

YOU AND THE LAW

Golf Cart Injury: Inherent Risk Bertin v. Mann 502 Mich. 603 Michigan Supreme Court July 25, 2018

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Introduction

Mr. Bertin (Plaintiff) appeals as of right the trial court's entry of a judgment of no cause of action in favor of Mr. Mann (Defendant) following the jury's verdict that the defendant did not engage in reckless misconduct while operating a motorized golf cart at the Farmington Hills Golf Club. The only issue in this appeal is whether the trial court correctly ruled before trial that the applicable standard of care for operating a golf cart is reckless misconduct, rather than ordinary negligence.

Issue before the Michigan Supreme Court

At issue in this tort case is whether getting hit by a golf cart is an inherent risk of golfing. If so, then the defendant, who ran over the plaintiff with a cart while golfing, owed a duty only to refrain from

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reckless misconduct, but cannot be held liable for negligent conduct. If not, then the defendant will be held to the negligence standard of conduct. The question boils down to how we (the Michigan Supreme Court) determine which risks in a recreational activity are inherent, such that the reckless standard of conduct applies. The Court of Appeals answered this question by meditating upon golf's essence and discerning that golf carts are not within the essence of the sport.

Factual Background

This case arises from an accident involving a golf cart driven by the defendant, which occurred while the plaintiff and defendant were golfing together on May 22, 2013. According to the plaintiff, while the parties were at the 17th hole, the defendant hit his golf ball onto the green, and the plaintiff's landed to the right of the green. The plaintiff then drove the cart toward his ball and parked it in nearby rough off the green. He exited the cart, while the defendant remained in the passenger seat, and grabbed his putter and wedge, intending to use the latter to chip the ball onto the green. However, after laying his putter on the ground, the plaintiff struck his ball too hard, it traveled further than the plaintiff intended, and it stopped on the other side of the green. The plaintiff then picked up the putter from where he had set it on the ground and began to walk toward his ball. The plaintiff did not believe that he stepped in front of the cart while walking, as he was moving in the opposite direction of the cart. After he had gone about 10 to 15 feet, the defendant drove the cart and struck the plaintiff in the buttocks. The plaintiff was pushed forward and knocked to the ground due to the impact. After the impact, the plaintiff rolled to the right, and the cart struck him a second time, running over his leg.

Defendant's recollection was similar to the plaintiff's except with regard to the cart. Defendant testified that after he took a shot to get his ball on the green, he returned to the cart, intending to drive it to the other side of the green so that it would be ready for them to drive to the tee box for the next hole. The defendant thought the plaintiff was to the right and slightly behind the cart, not in front of it.

Complaint

In April 2014, the plaintiff filed a complaint primarily alleging that the defendant acted “with active negligence” and “without due care and caution” when he struck the plaintiff. In particular, the plaintiff alleged, among other things, that the defendant breached his duty to safely, dependably, and reliably operate the golf cart and incur significant damages.

In his answer, the defendant largely denied the plaintiff’s allegations and expressly denied the plaintiff’s allegations of negligence and carelessness. However, the defendant also raised two affirmative defenses: the event was an unforeseeable accident and plaintiff’s own negligence or order to ensure plaintiff’s safety and, as a result, caused plaintiff to sustain serious injuries and comparative negligence was the sole cause or a contributing cause to the injuries and damages claimed by plaintiff.

Analysis

This case presents an issue of first impression in Michigan. As discussed further below, the parties were, without dispute, co-participants in a recreational activity. Under the broad language in *Ritchie–Gamester*, 461 Mich. 73 at 75, “co-participants in recreational activities owe each other a duty not to act recklessly.” However, as the plaintiff emphasizes, *Ritchie–Gamester* does not establish that any co-participant conduct that causes injury during a recreational activity must meet the reckless misconduct standard. Likewise, even though numerous golf-related cases in Michigan and other jurisdictions have applied the reckless misconduct standard to a participant who was injured by a golf ball or a club, we have not found a single Michigan case, or a case in any other jurisdiction, where the driver of an injury-causing golf cart during a game of golf was held to any standard other than ordinary negligence.

Standard of Care for Recreational Activities

The Court indicated that a person who engages in a recreational activity is temporarily adopting a set of rules that define that particular pastime or sport. In many instances, the person is also suspending the rules that generally govern everyday life. The Court concluded

that no matter how the elevated standard is described or justified (for example, as having notice of the inherent risks, as consenting to the inherent risks, or assuming the risks, etc.), the basic premise is the same: When people engage in a recreational activity, they have voluntarily subjected themselves to certain risks inherent in that activity. When one of those risks results in injury, the participant has no ground for complaint. The Court noted that there are foreseeable, built-in risks of harm in all recreational activities, including both contact and non-contact sports, as well as individual activities.

Reckless Misconduct

The Court adopted reckless misconduct as the minimum standard of care for co-participants in recreational activities. It is believed that this standard most accurately reflects the actual expectations of participants in recreational activities. Further, the Court believed that participants in recreational activities do not expect to sue or be sued for mere carelessness. A recklessness standard also encourages vigorous participation in recreational activities, while still protecting from egregious conduct. Finally, this standard lends itself to common-sense application by both judges and juries.

The Court further clarified the scope of the reckless misconduct standard as follows:

Surely all who participate in recreational activities do so with the hope that they will not be injured by the clumsiness or over-exuberant play of their co-participants. However, we suspect that reasonable participants recognize that skill levels and play styles vary, and that an occasional injury is a foreseeable and natural part of being involved in recreational activities; however, the informal and formal rules are structured and enforced (Id. at 612).

When a player steps on the field, he or she must recognize that an injury may occur, but he/she does not know whether he/she will be injured, or whether he/she will inadvertently injure another player. We do not believe that a player expects an injury, even if it results from a rule violation, to give rise to liability. Instead, the Court thought it more likely that players participate with the expectation

that no liability will arise unless a participant's actions exceed the normal bounds of conduct associated with the activity.

Thus, the Court adopted the standard of recklessness based explicitly on the usual expectation of participants that liability will only arise with regard to conduct that exceeds the normal bounds of the conduct associated with a given activity. It is also clear that the Court did not articulate a specific test for determining whether an injury arose from an inherent risk of an activity or whether it was tangential to the sport in which the parties were engaged.

Finally, the Court clarified in a footnote that the broad language of its holding does not imply that a reckless misconduct standard should be applied in all cases involving conduct arising from a recreational activity. The Court recognized that it has stated this standard broadly as applicable to all recreational activities. However, the precise scope of this rule is best established by allowing it to emerge on a case-by-case basis, so that we might carefully consider the application of the recklessness standard in various factual contexts.

Inherent Risk

A risk is inherent in an activity if the ordinary participant would reasonably consent to the risk, and the risk cannot be tailored to satisfy the idiosyncratic needs of any particular participant, like the plaintiff. The Court determined that the nonuse of a cart does not prevent a person from engaging in golf, while the nonuse of a ball or club would; it cannot be considered an inherent part of the game. As such, the risk of being injured by a golf cart does not become an ordinary and foreseeable risk.

Court's Conclusion

The trial court (*Bertin v. Mann, 2017*) applied an incorrect standard of care. Thus, we vacate the jury's verdict, reverse the trial court's order finding that reckless misconduct, as opposed to ordinary negligence, is the applicable standard under the circumstances of this case, and remand for further proceedings consistent with this opinion.

Risk Management Discussion

Golf carts were designed for golf. They are recreational vehicles designed for slow-speed driving, away from traffic, along grassy paths. With a poor brake assembly, no seatbelts, and a lack of other safety features, they do not provide the normal crash protection that an automobile typically offers. The open-air design makes it very easy for a passenger to fall out, as was the case recently when a young child tragically lost her life from such a fall. Some vehicles are being up-fitted these days to make them “road legal,” but those often seen cruising through the neighborhood are not typically so equipped. And most have not been maintained in the way people would normally attend to an automobile.

It is clear, at least in the State of Michigan, that a golf cart is not an inherent risk of the game of golf. Based on this ruling, it would be extremely important for the golf course operator/owner to clearly warn golfers of the inherent dangers of golf carts and post warnings related to those dangers. Further, the owner/operator should inspect and maintain the golf cart daily before renting it to a golfer.

Finally, the operator/owner should consider posting in prominent locations the following signage regarding the fundamentals of safe golf cart operation:

- Always drive responsibly.
- Arms and legs should always remain inside the vehicle, and, if your cart is equipped with them, seatbelts should always be fastened.
- Only carry passengers for whom you have seats.
- Do not try to squeeze in extra passengers.
- Never drive recklessly or joyride.
- Be courteous to other drivers and obey vehicle traffic laws and the rules of the road.
- Never drive intoxicated or under the influence of any drug or narcotic.
- Avoid distractions while operating your golf cart.
- No matter the size of the vehicle, it’s still an automobile.
- Remain attentive and avoid distractions, such as talking, texting, or reading while driving, reaching for objects, applying makeup, or eating.

- Never allow anyone to stand in the vehicle or on the platform located at the back of the vehicle, and never put the vehicle in motion until all passengers are safely inside and buckled in.
- Always use hand signals to indicate upcoming turns as well as your turn signals. Turn signals may be small or go unnoticed by vehicles behind you, so it's always a good idea to use hand signals as well.
- Always check blind spots before turning. When making a left-hand turn, yield to the through traffic lane and merge into that lane before turning left.
- Use caution while tuning and look behind your golf cart before backing up.
- Avoid excessive speeds, sudden starts and stops, and sharp turns at fast speeds.
- Reduce speed depending on the driving conditions and driving environment. Reduce speed on hills and inclines, as well as in blind corners, and yield to pedestrians.
- Do not leave keys in the golf cart while unattended, and always make sure to set the parking brake.
- Always yield to pedestrians.
- Use extreme caution in inclement weather.
- Golf carts may be prone to lightning strikes.
- Avoid driving in inclement weather whenever possible.

References

Bertin v. Mann, 501 Mich. 869, 869-870, 901 N.W.2d 404 (2017).

Bertin v. Mann, 502 Mich. 603 (2018).

Ritchie-Gamester, 461 Mich. 73 at 75 (1999).