

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

CW05-89

SHELLY BENOIT

VERSUS

**CITY OF LAKE CHARLES, UNITED STATES SPECIALTY
SPORTS ASSOCIATION AND UNITED STATES NATIONAL
INSURANCE COMPANY**

**ON APPLICATION FOR SUPERVISORY WRITS FROM THE
FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU, NO. 02-4508
HONORABLE WILFORD CARTER, DISTRICT JUDGE**

**MARC T. AMY
JUDGE**

**Court composed of Ulysses Gene Thibodeaux, Chief Judge, John D. Saunders,
Marc T. Amy, Michael G. Sullivan, and Elizabeth A. Pickett, Judges.**

**WRIT GRANTED IN PART AND MADE PEREMPTORY; WRIT DENIED IN
PART; REMANDED.**

**Thibodeaux, C.J., dissents in part and assigns written reasons.
Saunders, J., concurs in part, dissents in part, and assigns reasons.**

**H. Alan McCall
Stockwell, Sievert, Viccellio,
Clements & Shaddock, L.L.P.
Post Office Box 2900
Lake Charles, LA 70602
(337) 436-9491
COUNSEL FOR DEFENDANTS/APPLICANTS:
City of Lake Charles
United National Insurance Company
United States Specialty Sports Association**

Jeffrey T. Gaughan
Baggett, McCall, Burgess, Watson & Gaughan
3006 Country Club Road
Lake Charles, LA 70605
(337) 478-8888
COUNSEL FOR PLAINTIFF/RESPONDENT:
Shelly Benoit

AMY, Judge.

The plaintiff seeks damages related to a fall occurring at a ballpark owned by the City of Lake Charles. The defendants filed a motion for summary judgment, asserting immunity pursuant to La.R.S. 9:2795. The trial court denied the motion. The defendants filed the instant writ application. For the following reasons, we grant in part, deny in part and remand for further proceedings.

Factual and Procedural Background

The plaintiff, Shelly Benoit, alleges that she fractured her ankle after she stepped into a depressed portion of the ground at a park and ballfield owned by the City of Lake Charles. Mrs. Benoit and her family were visiting the park on that day to attend a baseball tournament in which her son was participating. The City of Lake Charles and the United States Specialty Sports Association (USSSA), the organization allegedly hosting and organizing the tournament, were named as defendants as was USSSA's insurer, United National Insurance Company.

The defendants filed a motion for summary judgment, asserting the applicability of recreational immunity under La.R.S. 9:2795. The motion was denied by the trial court.

Discussion

The defendants question the trial court's determination that genuine issues of material fact remain with regard to who was responsible for creating the depressed area on the park property. The defendants contend that such a determination is irrelevant as La.R.S. 9:2795 does not include the condition's origin as a factor in determining the applicability of the recreational immunity statute. The plaintiff contends that La.R.S. 9:2795 is inapplicable in the present case as the injury did not

occur in a “true outdoors” setting, but instead, occurred on a ballfield in a developed city park.

On appeal, a trial court’s ruling on a motion for summary judgment is reviewed pursuant to the *de novo* standard of review. *Champagne v. Ward*, 03-3211 (La. 1/19/05), 893 So.2d 773. Accordingly, we consider the standard set forth in La.Code Civ.P. art. 966. Subsection B of that provision requires that summary judgment shall be rendered “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law.”

The immunity provision in this case is La.R.S. 9:2795, which provides:

§ 2795. Limitation of liability of landowner of property used for recreational purposes; property owned by the Department of Wildlife and Fisheries; parks owned by public entities

A. As used in this Section:

(1) “Land” means urban or rural land, roads, water, watercourses, private ways or buildings, structures, and machinery or equipment when attached to the realty.

(2) “Owner” means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

(3) “Recreational purposes” includes but is not limited to any of the following, or any combination thereof: hunting, fishing, trapping, swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding, motorized, or nonmotorized vehicle operation for recreation purposes, nature study, water skiing, ice skating, roller skating, roller blading, skate boarding, sledding, snowmobiling, snow skiing, summer and winter sports, or viewing or enjoying historical, archaeological, scenic, or scientific sites.

(4) “Charge” means the admission price or fee asked in return for permission to use lands.

(5) “Person” means individuals regardless of age.

B. (1) Except for willful or malicious failure to warn against a dangerous condition, use, structure, or activity, an owner of land, except an owner of commercial recreational developments or facilities, who permits with or without charge any person to use his land for recreational purposes as herein defined does not thereby:

(a) Extend any assurance that the premises are safe for any purposes.

(b) Constitute such person the legal status of an invitee or licensee to whom a duty of care is owed.

(c) Incur liability for any injury to person or property caused by any defect in the land regardless of whether naturally occurring or man-made.

(2) The provisions of this Subsection shall apply to owners of commercial recreational developments or facilities for injury to persons or property arising out of the commercial recreational activity permitted at the recreational development or facility that occurs on land which does not comprise the commercial recreational development or facility and over which the owner has no control when the recreational activity commences, occurs, or terminates on the commercial recreational development or facility.

C. Unless otherwise agreed in writing, the provisions of Subsection B shall be deemed applicable to the duties and liability of an owner of land leased for recreational purposes to the federal government or any state or political subdivision thereof or private persons.

D. Nothing in this Section shall be construed to relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this Section to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

E. (1) The limitation of liability provided in this Section shall apply to any lands or water bottoms owned, leased, or managed by the Department of Wildlife and Fisheries, regardless of the purposes for which the land or water bottoms are used, and whether they are used for recreational or nonrecreational purposes.

(2)(a) The limitation of liability provided in this Section shall apply to any lands, whether urban or rural, which are owned, leased, or managed as a public park by the state or any of its political subdivisions and which are used for recreational purposes.

(b) The provision of supervision on any land managed as a public park by the state or any of its political subdivisions does not create any greater duty of care which may exist and does not create a duty of care or basis of liability for personal injury or for damage to personal property caused by the act or omission of any person responsible for security or supervision of park activities, except as provided in Subparagraph (E)(2)(d) of this Section.

(c) For purposes of the limitation of liability afforded to parks pursuant to this Section this limitation does not apply to playground equipment or stands which are defective.

(d) The limitation of liability as extended to parks in this Section shall not apply to intentional or grossly negligent acts by an employee of the public entity.

F. The limitation of liability extended by this Section to the owner, lessee, or occupant of premises shall not be affected by the granting of a lease, right of use, or right of occupancy for any recreational purpose which may limit the use of the premises to any persons other than the entire public or by the posting of the premises so as to limit the use of the premises to persons other than the entire public.

With regard to the City of Lake Charles, the defendants' submission to this court establishes that Nelson Road Park, the ballfield where the plaintiff's fall occurred, is a public park and recreational complex available for public use. The defendants submitted the deposition of William F. Edwards, assistant director of the City's recreation department. His testimony establishes that the park has both soccer and baseball fields open to the public. As stated above, the plaintiff's deposition establishes that she was at Nelson Road Park on the date of the accident, May 26, 2002, to attend a baseball tournament. She explained that she paid a fee to attend the tournament when she entered the parking lot and that the tickets were being sold by USSSA baseball.

Considering these established facts, we conclude that La.R.S. 9:2795 is applicable to the City. Subsection (B)(1) states that "an owner of land, . . ., who permits with or without charge any person to use his land for recreational purposes

as herein defined does not thereby . . . (c) [i]ncur liability for any injury to person or property caused by any defect in the land regardless of whether naturally occurring or man-made.” Thus, the trial court’s conclusion that the origin of the depression was uncertain is of no consequence to the applicability of the statute in this situation.

Furthermore, the definition of “land,” contained in La.R.S. 9:2795(A)(1), is sufficiently expansive so as to cover this park. Although the plaintiff suggests that this property is not covered by the statute as it is a developed park located in the city, we note that the statute was revised in 2001 to include “*urban* or rural land, roads, water, watercourses, private ways or buildings, structures, and machinery or equipment when attached to the realty.” La.R.S. 9:2795(A)(1) (emphasis added). *See also* La.R.S. 9:2795(E)(2)(a), which specifically provides that the statute’s limitation of liability “shall apply to any lands, whether urban or rural, which are owned, leased, or managed as a public park by the state or any of its political subdivisions and which are used for recreational purposes.” The cases relied upon by plaintiff, which feature rural settings, are cases in which the injuries occurred prior to the revisions.¹ We make no determination as to the continuing relevance of those cases and recognize simply that the plain wording of La.R.S. 9:2795(A)(1) and (E)(2)(a) indicate that it is applicable to this property. *See* La.R.S. 1:4, which provides that: “When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.” *See also Richard v. Hall*, 03-1488, p. 22 (La. 4/23/04), 874 So.2d 131, 148, citing La.Civ.Code art. 9 in its consideration of La.R.S. 9:2791 and La.R.S. 9:2795 for the proposition that “[w]hen a statute is clear and unambiguous and its application does not lead to absurd

¹ *See, e.g., Adams v. Hartford Accident & Indem. Co.*, 525 So.2d 1211 (La.App.1 Cir. 1988), wherein the first circuit denied the defendant’s request for immunity for injury occurring to the plaintiff after a collision with a chain link fence at a ballpark. The first circuit reasoned that a chain link fence was not expected to be found in the “true outdoors.” Again, we note that the statute was revised in 2001, and now includes not only rural lands, but those in urban settings as well.

consequences, the statute is applied as written, and no further interpretation may be made in search of legislative intent.”

Furthermore, we conclude that the definition of “recreational purposes”, contained in La.R.S. 9:2795(A)(3) includes the type of baseball tournament attended by the plaintiff. Subsection (A)(3) indicates that the term “recreational purposes” “includes but is not limited to any of the following, or any combination thereof: . . . summer and winter sports[.]” Certainly baseball must be considered to be a summer sport. Notwithstanding the fact that we conclude that this activity is included within the Subsection’s listed recreational purposes, the list is expressly a nonexclusive one. Accordingly, the use of the park for this purpose fits within the statute.

Finally, we find no merit in the plaintiff’s contention that immunity is not available to the City under the statute as it was a “commercial enterprise.” See La.R.S. 9:2795(B)(1), which indicates that the immunity provision is inapplicable to “an owner of commercial recreational developments or facilities.” The plaintiff stated that she paid a fee to attend the baseball tournament. She estimated that she was charged \$3.00 while her children were charged \$2.00. Again, she explained that the tickets were sold by USSSA, not the City. Furthermore, there is no evidence indicating that there was a fee charged by the City. Even if a fee was charged by the City, this does not indicate that it was operated as a commercial enterprise within the terms of the statute. Instead, La.R.S. 9:2795(B)(1) indicates immunity extends to an owner of land “who permits *with or without charge* any person to use his land for recreational purposes[.]” (Emphasis added.) Moreover, as indicated above, La.R.S. 9:2795(E)(2)(a) specifically addresses the applicability of immunity to a public park operated by a political subdivision of the state.

As we find that the City has demonstrated that the immunity provision of La.R.S. 9:2795 is applicable in this case, we conclude that the trial court erred in denying the motion for summary judgment in the City's favor.

The remaining question is whether summary judgment is appropriate in favor of USSSA. Based on the showing made, we find that summary judgment is not appropriate. The submission in favor of the motion for summary judgment, insofar as it is presented to this court, is deficient in evidence regarding USSSA's alleged sponsorship of the event, its use of the field at the ballpark, and the fees associated with the tournament. Mr. Edwards' testimony was general in nature regarding soccer associations' use of the park's fields and even less specific regarding the nature of baseball associations' use of the baseball fields. Accordingly, we make no determination regarding whether La.R.S. 9:2795 will be found to be ultimately applicable to USSSA. Rather, we find that based upon the showing made, the evidence is insufficient to do so. Accordingly, the trial court did not err in refusing to grant the motion for summary judgment in favor of USSSA.

DECREE

For the foregoing reasons, the relators' writ application is granted in part and summary judgment is entered in favor of the City of Lake Charles and made peremptory. The plaintiff's petition is dismissed insofar as it related to this defendant. The relator's writ application is denied in part as it relates to the United States Specialty Sports Association and United National Insurance Company. Costs of this proceeding are assigned one-half to the plaintiff and one-half to the defendants, United States Specialty Sports Association and United National Insurance Company. This matter is remanded for further proceedings.

WRIT GRANTED IN PART AND MADE PEREMPTORY; WRIT DENIED IN PART; REMANDED.