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DISTRICT II

August 4, 2021

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You are hereby notified that the Court has entered the following opinion and order:

2020AP555

Raymond Maderich v. Thomas A. Wisniewski (L.C. #2019CV78)

Before Gundrum, P.J., Neubauer and Reilly, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Raymond Maderich appeals from an order granting summary judgment to Reagan Investments, LLC, d/b/a/ Snap Fitness. Based upon our review of the briefs and record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We reverse and remand for further proceedings.

In 2016, Maderich and Thomas Wisniewski met at Snap Fitness, a health club in Muskego, to complete the sale of a hunting knife. During the course of the sale, the men engaged in heated argument that lasted up to fifteen minutes. Maderich allegedly called Wisniewski vulgar names and threatened to assault/embarrass him in front of his family. He also allegedly tried to spit in Wisniewski's face. Wisniewski subsequently attacked and injured Maderich in a fight that lasted up to forty seconds.

At the time of the incident, Chad Roider was the manager at Snap Fitness. He was trained to handle unruly patrons and had successfully done so in the past by threatening to call the police. During the argument between Maderich and Wisniewski, Roider told them multiple times to keep it down, which they did not do for long. He also may or may not have threatened to call the police.²

According to Maderich, after the attack was over, Roider told him, "I wanted to punch you too." Roider also allegedly said that Wisniewski reminded him of his father and that he "should have kicked the shit out of [Maderich] too." Roider later acknowledged that he was familiar with the two men and had considered them to be friends.

¹ All references to the Wisconsin Statutes are to the 2019-20 version.

² As the circuit court remarked, "there's some dispute here as to whether [Roider] said hey, keep it down, or he said hey, keep it down and if you don't, I'm going to call the police."

Maderich filed suit against several parties, including the owner of Snap Fitness, Reagan Investments, LLC. He accused Reagan Investments of negligence in its duty to maintain a safe place of business. Reagan Investments moved for summary judgment, arguing that its employee, Roider, had acted reasonably under the circumstances. Following a hearing on the matter, the circuit court granted the motion. This appeal follows.

We review de novo the grant or denial of summary judgment, employing the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 314–15, 401 N.W.2d 816 (1987). Summary judgment is proper when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). In deciding if genuine issues of material fact exist, we draw all reasonable inferences in favor of the non-moving party. *Metropolitan Ventures, LLC v. GEA Assocs.*, 2006 WI 71, ¶20, 291 Wis. 2d 393, 717 N.W.2d 58.

Here, we agree with Maderich that the circuit court erred in granting summary judgment to Reagan Investments. As noted, Reagan Investments' employee, Roider, observed a heated argument and told the participants multiple times to keep it down. When they repeatedly failed to do so, a reasonable jury could question whether Roider should have done more to satisfy his duty to use ordinary care. He was trained to handle unruly patrons, yet it is unclear whether he threatened to call the police, which could have diffused the situation and stopped it from becoming physical. Indeed, it is unclear whether Roider wanted to diffuse the situation given his alleged statements to Maderich afterwards. On this record, drawing all reasonable inferences in

favor of Maderich, we conclude that the circuit court should have permitted his claim to proceed to trial. Because it did not, we reverse and remand for further proceedings.³

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily reversed pursuant to Wis. STAT. RULE 809.21, and the cause is remanded for further proceedings.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

³ As an alternative argument, Reagan Investments asks that we affirm the circuit court on the ground that public policy considerations preclude Maderich's claim as a matter of law. We decline to decide this case on public policy grounds before a trial. *See Alvarado v. Sersch*, 2003 WI 55, ¶18, 262 Wis. 2d 74, 662 N.W.2d 350 (noting that, in most cases, the better practice is to submit the case to the jury before determining whether public policy considerations preclude liability).

