

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001994-MR

BEVERLY POOLE

APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 01-CI-00454

KENTUCKY LAKE MOTOR SPEEDWAY

APPELLEE

OPINION

REVERSING AND REMANDING

** ** * * *

BEFORE: GUIDUGLI and PAISLEY, Judges; and JOHN D. MILLER,
Special Judge.¹

GUIDUGLI, JUDGE. Beverly Poole ("Poole") appeals from an order of the Marshall Circuit Court granting Kentucky Lake Motor Speedway's motion for summary judgment. For the reasons stated below, we reverse and remand for further proceedings.

¹ Senior Status Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

On October 14, 2000, Poole was present at Kentucky Lake Motor Speedway ("the Speedway"), located in Marshall County, Kentucky, for the purpose of watching her husband engage in auto racing. The record indicates that persons coming to the Speedway could pay either \$10 for general admission, or \$20 for admission to the stands located in the pit area. Poole chose to pay \$20 to enter the pit area. Pursuant to the terms of the "pit pass", Poole was required to sign a release of liability. Persons paying \$10 for general admission were not required to sign a release. Poole signed the release, and entered the pit area.

Shortly thereafter, Poole was injured when she was struck by a race car which was being pushed by a Speedway-owned truck.² On October 10, 2001, she filed the instant action against the Speedway in Marshall Circuit Court. She claimed therein that the Speedway operated the truck in a negligent and reckless manner which resulted in her injuries. After tendering an answer and receiving answers to requests for admissions, the Speedway filed a motion on January 28, 2002, seeking summary judgment. As a basis for the motion, the Speedway maintained that the release operated to absolve it of any liability resulting from its alleged negligence. Poole countered that she

² The Speedway states in its brief that Poole was struck by the truck rather than the car, and that the truck was pulling the car.

was a mere spectator and not a participant, and as such was not bound by the Speedway's attempt to release itself from its own alleged negligence.

On September 9, 2002, the trial court rendered an order granting the Speedway's motion for summary judgment. It opined that Poole was neither a participant nor a spectator, but went on to conclude that the facts and the law required her to be treated as a participant for purposes of giving effect to the release. It found that Poole signed the release voluntarily and without coercion, that she freely entered the pit area, and that the release should be given legal effect. This appeal followed.

Poole now argues that the trial court erred in granting the Speedway's motion for summary judgment. She maintains that the release should not be given legal effect because Kentucky law prohibits the enforcement of exculpatory agreements unless made by a participant/racer. She goes on to argue that she was not a participant, that exculpatory agreements are not enforceable where the injuries resulted from wanton or willful conduct, and that other jurisdictions limit the enforcement of releases against spectators. She seeks to have the order of summary judgment reversed, and the matter remanded for further proceedings.

The corpus of Poole's claim of error is that public policy disfavors the enforcement of exculpatory agreements. She

maintains that, with respect to racing events, an exception to this public policy exists only for actual racing participants, and only where the participant is injured in the race for which he signed a release. Since, according to Poole, she clearly was not a racing participant, she argues that the court erred in giving effect to the release.

As the parties are aware, the general rule in Kentucky is that agreements which purport to release a party from the consequences of his own negligence are invalid. Meiman v. Rehabilitation Center, Inc., Ky., 444 S.W.2d 78 (1969). There are a number of public policy justifications for this rule, among them the recognition that parties are often engaged in unequal relationships which unduly compel participation. Id. at 78 (involving a waiver of liability agreement between a medical provider and a patient).

Certain fact patterns, though, have given rise to exceptions to the general rule. In Dunn v. Paducah International Raceway, 599 F.Supp. 612(W.D. Ky 1984), for example, the federal court applied Kentucky law and extra-jurisdictional cases to find that release of liability agreements are valid as between race tracks and race participants. It concluded that such relationships are not unequal (as is the case between a medical provider and patient), involve purely private interests, and are truly voluntary. It

went on to note that releases of liability as between tracks and participants promote the public interest in that racing events likely would not be conducted without such agreements.

Thus, the dispositive question is whether the trial court properly concluded that Poole should be treated as a participant for purposes of giving effect to the release or whether, as Poole maintains, she was a mere spectator whose status did not justify application of the Dunn exception. For the reasons stated herein, we must conclude that the trial court erred in treating Poole as something other than a spectator, and accordingly must reverse and remand.

There can be little argument but that Poole was a spectator and not a participant. She paid the fee of a spectator to enter the premises, and proceeded to a spectator area adjacent to the pits. She was present at the facility to watch her husband and others engage in racing. Poole was not driving a race car, nor engaged in "pit crew" activities, and as such could not properly be characterized as a participant.

It is also uncontroverted that the exception to the general rule against releases of liability is limited to actual participants. Dunn, supra. The trial court found that Poole was not a participant, but nevertheless treated her as one for purposes of avoiding the general rule against enforcing liability releases. While we are reluctant to tamper with the

trial court's rulings, we believe this constitutes reversible error. While attempting to fashion an equitable remedy, the trial court created a new category, to wit, a spectator who receives the legal status of participant. Neither the case law nor the public policy underlying Meiman and Dunn support this conclusion. A plaintiff must actually be a participant in order to be excepted from the general rule against enforcing liability waivers. Dunn, supra. Since Poole was not a participant, as the trial court properly found, she may not be barred from asserting a negligence liability claim against the track. As such, she is entitled to proceed with her claim.

For the foregoing reasons, we must reverse the summary judgment of the Marshall Circuit Court, and remand the matter for further proceedings.

ALL CONCUR.

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