COURT OF APPEALS DECISION DATED AND FILED

November 7, 2002

Cornelia G. Clark
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. 01-3461

Cir. Ct. No. 99-CV-252

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

AMANDA OSBORN, JOAN OSBORN, AND RICHARD OSBORN,

PLAINTIFFS-APPELLANTS,

UNITY HEALTH PLANS AND WISCONSIN PHYSICIANS SERVICE INSURANCE CORP.,

SUBROGATED-PLAINTIFFS,

V.

CASCADE MOUNTAIN, INC. AND AMERICAN HOME ASSURANCE COMPANY,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Columbia County: JAMES O. MILLER, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Deininger, JJ.

¶1 PER CURIAM. Amanda Osborn and her parents, Joan and Richard Osborn, appeal from a summary judgment dismissing their personal injury action against Cascade Mountain, Inc., and its insurer. The Osborns sued for injuries Amanda, then age twelve, received while skiing at Cascade Mountain. The dispositive issue is whether the Osborns' claim is subject to an enforceable release of liability agreement signed by Joan Osborn. We conclude that it is, and therefore affirm.

¶2 The Osborns allege that a defective ski-boot-binding system, on ski equipment rented from Cascade Mountain, caused the injury to Amanda. However, before Amanda's ski trip, Joan signed a document entitled "Rental Permission Agreement and Release of Liability." That document provided:

> I understand and am aware that skiing is a **HAZARDOUS** activity. I understand that the sport of skiing and the use of this ski equipment involve a risk of injury to any and all parts of my child's body. I hereby agree to freely and expressly assume and accept any and all risks of injury or death to the user of this equipment while skiing.
>
> I understand that the ski equipment being furnished forms a part of or all of a ski-boot-binding system which will **NOT RELEASE** at all times or under all circumstances, and that it is not possible to predict every situation in which it will or will not release, and that its use cannot guarantee my child's safety or freedom from injury while skiing. I further agree and understand that this ski-boot-binding system may reduce but does not eliminate the risk of injuries to the bottom one-third of my child's lower leg. However, I agree and understand that this ski-boot-binding system does **NOT** reduce the risk of injuries to my child's knee or any other part of my child's body.
>
> I agree that I will release Cascade Mountain from any and all responsibility or liability for injuries or damages to the user of the equipment listed on this form, or to any other person. I agree **NOT** to make a claim against or sue Cascade Mountain for injuries or damages relating to skiing and/or the use of this equipment. I agree to release

> Cascade Mountain from any such responsibility, whether it results from the use of this equipment by the user, or whether it arises from any **NEGLIGENCE** or other liability arising out of the maintenance, selection, mounting or adjustment of this ski equipment.
>
> ….
>
> I have carefully read this agreement and release of liability and fully understand its contents. I am aware that this is a release of liability and a contract between my child, myself and Cascade Mountain and I sign it of my own free will.

¶3 Amanda fell twice while skiing. Amanda had signed a second release agreement similar to the one previously signed by her mother. The second fall caused her injuries.

¶4 Cascade Mountain moved for summary judgment, alleging that the above-quoted release rendered it immune from liability. The trial court agreed and granted summary judgment. On appeal, the Osborns contend that the release is void on contract principles and public policy grounds.[1]

¶5 An exculpatory contract may be void on public policy grounds or under rules governing contracts. *See* ***Werdehoff v. General Star Indem. Co.***, 229 Wis. 2d 489, 499-500, 600 N.W.2d 214 (Ct. App. 1999). In either case, the issue is one of law. ***Yauger v. Skiing Enters., Inc.***, 206 Wis. 2d 76, 80, 557 N.W.2d 60 (1996). In deciding it, we owe no deference to the trial court. *See* ***M & I First Nat'l Bank v. Episcopal Homes Mgmt., Inc.***, 195 Wis. 2d 485, 497, 536 N.W.2d 175 (Ct. App. 1995).

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[1] It is recognized that a parent may waive a child's claim, ***Fire Ins. Exch. v. Cincinnati Ins. Co.***, 2000 WI App 82, ¶24, 234 Wis. 2d 314, 610 N.W.2d 98, and the Osborns do not claim otherwise here.

¶6 In ***Richards v. Richards***, 181 Wis. 2d 1007, 1011, 513 N.W.2d 118 (1994), the supreme court applied a three-part public policy test to determine the validity of a liability release: first, whether it serves two purposes, neither clearly identified nor distinguished; second, whether it is extremely broad and all-inclusive; and third, whether it is a standardized form offering little or no opportunity for negotiation or free and voluntary bargaining. "None of these factors alone would necessarily invalidate the release; however, taken together they demand the conclusion that the contract is void as against public policy." ***Id.***

¶7 In ***Yauger***, the court applied a two-part test: first, examining whether the release clearly, unambiguously, and unmistakably informed the signer of what was waived; and second, whether the form in its entirety alerted the signer to the nature and significance of what was being signed. ***Yauger***, 206 Wis. 2d at 84. Here, the Osborns contend that Cascade Mountain's liability release must be deemed void under both the ***Richards*** and the ***Yauger*** tests.

¶8 Cascade Mountain's liability release is not void under the ***Richards*** test. The release's two purposes are clearly and unmistakably identified in its title, "Rental Permission Agreement and Release of Liability." That clear enunciation of purpose is not remotely confusing. Second, the release is not unduly broad or all-inclusive. It expressly and unmistakably restricts itself to those using its equipment: "I agree to release Cascade Mountain from [liability], whether it results from the *use of this equipment by the user*, or whether it arises from any **NEGLIGENCE** or other *liability arising out of the maintenance, selection, mounting or adjustment of this ski equipment*." (Emphasis added.) Under any reasonable view, that language does not present an overly or unduly broad and all-inclusive release of liability. Third, it cannot be said that the agreement offered little or no opportunity for negotiation or free and voluntary bargaining. The

release applied only to those who rented equipment from Cascade Mountain. Amanda, or any other skier, was permitted to ski at Cascade Mountain without signing the release if the person chose to obtain equipment elsewhere.

¶9 The liability release is also enforceable under the ***Yauger*** test. The release clearly, unambiguously, and unmistakably informed the Osborns that they were agreeing not to pursue a claim against Cascade Mountain for injuries resulting from the use of rented Cascade Mountain ski equipment. Second, the title of the release, if nothing else, clearly informed the Osborns of what they were signing. In ***Yauger***, the court held a liability release void in significant part because it was titled "APPLICATION." *See* ***Yauger***, 206 Wis. 2d at 86-87. The release here, unambiguously entitled a "Release of Liability," removed that problem. Also in ***Yauger***, only part of the release document actually dealt with the subject of liability. *See* ***id.*** at 79. Here, virtually every sentence of the release plainly and unmistakably addresses the issues of injury and liability for injury. Again, the facts are far removed from those that persuaded the court in ***Yauger*** to declare the release void. Additionally, although the Osborns argue otherwise, the reference to "Cascade Mountain" as the released party is not ambiguous. No one reading the release form could reasonably understand it as referring to anything other than Cascade Mountain, Inc.

¶10 The Osborns also contend that the release Amanda signed was not valid because she was a minor. That is true, but irrelevant. The first release, signed by Joan, remained in effect.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).