STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2040

Graham Waltz, et al.,
Appellants,

vs.

Life Time Fitness, Inc., d/b/a Life Time Fitness
and LTF Club Operations Company, Inc.,
Respondent.

Filed July 27, 2010
Affirmed
Muehlberg, Judge[*]

Hennepin County District Court
File No. 27-CV-09-9713

John C. Goetz, James S. Ballentine, Schwebel, Goetz & Sieben P.A., Minneapolis, Minnesota (for appellants)

William L. Davidson, Brian A. Wood, Lind, Jensen, Sullivan & Peterson P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Stoneburner, Presiding Judge; Connolly, Judge; and Muehlberg, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

MUEHLBERG, Judge

Appellants Graham and Mary Waltz challenge the district court's grant of summary judgment to respondents Life Time Fitness, Inc. and LTF Club Operations Company, arguing that the district court erred by (1) enforcing an exculpatory clause in a membership agreement because appellant asserted a claim of willful negligence not subject to waiver; and (2) dismissing claims against respondent LTF Club Operations Inc., because that entity was not identified in the membership agreement. Because we conclude that the district court properly granted summary judgment, we affirm.

FACTS

Appellant Graham Waltz (Waltz) joined Life Time Fitness in Bloomington in 2006. The Club is owned and operated by respondent Life Time Fitness, Inc. d/b/a Life Time Fitness (Life Time). Respondent LFT Club Operations Company, Inc. (LTF Club) was named in this lawsuit as a business engaged in designing, constructing, remodeling and maintaining Life Time Fitness clubs in Minnesota.

Injury

Waltz frequented the Life Time Bloomington facility "several times a week." Following his workouts, he routinely used the men's sauna adjacent to the men's shower room. Several months prior to his accident, appellant observed that the men's sauna had a ceramic tile floor, that three removable floorboard sections covered the tile floor, and that each floorboard section was undergirded with two-by-fours and covered with platform board upon which sauna users could walk. Waltz stated that as

> a sauna user walked into the sauna, the two outside sections were built in such a way that they could not be moved without moving the third middle section. This middle section was cut several inches (perhaps 12-16") shorter than the length of the room. The middle section would slide when walked on creating a hazardous hole for people stepping into the sauna.

"After noting this safety hazard," Waltz "complained to Life Time's general manager." On subsequent visits to the Life Time facility by appellant, he "addressed these concerns on a weekly basis with [the] maintenance supervisor" up until the time of his injury.

On November 30, 2008, after his exercise-bike workout, appellant used the sauna. After reading for about 15 minutes, he left the sauna to take a 45-second shower, leaving his towel and reading material in the sauna. When he left the sauna for the shower room, "the center section floorboard was pushed up flush to the baseboard below the door of the sauna." Following his shower, consistent with his routine, he "entered the sauna again to dry off" before he got dressed. When he reentered the sauna, "the center floorboard section had slid or been pushed toward the back of the sauna, creating a significant hole which [he] did not expect." He stepped into the sauna and immediately fell down "striking [his] head on the floorboard, injuring [his] knee and cutting [his] toes."

On December 4, 2008, Waltz underwent surgery at Fairview Southdale Hospital to repair the quadriceps tendon in his right leg, which ruptured as a result of his fall in the sauna. When his leg developed an infection called necrotizing fasciitis, appellant was required to have his right leg amputated.

Membership Agreement with Life Time

When Graham Waltz joined Life Time Bloomington in 2006, he signed a Member Usage Agreement (MUA). The membership agreement contains the following paragraphs:

> ASSUMPTION OF RISK
> I understand that there is an inherent risk of injury, whether caused by me or someone else, in the use of or presence at a Life Time Fitness center, the use of equipment and services at a Life Time Fitness center, and participation in Life Time Fitness' programs. This includes, but is not limited to, indoor and outdoor pool areas with waterslides, a climbing wall area, ball and racquet courts, cardiovascular and resistance training equipment, personal training, and nutrition classes and services, member programs, a child center, and spa and cafe products and services. This risk includes, but is not limited to:
>
> 1) Injuries arising from the use of any of Life Time Fitness' centers or equipment, including any accidental or "slip and fall" injuries;
>
> 2) Injuries arising from participation in supervised or unsupervised activities and programs within a Life Time Fitness center or outside a Life Time Fitness center, to the extent sponsored or endorsed by Life Time Fitness; . . . .
>
> I understand and voluntarily accept this risk. I agree to specifically assume all risk of injury, whether physical or mental, as well as all risk of loss, theft, or damage of personal property for me, any person that is a part of this membership and any guest under this membership while such persons are using or present at any Life Time Fitness center, using any lockers, equipment, or services at any Life Time Fitness center or participating in Life Time Fitness' programs, whether such programs take place inside or outside of a Life Time Fitness center.

RELEASE OF LIABILITY

I waive any and all claims or actions that may arise against Life Time Fitness, Inc., its affiliates, subsidiaries, successors or assigns (collectively, "Life Time Fitness") as well as each party's owners, directors, employees, or volunteers as a result of any such injury, loss, theft, or damage to any such person, including and without limitation, personal, bodily or mental injury, economic loss or any damage to me, my spouse, my children, or guests resulting from the negligence of Life Time Fitness or anyone else using a Life Time Fitness center. I agree to defend, indemnify, and hold Life Time Fitness harmless against any claims arising out of the negligent or willful acts or omissions of me, any person that is a part of my membership, or any guest under this membership.

I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS ABOVE, INCLUDING, BUT NOT LIMITED TO, THE ASSUMPTION OF RISK AND RELEASE OF LIABILITY, AND I HAVE RECEIVED A COMPLETE COPY OF MY MEMBER USAGE AGREEMENT.

Appellants sued respondents Life Time and LTF Club over injuries Waltz sustained in his November 30, 2008 fall. Appellants served written discovery notices along with his complaint.

Pursuant to Minn. R. Civ. P. 12.03, Life Time filed a motion for a judgment on the pleadings based on Waltz's membership agreement with Life Time. Appellants moved to amend their complaint to assert a punitive damages claim, attaching Waltz's affidavit of May 28, 2009, in support of the motion. Appellants opposed Life Time's motion for judgment on the pleadings. In addition, appellants asked the district court to convert Life Time's rule 12.03 motion to a rule 56 motion for summary judgment. A hearing was held in district court regarding the motions.

The district court converted Life Time's rule 12.03 motion into a summary judgment motion, stating: "[s]ince both parties have submitted evidence outside of the pleadings, Defendants' motion shall be treated as one for summary judgment." The district court then granted the motion for summary judgment. Appellants challenge that decision.

DECISION

Appellants argue that the district court erred in granting summary judgment for respondents. On appeal from summary judgment, this court asks two questions: (1) whether there are any genuine issues of material fact; and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). A motion for summary judgment shall be granted when 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 any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03; *accord Asmus v. Ourada*, 410 N.W.2d 432, 434 (Minn. App. 1987). "On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

I.

Public Policy

"It is settled Minnesota law that, under certain circumstances, parties to a contract may, without violation of public policy, protect themselves against liability resulting from their own negligence." *Anderson v. McOskar Enters., Inc.*, 712 N.W.2d 796, 799-

800 (Minn. App. 2006) (quotation omitted). These agreements are generally viewed as being in the nature of a contractual or express assumption of risk. *Bunia v. Knight Ridder*, 544 N.W.2d 60, 62-63 (Minn. App. 1996), *review denied* (Minn. May 9, 1996). Exculpatory clauses are disfavored and strictly construed against the exculpated party. *Yang v. Voyagaire Houseboats, Inc.*, 701 N.W.2d 783, 789 (Minn. 2005). An exculpatory clause is invalid if it seeks to exonerate for intentional willful or wanton conduct. *Schobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 923 (Minn. 1982). "Willful and wanton conduct is the failure to exercise ordinary care after discovering a person or property in a position of peril." *Beehner v. Cragun Corp*., 636 N.W.2d 821, 829 (Minn. App. 2001), *review denied* (Minn. Feb. 28, 2002); *accord Havel v. Minneapolis & St. Louis R.R.*, 120 Minn. 195, 196, 139 N.W. 137, 138 (1913); *Sloniker v. Great N. Ry.*, 76 Minn. 306, 79 N.W. 168 (1899).

Appellants argue that the district court erred in concluding that Waltz's affidavit had insufficient evidence of wanton or willful conduct to preclude enforcement of the exculpatory clause. In its order granting respondents summary judgment, the district court stated:

> Plaintiffs' main argument is that the exculpatory agreement does not apply because Defendants' conduct exhibited greater-than-ordinary negligence.
>
> . . . .
>
> The facts submitted indicate that, although Waltz alleges that the sauna room floor constituted a safety hazard, he did not even notice the presence of this allegedly hazardous condition until several months before his accident.

> Even after noticing the allegedly dangerous condition of the floor, Waltz continued to use the sauna on a regular basis.

Waltz argues that it was not in the district court's purview to use a "balancing test" to determine whether a fact issue exists to preclude summary judgment, and that "the question of Life Time's causal heightened negligence is for jury deliberation, not summary judgment." In reviewing appellants' complaint and Waltz's affidavit, it is clear that Waltz told Life Time employees many times over the span of several months about his concern regarding the moving floorboard in the sauna. Based on the record, however, Waltz presented no other evidence regarding his allegation of willful-or-wanton-conduct at the summary-judgment hearing. Specifically, Waltz presented no evidence that on the date of the accident Life Time was aware of the particular gap in the floorboard in which Waltz tripped and Life Time failed to repair it. Given this lack of evidence that Life Time was aware of the particular hazard on the day of the accident, the district court did not err in ruling that appellant failed to establish willful and wanton negligence at the time of the accident, and we affirm the district court's decision. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 73 (Minn. 1997) (stating that summary judgment appropriate if reasonable persons could not draw different conclusions from the evidence presented).

Discovery Ruling

Appellants also argues that the district court erred because it refused appellants' request to conduct discovery. "A district court's decision to deny a motion for a continuance to conduct discovery is reviewed under an abuse-of-discretion standard." *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466, 473 (Minn. App. 2005), *review denied*

(Minn. June 14, 2005). Because appellants did not ask for discovery under Minn. R. Civ. P. 56.06, or identify what specific discovery they needed in order to oppose summary judgment, and never brought a motion to compel discovery, the district court did not abuse its discretion in refusing appellants' discovery request.

II.

Electronic MUA

Appellants contends that because Waltz signed "an electronic screened version" of a MUA that "showed only page 2 of the form" on the computer screen, he "does not recall at any time seeing or being shown the release language on page 1 of the form." The district court stated that "Waltz was presented with the signature page of the MUA. Above the signature line, there is a clear reference to the assumption of risk and release of liability provisions. Despite this language, Waltz never requested to see a full copy of the MUA prior to signing it. Therefore, Waltz's failure to read the MUA does not invalidate its provisions." Based on established contract law, the district court did not err in holding Waltz bound by what he signed. *See Currie State Bank v. Schmitz*, 628 N.W.2d 205, 210 (Minn. App. 2001) (stating that "if a party has the ability to read a written contract and fails to do so, the party is still bound").

Application of Release to LTF Club

Waltz contends that he should have been provided "with a paper copy of the MUA together with a list of Life Time's 25 subsidiaries" and that the district court erred in concluding that LTF Club benefitted from the exculpatory clause because the clause does not specifically identify LTF Club as a subsidiary. The district court stated:

> The MUA, however, clearly states that Life Time's subsidiaries are covered by the terms of the exculpatory agreement. Also, Waltz cannot argue that he was unfairly surprised by the addition of Life Time's subsidiaries to an exculpatory clause that he signed without reading.

In signing the MUA, Waltz "waive[d] any and all claims or actions that may arise against Life Time Fitness, Inc., its affiliates, *subsidiaries*, successors or assigns (collectively, 'Life Time Fitness'), . . . resulting from the negligence of Life Time Fitness." (Emphasis added.) Therefore, the district court did not err in determining that appellants' "surprise" regarding LTF Club was without merit.

Affirmed.