, Kerry Hanson, Jodi Hanson, and T.H.E. Insurance Company (collectively, Sundog).[1] The circuit court dismissed Roberts' claims on summary judgment, and Roberts appeals.

¶2 Sundog argues that it is entitled to summary judgment dismissing Roberts' claims because under the Wisconsin recreational immunity statute, WIS. STAT. § 895.52 (2013-14), it is immune from liability for the injuries suffered by Patti Roberts when she was engaging in the recreational activity of ballooning on property occupied by Sundog.[2] Roberts counters that § 895.52 does not apply because "[n]egligent acts or decisions not directed at the condition of the land are not entitled to immunity," and "there was nothing about the land that caused [Patti] Roberts' injuries." Roberts also argues that WIS. STAT. § 895.525 precludes application of § 895.52. For the reasons stated below, we conclude that

[1] Patti's husband, David Roberts, is also a plaintiff-appellant. For ease of discussion, we speak as if Patti is the lone plaintiff-appellant.

[2] Sundog also argues that it is entitled to summary judgment because a release or waiver form signed by Patti Roberts absolves it from liability. Because our decision as to the applicability of WIS. STAT. § 895.52 disposes of this appeal, we do not address the release or waiver form. ***Barrows v. American Family Ins. Co.***, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (WI App 2013) ("An appellate court need not address every issue raised by the parties when one issue is dispositive.").

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

§ 895.52 applies in this case and grants Sundog immunity from Roberts' negligence claims. Therefore, we affirm.

BACKGROUND

¶3 As noted, Roberts filed a complaint against Sundog alleging negligence arising from a ballooning accident that occurred at a charity event in Beaver Dam.

¶4 The material facts are undisputed. The charity event was held on property owned by a conservation club. Sundog agreed to donate free tethered hot air balloon rides during the charity event. During a tethered hot air balloon ride, the balloon is tethered by ropes to something stationary on the ground, and the operator raises the balloon to the length of the ropes and then lowers it back down to the ground. The hot air balloon here was tethered to two trees on the property and a large truck parked on the property.

¶5 Patti Roberts was standing in a line of people waiting to take a tethered hot air balloon ride, when a gust of wind caused one of the balloon's tether lines to snap. The balloon and its basket slid along the ground and struck Patti Roberts, knocking her down and causing her injuries.

¶6 Sundog moved for, and the circuit court granted, summary judgment dismissing all of Roberts' claims because WIS. STAT. § 895.52 grants Sundog immunity from those claims.

DISCUSSION

¶7 In the following sections, we first state the applicable standard of review. We next explain Roberts' concessions, with which we agree, that Sundog

has immunity from Roberts' claims for injury under a plain meaning interpretation of WIS. STAT. § 895.52(2)(b). We then address and reject Roberts' argument that, under Wisconsin case law interpreting the recreational immunity statute, summary judgment is not appropriate on these facts. Finally, we explain that we reject Roberts' argument directed toward WIS. STAT. § 895.525 as wholly undeveloped.

A. Standard of Review

¶8 "We review the circuit court's grant of summary judgment by applying the standards set forth in sec. 802.08(2), Stats., in the same manner as the circuit court. Summary judgment is proper when 'there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.'" ***Linville v. City of Janesville***, 184 Wis. 2d 705, 714, 516 N.W.2d 427 (1994) (citation and quoted source omitted).

¶9 The issue we address is whether Sundog is immune from Roberts' negligence claims under WIS. STAT. § 895.52. "'The construction of a statute in relation to a given set of facts is a question of law.' We decide questions of law without deference to the circuit court's determination." ***Ervin v. City of Kenosha***, 159 Wis. 2d 464, 472, 464 N.W.2d 654 (1991) (quoted source and citation omitted).

¶10 We construe statutory language based on its common and ordinary meaning. ***Id.*** If the language is plain and unambiguous, our analysis stops there. ***Kangas v. Perry***, 2000 WI App 234, ¶8, 239 Wis. 2d 392, 620 N.W.2d 429. In conducting this analysis, we read statutory language not in isolation but as it relates to the statute as a whole. ***Id.*** "[W]e look only to the plain language, purpose, context, and structure of the statutes." ***Gister v. American Family Mut. Ins. Co.***, 2012 WI 86, ¶9, 342 Wis. 2d 496, 818 N.W.2d 880.

B. Roberts Correctly Concedes that the Plain Language of the Wisconsin Recreational Immunity Statute Grants Sundog Immunity From Roberts' Negligence Claims Arising From the Ballooning Accident

¶11 "WISCONSIN STAT. § 895.52 provides that no owner is liable for any injury to a person allowed to engage in a recreational activity on the owner's property. The policy behind the statute is to encourage property owners to open their lands for recreational activities by removing a property user's potential cause of action against a property owner's alleged negligence." ***Kautz v. Ozaukee Cnty. Agri. Soc.***, 2004 WI App 203, ¶9, 276 Wis. 2d 833, 688 N.W.2d 771 (citations omitted). "In order to achieve the goal of encouraging property owners to open their lands to public recreation by limiting the liability of property owners, courts must liberally construe the statute in favor of property owners." ***Id.***

¶12 Wisconsin's recreational immunity statute, WIS. STAT. § 895.52, reads in pertinent part:

> **(2) NO DUTY; IMMUNITY FROM LIABILITY.**
>
> ….
>
> (b) Except as provided in subs. (3) to (6), no owner and no officer, employee or agent of an owner is liable for … any injury to … a person engaging in a recreational activity on the owner's property ….

¶13 "Owner" is defined under WIS. STAT. § 895.52(1)(d) as: "1. A person, including a governmental body or nonprofit organization, that owns, leases or *occupies* property." (Emphasis added.) "An occupant is one who has actual possession of the property, but is more transient than either a lessee or an owner with legal title." ***Doane v. Helenville Mut. Ins. Co.***, 216 Wis. 2d 345, 351, 575 N.W.2d 734 (Ct. App. 1998).

¶14 "Property" is defined under WIS. STAT. § 895.52(1)(f) to include "real property and buildings."

¶15 "Recreational activity" is defined under WIS. STAT. § 895.52(1)(g) as:

> [A]ny outdoor activity undertaken for the purpose of exercise, relaxation or pleasure, including practice or instruction in any such activity. "Recreational activity" includes hunting, fishing, trapping, camping, … *ballooning*, hang gliding, hiking …. "Recreational activity" does not include any organized team sport activity sponsored by the owner of the property on which the activity takes place.

(Emphasis added.)

¶16 Roberts does not contest that Sundog was occupying, and therefore was an "owner" of, "property" on which Patti Roberts was engaging in "recreational activity." *See* WIS. STAT. § 895.52(1)(d), (f), (g). Roberts also does not dispute that "the activity giving rise to [Patti Roberts'] injury was a 'recreational activity' as defined by the statute," that is, ballooning. Finally, Roberts does not argue that any of the situations in subsections (3) to (6) apply here so as to exclude immunity. Thus, we understand Roberts to be conceding that, but for the arguments we address below, the plain language of the Wisconsin recreational immunity statute grants Sundog immunity from Roberts' negligence claims arising from the ballooning accident.

C. Relationship Between Sundog's Alleged Negligent Actions and the Property on Which the Injury Occurred

¶17 Roberts argues that, in Roberts' view, Wisconsin case law dictates that WIS. STAT. § 895.52 does not apply here because "nothing about the land ... caused [Patti] Roberts' injuries." We now explain why we conclude that Roberts'

argument is based on a misreading of the case law on which Roberts relies, which has no application to the facts of this case.

¶18 Roberts directs us to ***Linville***, 184 Wis. 2d 705. In that case, our supreme court ruled that a city was not immune from the claim that its paramedics were negligent in their unsuccessful attempts to rescue a child from drowning in a pond owned by the city. ***Id.*** at 718. Roberts suggests that the supreme court in ***Linville*** narrowly limited immunity under WIS. STAT. § 895.52 only to situations where the negligent act "arises directly out of some condition with the actual land." Roberts misinterprets the holding in ***Linville***.

¶19 In ***Linville***, paramedics arrived at the pond, resuscitated the child, and transported the child to a hospital where the child died. ***Id.*** at 712. The estate of the child brought a negligence action against the paramedics and the city, as employer of the paramedics. ***Id.*** The court held that the city had two distinct roles: owner of the pond and operator of paramedic services. ***Id.*** at 720-21. The court held that the city, as owner of the pond, was entitled to immunity under the recreational immunity statute, but that the city, as operator of paramedic services, was not entitled to immunity under the recreational immunity statute because the city "does not operate these services for any reason connected to the Pond." ***Id.*** at 721. The court noted that "[i]t is mere coincidence that the City is both owner of the Pond and provider of public rescue and medical treatment services…. Thus the City's rescue attempts and medical treatment are separate and apart from the City's ownership of or activities as owner of recreational land." ***Id.***

¶20 The rationale of ***Linville*** is that the city, in its role as operator of the paramedic services, was not an "owner" of the property on which the recreational

activity took place so as to satisfy the prerequisites for immunity under the recreational immunity statute. The court explained:

> We conclude that in furnishing rescue and medical treatment the City was acting independent of its functions as owner of recreational land and that its public paramedic services rendered in this case were unrelated to the City's role as owner of the Pond. The City's immunity for its functions as owner of recreational land cannot shelter its liability for negligently performing another function.

Id. at 711. Roberts identifies no such division of functions here. Rather, as stated above, Roberts sued Sundog as owner of property on which Patti Roberts was engaging in a recreational activity. Therefore, ***Linville*** does not undermine Sundog's entitlement to immunity based on the statute.

¶21 Roberts similarly misconstrues a subsequent decision of this court, ***Kosky v. International Ass'n of Lions Clubs***, 210 Wis. 2d 463, 565 N.W.2d 260 (Ct. App. 1997), which relies on ***Linville***. In ***Kosky***, our analysis focused on the Lions Club's role relative to Kosky, who was injured while assisting in detonating fireworks. Specifically, we noted that the alleged negligent activities of the Lions Club "were related to ... supervis[ing] and train[ing] workers such as Kosky regarding a dangerous process of loading and cleaning explosive devices." ***Id.*** at 476-77. We concluded that the Lions Club's alleged negligent activities did "not meet the *Linville* standard." *See* ***id.*** In other words, the Lions Club's negligent activities causing Kosky's injuries were distinct from its capacity as "owner" of "property." Roberts does not point to facts demonstrating that the situation here is similar to the situation in ***Kosky***, where, to repeat, the negligent activities causing injury were distinct from the defendant's capacity as "owner" of "property." Thus, ***Kosky*** also does not support Roberts' argument against granting Sundog immunity here.

¶22 In sum, we reject the only argument that Roberts makes directed to the application of WIS. STAT. § 895.25, namely, that Wisconsin appellate precedent has interpreted the statute to require proof under circumstances such as those here that the negligence of the party asserting immunity was not sufficiently "directed at the condition of the land" to trigger immunity.

D. Whether Application of WIS. STAT. § 895.525 Precludes Application of WIS. STAT. § 895.52

¶23 Roberts asserts that WIS. STAT. § 895.525, entitled "Participation in recreational activities; restrictions on civil liability, assumption of risk," precludes application of WIS. STAT. § 895.52 in this case. However, Roberts does not develop a cognizable argument in support of this assertion, and we do not consider it further. ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we may decline to review arguments that are undeveloped).[3]

CONCLUSION

¶24 For the reasons stated above, we conclude that WIS. STAT. § 895.52 grants Sundog immunity from Roberts' negligence claims arising from the ballooning accident on property that Sundog occupied, and we reject Roberts' arguments that § 895.52 does not apply in this case. Therefore, we affirm the grant of summary judgment to Sundog dismissing Roberts' negligence claims.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

[3] Moreover, we note that WIS. STAT. § 895.525(5) expressly states, "Nothing in this section affects the limitation on property owners' liability under s. 895.52 ...."