MINNESOTA LAWYER

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Weighing negligence and risk

By: Jane F. Pribek April 27, 2012 0

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Bill Bongard

That April 25 ruling in Daly v. McFarland stems from a lawsuit regarding a January 2007 accident. Christopher Daly and Zachary McFarland were riding when McFarland's snowmobile hit a drift and became airborne. He pushed his snowmobile away from his body to avoid injury, and it collided with Daly's sled. Daly fell off and was injured.

At trial, the jury found both parties negligent but that Daly's negligence was not a direct cause of the accident. The jury then allocated 30 percent of the fault to Daly. Nobles County District Court Judge Timothy Connell entered judgment for Daly for $442,634, the full amount the jury awarded.

McFarland then moved for judgment as a matter of law, arguing that the court had improperly reconciled the jury's special-verdict form answers and that Daly was not negligent as a matter of law. In the alternative, McFarland moved for a new trial because of error in the reconciliation of the special-verdict form and because the court hadn't instructed the jury on the emergency rule or the primary assumption of risk doctrine.

Connell denied the motion.

The Minnesota Court of Appeals affirmed, and the Minnesota Supreme Court affirmed in part, reversed in part and remanded.

The decision

Under case law, the primary assumption of risk doctrine is limited to certain types of circumstances, such as

participants and spectators of inherently dangerous sports, including golf, auto racing, ice skating and hockey.

The high court had previously rejected its application to bar claims arising out of snowmobiling accidents in 1974 in Carpenter v. Mattison and Olson v. Hansen.

McFarland argued that modern-day snowmobiles are more dangerous than those of 1974 when the court decided those cases, because they typically have more horsepower and acceleration than they did in 1970s.

Justice Helen Meyer wrote for the majority: "McFarland's arguments for overturning Olson and Carpenter are not compelling for three reasons: (1) the record does not conclusively establish that circumstances have changed in relation to snowmobile safety since we decided Olson and Carpenter in 1974; (2) McFarland does not justify how overruling Olson and Carpenter would be consistent with the Legislature's explicit decision to affirm the duty to operate a snowmobile with reasonable care; and (3) the record does not establish that Minnesota case law is obsolete or out of line with snowmobile negligence principles in other jurisdictions."

McFarland also argued that the jury should have been instructed on the emergency rule, which says: "One, suddenly confronted by a peril, through no fault of his own, who, in the attempt to escape, does not choose the best or safest way, should not be held negligent because of such choice, unless it was so hazardous that the ordinarily prudent person would not have made it under similar conditions."

The justices concluded that the essential requirement underlying the rule is a sudden peril requiring an instinctive reaction. "The District Court stated on the record that the reason it did not give the emergency rule instruction is that the situation was not an emergency, characterizing an emergency as akin to a deer jumping into the road. Our case law supports the District Court's determination. A snowdrift that McFarland described as a normal hazard of snowmobiling and in the normal range of snowdrifts did not create an emergency situation here."

McFarland's third basis for appeal was that the District Court improperly reconciled the special-verdict form.

The jury found both parties negligent in Questions 1 and 3 but found that only McFarland's negligence was a direct cause of the accident in Questions 2 and 4. In response to Question 5, however, the jury apportioned fault "as a direct cause of the accident" 70 percent to McFarland and 30 percent to Daly.

Connell had concluded that because the jury had determined that Daly's negligence was not a direct cause of the accident in Question 4, the answer to Question 5 apportioning 30 percent of fault to Daly was superfluous.

The justices found an abuse of discretion but rejected McFarland's proposed remedy of a new trial.

"However one reads the special verdict form, the jury unquestionably believed McFarland to be either 70% or 100% responsible for the accident. Under no circumstance could the special verdict answers be interpreted to mean that

McFarland was not causally negligent. Thus, the relevant question is whether the District Court committed error as a matter of law by assigning 100% of the fault to McFarland."

The justices ordered a remittitur, where Daly may choose to accept 70 percent of the damages or a new trial on liability.

Counsel's comments

Bill Bongard and Marcia Miller of Sieben, Grose, Von Holtum & Carey in Minneapolis represented Daly.

Miller said the central holding of the case "didn't expand primary assumption of risk beyond what it was ever intended to cover.

"Primary assumption of risk was really meant to apply to people engaging in recreational activities or spectating at them. If you go the Twins stadium and get hit by a foul ball, you've assumed that risk. If the court had expanded primary assumption of risk to snowmobiling, that's the epitome of a slippery slope in my opinion. What would be next — cars? Pretty soon nobody's liable. And I think sometimes people forget that secondary assumption of risk, or contributory negligence, can still come in."

Bongard said the two men were good friends before the accident and remain good friends today. With regard to Daly's injuries, he said he will need multiple hip replacements.

Bongard has recommended Daly accept the remittitur rather than a retrial and that's probably what will happen, he said. With prejudgment interest and costs, the sum he'll receive should be almost equal to the initial verdict.

Daly had argued in favor of abandoning the emergency rule in Minnesota. "The court didn't go that far, but found, I think very rightly, that there was no emergency except one created by the defendant's conduct, driving too fast for conditions," Bongard said.

The case was argued in Brainerd before an audience of high school students, Bongard noted -– so he hopes it reinforced the importance of safe snowmobiling, and he's glad the opinion was issued before summer break.

Kay Nord Hunt of Lommen, Abdo, Cole, King & Stageberg in Minneapolis and Michael O'Rourke of Erickson, Zierke, Kuderer & Madsen in Fairmont represented McFarland.

Hunt said they were disappointed overall, but with regard to the inconsistent verdict, McFarland is relieved the justices have ruled that he's 70 percent negligent rather than 100 percent.

"That makes a big difference to him. So in that respect, he prevailed."