COURT OF APPEALS
DECISION
DATED AND FILED

June 13, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-3099-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

KATHERINE H. LEETE,

PLAINTIFF-APPELLANT,

V.

GENERAL CASUALTY COMPANY OF WISCONSIN,

DEFENDANT-RESPONDENT,

STATE FARM FIRE AND CASUALTY COMPANY AND HUMANA EMPLOYERS HEALTH INSURANCE COMPANY,

DEFENDANTS.

APPEAL from an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Katherine Leete appeals a summary judgment that dismissed her lawsuit against General Casualty Company of Wisconsin, the liability insurer for the Lakeshore Municipal Golf Corporation.[1] Leete suffered injuries on Lakeshore golf course when her golf cart hit a hole, throwing her to the ground. The trial court ruled that Lakeshore was a nonprofit entity and enjoyed recreational immunity from liability. Leete makes five arguments on appeal: (1) golf is not a "recreational activity" within the meaning of the recreational immunity statute, WIS. STAT. § 895.52; (2) the recreational immunity statute cannot be applied without resort to its legislative history and underlying policy; (3) Lakeshore was also a governmental body and thereby had a lesser degree of recreational immunity than a pure nonprofit entity; (4) golf is an "organized team sport" excepted from recreational immunity; and (5) Lakeshore had no recreational immunity for a "hazard" it either made or failed to cure. We reject these arguments and affirm the summary judgment.

¶2 The following facts were undisputed on summary judgment. Lakeshore operates the Lakeside Municipal Golf Course and is a nonprofit entity for federal income tax purposes. The City of Oshkosh formerly operated the course and still owns it, now leasing it to Lakeshore. Lessees like Lakeshore are "landowners" for recreational immunity purposes. *See* WIS. STAT. § 895.52(1)(d)1.

¶3 On May 9, 1998, Leete was golfing at the course and was a passenger in her friend's golf cart. One of the golf cart's wheels hit a hole. The hole was overgrown with long grass and was approximately fourteen inches in

[1] This is an expedited appeal under WIS. STAT. RULE 809.17 (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

diameter and five inches deep. Workers at the course suspected that the hole was all that remained of a tree stump removed at an unknown time in the past. The hole was rather old and course workers did not consider it unusual for the rough. As the cart struck the hole, the cart tilted and jarred Leete. She fell off the cart onto the ground, breaking her leg in five places. Another golfer who witnessed the incident stated that the cart had just started out from neutral when it hit the hole.

¶4 The trial court properly granted summary judgment if there was no dispute of material fact and Lakeshore was entitled to judgment as a matter of law. *See* ***Powalka v. State Life Mut. Assur. Co.***, 53 Wis. 2d 513, 518, 192 N.W.2d 852 (1972). Summary judgment is improper if the facts permit more than one reasonable inference. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 317, 401 N.W.2d 816 (1987). Leete's contentions require that we construe WIS. STAT. § 895.52, a question of law we review de novo. We must give the words in a statute their plain and ordinary meaning. *See* ***State v. Mendoza***, 96 Wis. 2d 106, 114, 291 N.W.2d 478 (1980). General words imply broad coverage. *See* ***Wilke v. First Fed. Sav.***, 108 Wis. 2d 650, 654, 323 N.W.2d 179 (Ct. App. 1982). We need not look at extrinsic sources for the legislature's intent or the public policy behind the statute unless the statute was ambiguous. *See* ***Cox v. DHSS***, 184 Wis. 2d 309, 316, 517 N.W.2d 526 (Ct. App. 1994). Statutes are ambiguous if they reasonably allow more than one construction. *See* ***State v. Kirch***, 222 Wis. 2d 598, 602-03, 587 N.W.2d 919 (Ct. App. 1998). We read statutes de novo as questions of law. *See* ***Minuteman, Inc. v. Alexander***, 147 Wis. 2d 842, 853, 434 N.W.2d 773 (1989).

¶5 We agree with the trial court that golf is a "recreational activity" subject to recreational immunity. The statute is not ambiguous, and we therefore apply its words to effect their ordinary meaning. WISCONSIN STAT. § 895.52(1)(g)

defines "recreational activity" as "any outdoor activity undertaken for the purpose of exercise, relaxation or pleasure," including activities such as hunting, fishing, trapping, camping, picnicking, exploring caves, nature study, bicycling, horseback riding, birding, and "any other outdoor sport, game or educational activity." *See* ***id.*** This definition is broadly worded, evincing the legislature's intent that the term apply to a wide range of outdoor activities. *See* ***State v. Bizzle***, 222 Wis. 2d 100, 110, 585 N.W.2d 889 (Ct. App. 1998). Its all-embracing terms include an activity like golf, which by its nature is played outdoors for the innate purpose of exercise, relaxation or pleasure. We see nothing in the statute or record that requires a different conclusion. We also reject Leete's contention that this description of the nature of golf is an improper "subjective" assessment of activity. The nature of golf is common knowledge. Trial and appellate courts may consider matters of common knowledge on summary judgment. *See* ***Donaldson v. Urban Land Interests, Inc.***, 205 Wis. 2d 408, 415-16, 556 N.W.2d 100 (Ct. App. 1996).

¶6 Leete asserts, however, that prior case law compels us to look beyond the statute's words to its legislative policy. Leete notes that the Wisconsin Supreme Court has already addressed this issue. In ***Quesenberry v. Milwaukee County***, 106 Wis. 2d 685, 309 N.W.2d 889 (1982), the court, considering a former statute, ruled that golf was not a recreational activity. The court applied the rule of *ejusdem generis*, holding that golf was dissimilar to activities specifically enumerated by the statute, such as hunting, fishing, and berry picking. *See* ***id.*** at 692-93. These enumerated activities typically took place on natural, undeveloped land, unlike golf, which is played on the landscaped, sculptured terrain of a golf course. *See* ***id.***

¶7 Leete reads ***Quesenberry*** as taking a restrictive view of immunity. In her view, the ***Quesenberry*** court reached the correct result but used the wrong

methodology—strict construction. She acknowledges that the legislature later reenacted the statute, in part she believes to overrule ***Quesenberry***, and instructed courts to now apply immunity liberally in favor of landowners for activities substantially similar to those expressly listed in the statute. *See* 1983 WIS. ACT 418 § 1. Leete maintains, however, that the new enactment "may have" overruled only ***Quesenberry***'s strict construction methodology, not its holding on golf.

¶8 On this basis, Leete asks us to look beyond the statute's words to its underlying policy to ascertain whether the legislature intended the new act to leave ***Quesenberry***'s holding on golf intact. She argues that like ***Quesenberry***, this is not a case where someone went on another's property to pick berries, but one where the public was invited for commercial purposes. We reject Leete's argument. ***Quesenberry*** applied the rule of *ejusdem generis* to the prior statute, limiting its general words by preceding specific words. *See* ***id.*** at 693. The new statute is written differently; its general words are more expansive and its enumerated recreational activities more wide ranging. *Compare* WIS. STAT. § 29.68(1) (1977) with WIS. STAT. § 895.52(1)(g) (1997-98). The new statute uses all-inclusive terms like "any outdoor activity" and "any other outdoor sport, game or educational activity" to describe "recreational activity," evincing an intent to broaden coverage. *See* ***Wilke***, 108 Wis. 2d at 654. Read from this standpoint, the new statute's enumerated recreational activities act more to illustrate, than to limit, the general words. *See* ***DOR v. Dow Jones & Co.***, 148 Wis. 2d 872, 880, 436 N.W.2d 921 (Ct. App. 1989). The statute, as broadened, now plainly covers golf, and we therefore need not look beyond the statute for contrary legislative intent. *See* ***Hull v. State Farm Mut. Auto. Ins. Co.***, 222 Wis. 2d 627, 641-42, 586 N.W.2d 863 (1998).

¶9 Next, we reject Leete's argument that Lakeshore is a governmental body, in addition to being a nonprofit entity. The statute grants a lesser degree of immunity to governmental bodies, leaving them liable for negligence if they charge spectators an admission fee. *See* WIS. STAT. § 895.52(4) and (5). First, Leete has not developed this argument, and we therefore need not address it. *See* ***State v. Gulrud***, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987). Second, the trial court's express holding that Lakeshore was a nonprofit entity and not a governmental body constituted a ruling that Lakeshore was not both. Third, Leete has shown no dispute of material fact on the issue. The record shows that Lakeshore functioned as a self-governing entity with full control over course operations. We see no indication of either direct or indirect City control.[2]

¶10 Last, WIS. STAT. § 895.52 is remedial in nature, enacted to lessen landowners' liability. *See* ***Stann v. Waukesha County***, 161 Wis. 2d 808, 824-25, 468 N.W.2d 775 (Ct. App. 1991). We read the statute to grant the higher of two levels of immunity to landowners who qualify for both. *Cf.* ***Erdman v. Jovoco, Inc.***, 181 Wis. 2d 736, 765, 512 N.W.2d 487 (1994). As a result, even if Lakeshore was a dual qualifier, it enjoyed the higher degree of immunity afforded nonprofit entities.

[2] The City did not have the detailed day-to-day control over course operations needed to make Lakeshore a governmental body. For example, the City does not have the right to hire and fire Lakeshore's employees. Rather, the City exercised what amounted to relatively low oversight. Lakeshore bylaws put a City council member on the board of directors. The City Director of Parks is also a permanent member of the board. Every year, Lakeshore must provide the City an operating budget, revenue budget, and capital improvement budget, and the City has the right to receive quarterly financial reports. The City may inspect and verify Lakeshore's financial records. It may also demand other statistical records and cash register tapes. The City has the power to approve all Lakeshore insurance policies, while Lakeshore has agreed to indemnify and hold the City harmless for negligence. None of these powers, however, deal directly with the particulars of daily course operations. In short, the City's powers fall short of making Lakeshore a governmental agency.

¶11 We briefly address Leete's remaining two arguments. First, the record does not show that Leete's golf outing was an "organized team sport activity sponsored" by Lakeshore, within the meaning of that exception to recreational immunity. *See* WIS. STAT. § 895.52(1)(g). Leete identifies no evidence that she was taking part in team golf or that Lakeshore was sponsoring a team event. She hypothetically claims, rather, that husbands and wives often play golf as part of competing teams. This assertion does not establish that Leete and her husband were competing at the time of the injury, and it will not defeat summary judgment. Second, the statute grants immunity to any nonprofit landowner responsible for a hazard, as long as the landowner's action or inaction as to the hazard was merely negligent, not malicious. *See* WIS. STAT. § 895.52(5). In other words, the legislature has made malice, not hazard, the linchpin of liability for landowners in the recreational activity setting. *Cf.* ***Wirth v. Ehly***, 93 Wis. 2d 433, 446-47, 287 N.W.2d 140 (1980) (hazard not equivalent of malice). Leete has given no evidence of malice by Lakeshore, and there is no basis to infer malice from the nature and scope of the hazard itself. Therefore, the trial court properly granted summary judgment.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.