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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-827

Filed: 18 April 2017

Cumberland County, No. 15-CVS-3328

STEPHEN VICTOR WHEELER, Plaintiff,

v.

CENTRAL CAROLINA SCHOLASTIC SPORTS, INC., dba CENTRAL CAROLINA SCHOLASTIC BASEBALL SUMMER LEAGUE, Defendant.

Appeal by Plaintiff from order entered 22 April 2016 by Judge Claire V. Hill in Cumberland County Superior Court. Heard in the Court of Appeals 8 February 2017.

Jerome P. Trehy, Jr., for Plaintiff-Appellant.

Cranfill Sumner & Hartzog LLP, by Melody J. Jolly and Regan S. Toups, for Defendant-Appellee.

DILLON, Judge.

Stephen Victor Wheeler (“Plaintiff”) appeals from a trial court order granting summary judgment to Central Carolina Scholastic Sports, Inc. dba Central Carolina Scholastic Baseball Summer League (“Defendant”). After careful review, we affirm the trial court’s order.

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I. Background

In June 2012, Plaintiff was attending his son's baseball game at a newly renovated field rented by Defendant.¹ Plaintiff was struck in the head by a foul ball while standing and talking with a friend behind a fence next to the bleachers near first base.

Plaintiff filed suit for negligence. Defendant moved for summary judgment. After a hearing, Judge Hill granted Defendant's motion for summary judgment. Plaintiff timely appealed.

II. Standard of Review

We review a trial court's grant of summary judgment *de novo*. *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007). "Summary judgment is appropriate when there is no genuine issue as to any material fact and any party is entitled to a judgment as a matter of law." *Builders Mut. Ins. Co. v. N. Main Const., Ltd.*, 361 N.C. 85, 88, 637 S.E.2d 528, 530 (2006) (internal quotation marks omitted).

III. Analysis

Plaintiff contends that a special hazard exception to *Cates v. Exhibition Co.*, 215 N.C. 64, 66, 1 S.E.2d 131, 133 (1939) (sometimes referred to as the "*Baseball*

¹ Defendant assumed liability "for damages or injuries sustained by any person using the facilities during the rental" pursuant to its Facilities Use Agreement with the field owner, the Cumberland County Board of Education (the "Board").

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Rule”) applies and therefore bars summary judgment in favor of Defendant. We disagree.

“[U]nder established common law negligence principles, a plaintiff must offer evidence of four essential elements in order to prevail: duty, breach of duty, proximate cause, and damages.” *Estate of Mullis by Dixon v. Monroe Oil Co.*, 349 N.C. 196, 201, 505 S.E.2d 131, 135 (1998).

Landowners, including baseball field operators, owe a “duty to exercise reasonable care in the maintenance of their premises for the protection of lawful visitors.” *Nelson v. Freeland*, 349 N.C. 615, 632, 507 S.E.2d 882, 892 (1998). Our Supreme Court held that baseball field operators “discharge[] their full duty to spectators in safeguarding them from the danger of being struck by thrown or batted balls by providing adequately screened seats for patrons who desire them, and leaving the patrons their choice between such screened seats and those unscreened.”² *Cates*, 215 N.C. at 66, 1 S.E.2d at 133.

Furthermore, a baseball field operator is not required to provide screening in all of the areas where patrons may be during a game; rather, “[i]t is enough to provide screened seats, in the areas back of home plate where the danger . . . is greatest, in sufficient number to accommodate as many patrons as may reasonably be expected to call for them on ordinary occasions.” *Erickson v. Lexington Baseball Club*, 233 N.C.

² A baseball field operator complies with the *Baseball Rule* set forth in *Cates* by providing adequate screened seating to patrons.

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627, 628, 65 S.E.2d 140, 141 (1951). “Spectator[s], with ordinary knowledge of the game of baseball . . . accept[] the common hazards incident to the game . . . and ordinarily there can be no recovery for an injury sustained as a result of being hit by a batted ball.” *Id.* at 629, 65 S.E.2d at 141.

We have held that the *Baseball Rule* shields a baseball field operator from liability, even when a patron is struck in an unusual way by a batted ball, so long as the operator provides a screened section. *Hobby v. City of Durham*, 152 N.C. App. 234, 236-37, 569 S.E.2d 1, 2 (2002). *See also Bryson v. Coastal Plain League*, 221 N.C. App. 654, 657-58, 729 S.E.2d 107, 110 (2012) (concluding that summary judgment in favor of defendants was appropriate where patron was struck in an unscreened area along the third base line as other areas of the park were screened).

Here, it is undisputed that Defendant and the Board provided screened bleacher seats in the area behind home plate (“Home Plate Bleachers”). Also, Defendant and the Board provided screened bleacher seats along the first base line (“First Base Bleachers”). There is an area between the Home Plate Bleachers and the First Base Bleachers where patrons sometimes stand. There is no screening there. Instead, there is a gap between the screening protecting the Home Plate Bleachers and the screening protecting the First Base Bleachers. There is, however, a dugout and a six-foot high gate which leads to the field in the area between the screens. And there is a ten-inch gap between the gate and the screening in front of

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the First Base Bleachers (the “Gap”). Plaintiff was standing between the bleacher sections when he was struck by a batted ball that had traveled between the Gap. Plaintiff was struck in an unusual way, as was the case with the patron in *Hobby*. *Hobby*, 152 N.C. App. at 235, 569 S.E.2d at 1. However, there is no evidence that the screening that was provided by Defendant and the Board was defective. The ball simply traveled along a path where there was no screening and where there was no duty to provide screening. Accordingly, we conclude that Defendant did not breach its duty of care as a matter of law and that summary judgment was appropriate.³

IV. Conclusion

We affirm the trial court’s order granting Defendant summary judgment as Defendant provided screened seating in the area behind home plate in compliance with the *Baseball Rule* and Plaintiff’s injury was not the result of defective, unrepaired screening or fencing.

AFFIRMED.

Judge ELMORE concurs.

Judge ZACHARY dissenting by separate opinion.

³ Plaintiff cites *Correa v. City of New York*, 66 A.D.3d 573, 890 N.Y.S.2d 461 (2009) in support of his argument. However, *Correa* is easily distinguishable. Unlike the screening in *Correa*, which was tampered with, the Gap did not create an “enhanced risk of injury beyond that inherent in the nature of the sport” of baseball. *Id.* at 575, 890 N.Y.S.2d at 463. Moreover, *Correa* is a New York decision, which is not binding on this Court. See *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 465, 515 S.E.2d 675, 686 (1999) (reaffirming general principle that authority from other jurisdictions is not binding on North Carolina courts).

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Report per Rule 30(e).

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ZACHARY, Judge, dissenting.

Although North Carolina’s Baseball Rule is correctly stated above, the majority has applied the rule to a situation in which the baseball field operator is alleged to have provided inadequate screening down the first base line in addition to the minimum screening required, that is, the areas behind home plate. The instant case provides a fact scenario that has not been addressed by the courts of this State. The majority, however, endorses the imposition of a blanket rule divorced from the circumstances of this case. For these reasons, I respectfully dissent and vote to reverse the trial court’s order granting summary judgment in favor of defendant.

I agree with the majority that “a baseball field operator is not required to provide screening in all of the areas where patrons may be during a game”; rather, “[i]t is enough to provide screened seats, in the areas back of home plate where the danger . . . is greatest” *Erickson v. Lexington Baseball Club*, 233 N.C. 627, 628, 65 S.E.2d 140, 141 (1951). Our law does not require the baseball field operator to extend the screening beyond this minimum.

Where the baseball field operator chooses to provide additional screening, however, long-established principles of common law negligence impose a duty on the operator to use reasonable care and to provide *adequate* screening. Screening can be “adequate,” as a matter of law, only when the screening provides reliable and effective

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protection to spectators who rely on it. Our Supreme Court recognized as much in *Cates v. Cincinnati Exhibition Co.*, in which it concluded that baseball field operators “are held to have discharged their full duty to spectators . . . by providing adequately screened seats for patrons who desire them. . . ,” with the “screen being reasonably sufficient as to extent and substance.” 215 N.C. 64, 66, 1 S.E.2d 131,133 (1939) (emphasis added and citations omitted).

In my view, once it is properly alleged that an opening—or in this case, a gap—in the screening allowed a baseball to pass through and injure a plaintiff situated in the protected area, only the jury may answer the question of whether the screening was adequately maintained or constructed. *See Akins v. Glens Falls City Sch. Dist.*, 53 N.Y.2d 325, 331, 424 N.E.2d 531, 534 (1981) (adopting and applying the general Baseball Rule but noting that “we [do not] suggest that where the adequacy of the screening in terms of protecting the area behind home plate properly is put in issue, the case should not be submitted to the jury”).

The newly-renovated baseball field in the present case featured screening behind home plate as well as along the first base line. A dugout, guarded by a six-foot high gate, was situated between the screened sections. Critically, a ten-inch gap existed between the gate and the first base line screening. There is conflicting evidence as to exactly where plaintiff was standing when the foul ball struck him, but plaintiff maintains that he was positioned behind the first base line screening near

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the outfield-side of the gap. Plaintiff maintains that he chose this position because he believed the netting and the fence provided a safe area from which to observe the game, and that he did not maintain the vigilance that he would have otherwise if there had been no safety netting to lull him into a false sense of security.

After a careful review of the record, I conclude that defendant has failed to establish as a matter of law that the screening provided adequate protection to spectators. My conclusion is not based on plaintiff's "extraordinary hazard" theory. Rather, I simply conclude that where an operator provides screening, the operator must provide adequate screening and refrain from *enhancing* the risks that are inherent to baseball. Here, defendant provided substantial screening along the first base line, and further protected the spectator area with a fence. Plaintiff alleges that he chose to rely on the screening. Unbeknownst to plaintiff and others at the park, including a player and an assistant coach, a gap existed between the first base line screening and the fence post. Plaintiff's sense of security was thus illusory. Consequently, the gap might have increased plaintiff's risk of injury.

Given these circumstances, summary judgment was improper, as the trial court deprived the jury of the opportunity to decide whether defendant took reasonable precautions to ensure that the screened sections provided adequate protection to spectators. Indeed, genuine issues of material fact exist as to whether the gap increased the inherent risk of being struck by a thrown or batted ball, and

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whether the protective screening was adequate such that defendant's duty of care was fully discharged under the Baseball Rule. Because the jury should be able to decide whether the circumstances here made defendant's screening inadequate, I would reverse the trial court's order and remand for further proceedings.