

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF RILEY ROBINSON, by REBECCA
MILNE, Personal Representative

Plaintiff-Appellant,

v

LARRY ROBINSON, SR., and ANN ROBINSON

Defendants-Appellees.

FOR PUBLICATION
December 28, 2021
9:10 a.m.

No. 354534
Missaukee Circuit Court
LC No. 19-009860-NO

Before: MURRAY, C.J., and MARKEY and RIORDAN, JJ.

MURRAY, C.J.

Plaintiff, as personal representative of the estate of Riley Robinson, appeals as of right the trial court’s order granting defendant Larry Robinson, Sr., summary disposition under MCR 2.116(C)(10).¹ Plaintiff argues that the trial court erred when it determined that the recreational land use act (RUA), MCL 324.73301 *et seq.*, applied to this case over the civil liability act, MCL 257.401 *et seq.*, of the Michigan Vehicle Code (MVC). Plaintiff also challenges the trial court’s denial of her motion for leave to amend her complaint on the basis that adding an owner’s liability claim under the MVC was futile. For the reasons expressed below, we affirm.

I. BACKGROUND AND PROCEDURAL HISTORY

¹ While plaintiff indicated in her brief that she is also challenging the trial court’s order granting summary disposition under MCR 2.116(C)(10) in favor of defendant Ann Robinson, plaintiff does not argue that the trial court erred by granting her motion. As plaintiff has failed to adequately brief this argument, it is abandoned. See *Ypsilanti Charter Twp v Kircher*, 281 Mich App 251, 287; 761 NW2d 761 (2008) (“Defendant’s failure to properly address the merits of his assertion of error constitutes an abandonment of this issue on appeal.”). Therefore, we will address plaintiff’s arguments on appeal solely as to defendant Larry Robinson, Sr.

This action arises as a consequence of an ORV² accident occurring on defendant's property, involving his grandchildren, Payton Robinson and Riley Robinson, which resulted in Riley's death. Rebecca Milne took her children, Payton, Riley, and Tyler Robinson, to visit defendant at his cabin in northern Michigan. The northern Michigan land consists of a cabin, pole barn, several wooded acres, and three trails often used for riding ORVs. On the day of the accident, 14-year-old Payton operated defendant's ATV on the trail while 12-year-old Riley sat as her passenger. After some time, Tyler borrowed his mother's keys to go looking for the girls. Tyler traveled down the trail when he discovered the ATV flipped over with Payton stuck underneath the center portion and Riley laying down in front of it. Payton and Riley were immediately transported to the hospital with life-threatening injuries, with Riley passing away soon after. Payton could not recall the details of the accident.

Before the accident, Payton and Riley frequented ATV rides on their grandfather's property. Payton testified that she had been on an ATV at least over 30 times before the accident and received informal training on operating an ATV from her father, Larry Jr. However, the ATV used on the day of the accident was bigger and more powerful than the ATVs Payton previously rode.

Plaintiff filed the instant action alleging that defendant was liable for Riley's injuries because he was negligent. Defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that the claims were barred under the Recreational Land Use Act ("RUA"), MCL 324.73301, because plaintiffs were using defendant's land to participate in the outdoor recreational activity of riding an ORV. Defendant also argued that he was entitled to summary disposition because plaintiffs failed to plead gross negligence or willful and wanton misconduct, a consideration required for liability to attach under the RUA. MCL 324.73301(1).

In response, plaintiff argued that the civil liability act, MCL 257.401 *et seq.*, of the MVC should instead be imposed on defendant for negligent operation of the ORV notwithstanding the protections afforded landowners under the RUA. However, because plaintiff had failed to specifically state a claim under the MVC in her complaint, she sought leave to amend her complaint under MCR 2.118 to cure the deficiency. Plaintiff argued in the alternative that, to the extent the RUA was applicable, there were questions of material fact as to whether defendant's conduct amounted to gross negligence.

The trial court granted summary disposition to defendant under MCR 2.116(C)(10), concluding that the RUA applies to the underlying activities and plaintiff's ordinary negligence claims under the MVC were "trumped" by the RUA. The court denied plaintiff's motion to amend her complaint to include the MVC claim since the amendment would have been futile or moot. The court also concluded that the record did not support a finding of gross negligence or willful

²An "ORV" is a "motor-driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain . . . An ATV is an ORV." MCL 324.81101(u).

and wanton misconduct sufficient to establish a question of material fact regarding the level of defendant's negligence.

Plaintiff now raises only two issues on appeal. First, plaintiff argues that the RUA does not apply to her claim because the owner's liability provision of the MVC, MCL 257.401(1), is the more applicable statute. Second, plaintiff argues that she should have been permitted to amend her complaint to add a claim under the owner's liability provision of the MVC.

II. ANALYSIS

A. RECREATIONAL LAND USE ACT

Plaintiff argues that the trial court erred by granting summary disposition because the RUA does not apply to these circumstances, and thus she can maintain an owner's liability claim against defendant.

A trial court's decision on a motion for summary disposition is reviewed de novo. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). This Court also reviews de novo whether a trial court properly interpreted a statute. *Neal v Wilkes*, 470 Mich 661, 664; 685 NW2d 648 (2004), reh den 471 Mich 1201 (2004). Summary disposition is appropriate under MCR 2.116(C)(10) when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A motion under MCR 2.116(C)(10) "tests the factual sufficiency of a claim." *El-Khalil*, 504 Mich at 160 (emphasis omitted). When the record "leave[s] open an issue upon which reasonable minds might differ," a genuine issue of material fact exists. *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018) (quotation marks and citation omitted; alteration in original). When reviewing a motion under MCR 2.116(C)(10), this Court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.*

The RUA applies to ATV accidents on recreational property, and provides:

Except as otherwise provided in this section, a cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. [MCL 324.73301(1).]

Simply put, "an owner of land is not liable to a person who injures himself on the owner's land if that person has not paid for the use of the land and that person was using the land for a specified purpose, unless the injuries were caused by the owner's gross negligence or willful and wanton misconduct." *Neal v Wilkes*, 470 Mich at 667-668. The purpose of the RUA is to "provide immunity for landowners from personal-injury lawsuits by persons using their property recreationally, regardless of age, i.e., even when minors are injured." *Woodman ex rel Woodman v Kera LLC*, 486 Mich 228, 291; 785 NW2d 1 (2010). The RUA is "a liability-limiting" rather

than “a liability-imposing, act[.]” meaning it “did not create a cause of action against landowners” but instead “eliminated liability for negligence,” leaving “liability only for gross negligence and wilful and wanton misconduct.” *Ballard v Ypsilanti Twp*, 457 Mich 564, 577-578; 577 NW2d 890 (1998).

Plaintiff’s complaint alleges that defendant was liable in negligence for the injuries plaintiff sustained while riding the ATV on defendant’s property, and argues that she has a viable owner’s liability claim against defendant notwithstanding the RUA. The civil liability provision of the MVC, MCL 257.401(1), provides:

[t]he owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state or the ordinary care standard required by common law. The owner is not liable unless the motor vehicle is being driven with his or her express or implied consent or knowledge.

The MVC broadly imposes liability for the negligent operation of a motor vehicle if the owner knows or has consented to the operation of that motor vehicle. MCL 257.401(1). Under the MVC, an ORV is a motor vehicle for the purposes of MCL 257.401(1), and an ATV is an ORV, MCL 324.81101(u).³ Similarly, the RUA undoubtedly includes the use of an ORV or ATV within the meaning of “outdoor recreational use or trail use[.]” See *Neal*, 470 Mich at 670-671 (“Plaintiff does not contest the fact that riding an ATV on another’s land is an outdoor recreational use of another’s land within the meaning of the RUA.”). Additionally, the statute lists both “motorcycles” and “snowmobiles” as types of vehicles covered by the act, and an ATV is similar in nature to those.

Because both the RUA and the MVC apply to ATVs, we must determine which to apply. Typically, the statute that more specifically applies to the subject matter must control. *Livonia Hotel LLC v City of Livonia*, 259 Mich App 116, 131; 673 NW2d 763 (2003) (“when two statutes or provisions conflict, and one is specific to the subject matter while the other is only generally applicable, the specific statute prevails”); see also *Miller v Allstate*, 481 Mich 601, 613; 751 NW2d 463 (2008) (“In order to determine which provision is truly more specific and, hence, controlling, we consider which provision applies to the more narrow realm of circumstances, and which to the more broad realm”). We conclude that the RUA governs as it applies with greater specificity to the circumstances of the case than does the MVC. The RUA applies when a person who is on the land of another, without paying the owner, for the purpose of “motorcycling, snowmobiling, or any other outdoor recreational use or trail use” is injured. See MCL 324.73301(1). Clearly, the RUA is the more specific statute as it deals directly with the potential liability of landowners when other persons recreationally use their property with ATVs. By contrast, the MVC applies to all motor vehicles in all places and circumstances. The Legislatures intention to have the provisions

³ An “ATV” is defined as a “3- or 4-wheeled vehicle designed for off-road use that has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 500cc gasoline engine or an engine of comparable size using other fuels.” MCL 324.81101(a).

of the RUA apply to ATV accidents on recreational property is clear from the express language of the statute.

Having determined that the RUA applies, we turn to the question of whether the circumstances surrounding the accident on defendant's property fall directly within the purview of the statute so as to bar plaintiff's claims. Plaintiff did not pay defendant any consideration to use his land for the recreational activity, riding ATVs. As such, plaintiff's action is clearly subject to the RUA. Accordingly, defendant cannot be liable under a theory of negligence⁴ as the "liability-limiting" nature of the RUA eliminates a landowner's liability for negligence. *Ballard*, 457 Mich at 577-578.

Based on our conclusion that the MVC does not apply, we also hold that the trial court did not abuse its discretion by denying plaintiff's motion to amend the complaint because plaintiff's proposed amendment to add an owner's liability claim would be futile. *Wolfenbarger v Wright*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 350668), slip op at 6.

Affirmed.

/s/Christopher M. Murray

/s/Jane E. Markey

/s/Michael J. Riordan

⁴ Plaintiff concedes on appeal that defendant was not grossly negligent and his actions did not constitute wanton and willful conduct.