Weekly Law Resume

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WEEKLY LAW RESUME™
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Negligence - Doctrine of Primary Assumption of Risk Does Not Apply To Amusement Park Rides

Smriti Nalwa v. Cedar Fair, LP
Court of Appeal, Sixth District (June 10, 2011)

Since *Knight v. Jewett* (1992) 3 Cal.4th 296, courts have applied the doctrine of primary assumption of risk as a bar to negligence claims for injuries resulting from the inherent dangers of recreational activities. *Knight* determined that there is "no duty of due care" to protect others from dangers that are inherent to a sport or activity. Most cases have applied *Knight* to "active sports," but multiple cases have extended the doctrine to non-competitive activities, such as river rafting or attending a baseball game. In *Nalwa*, the court held that amusement park rides (in this case bumper cars) are not within the scope of activities that *Knight* encompasses.

Plaintiff/Appellant Smitri Nalwa was a patron of the Great America Amusement Park in Santa Clara. While there, Nalwa took her children on the bumper car ride, riding as a passenger with her son. During the ride, Nalwa's car was hit head on and then immediately from behind. She braced herself by placing her hand on the dash and resultantly fractured her wrist. Nalwa sued Great America (Cedar Fair), alleging common carrier liability, negligence, strict liability, products liability, and willful misconduct. Nalwa eventually dismissed the product liability claim, and the trial court granted summary judgment in Cedar Fair's favor on the remaining claims. The trial court determined that the assumption of risk doctrine barred both plaintiff's negligence claims and her common carrier claims, as being bumped was an inherent risk in the activity of riding bumper cars.

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The appellate court reversed, declining to apply primary assumption of risk on three grounds. First, the court concluded that public policy concerns in the amusement park setting are reversed from those in *Knight*, where the concern was chilling the vigorous participation in sport by imposing liability for inherent dangers. As the court concluded, public policy supports the imposition of a duty on the amusement park to protect the public from the possible dangers of the rides. The court reasoned that amusement parks promote the illusion of danger with the assurance of a ride's actual safety. As the court put it, "The rider expects to be surprised and perhaps even frightened, but not hurt." Further, the court referenced California's "elaborate" regulatory scheme governing amusement park ride safety in support of imposing a duty on the operators of such rides.

Second, the court determined that amusement park rides are not "sporting activities," as defined by Knight and its progeny. The court referenced *Shannon v. Rhodes* (2001) 92 Cal.App.4th 792 (a recreational boating case) to define a sport as: "an activity 'done for enjoyment or thrill, [that] requires physical exertion as well as elements of skill, and involves a challenge containing a potential risk of injury,'" and added that the activity "must entail 'some pitting of physical prowess (be it strength based [i.e. weight lifting], or skill based [i.e. golf]) against another competitor or against some venue.'" Using these principles the court concluded that riding in a bumper car is "too benign" to be considered a sport within the *Knight* framework.

Third, the court determined that the amusement park's position as the owner imposes a duty of care to minimize risks. The court repeatedly pointed to the park's position of control over the premises, which "they hold open to the public for profit." The court concluded: "It is entirely consistent with both *Knight* and the prevailing commercial premises liability case law to impose reasonable duties to minimize risk on defendants who hold their premises open to the public for profit." The evidence presented to the trial court showed that Cedar Fair knew head-on collisions were dangerous and had taken steps to eliminate or reduce head-on collisions at its other parks, but had not at Great America. The court held that this evidence presented triable issues of fact as to whether Cedar Fair breached its duty to minimize the risks of head-on collisions.

Regarding the common carrier and willful misconduct claims, the court similarly determined that triable issues of fact remained, precluding summary judgment.

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COMMENT

This case reaffirms the principles of the doctrine of assumption of risk, including a two-step analysis of 1) the nature of the activity or sport, and 2) the relationship between the parties. Under the first prong, this court has narrowed the scope of Knight to exclude activities which do not fit within the definition of sport, as defined by *Shannon v. Rhodes* quoted above. Included in this prong is an analysis of public policy, specifically whether imposing a duty will chill public participation in the activity, as opposed to promoting public safety. This case may lead to stricter scrutiny and public policy analysis in cases involving recreational activities, as compared to "active sports," before *Knight* is applied to bar a negligence claim. Under the second prong, the court follows the trend of imposing a higher duty on commercial owners/operators to "minimize inherent risks." The rationale is that proprietors who control the premises and operate for profit are "uniquely positioned to eliminate or minimize certain risks, and are best financially capable of absorbing the relatively small cost of doing so." As such, commercial owner/operators have a duty to "minimize" known risks, even where those risks are inherent to the activity.

For a copy of the complete decision see:

HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/A126865.PDF

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