

3-13-2018

***Allen v. Town of Prescott Valley, CA-CV 16-0728, (2018)***

An Arizona Municipality's nominal use fees will not preclude it from recreational immunity under Ariz. Rev. Stat. 33-1551, but the municipality's maintenance failures regarding the recreational area could render it subject to liability for gross negligence.

Jerrid Allen sustained serious head injuries while playing softball in a league sponsored by the Town of Prescott Valley. When Allen sued, the Town moved for summary judgment under Arizona's recreational-immunity statute, Ariz. Rev. Stat. § 33-1551. When trial court granted summary judgment, Allen appealed alleging because the Town charged a fee for each softball team's admission to the league and because the Town's conduct was grossly negligent, it was not entitled to qualified immunity.

Under the statute, recreational users may only recover against a municipality when they prove the town acted "willfully, maliciously, or through grossly negligent conduct." A potential plaintiff is not a recreational user if the individual pays an admission fee to use the facility. However, a "nominal" fee to offset the costs of maintaining the premises are not considered admission fees. The statute does not define "nominal" and provides no examples or illustrations for guidance.

Allen's argument on appeal was the Town's league registration fee was too high to be nominal. The Court looked to the legislative history of the statute and the underlying case law regarding whether municipal fees charged in the past were nominal. It performed a fee per person/per game analysis of the league's fees. Based on these factors, the Court determined the Town's league registration fee was "nominal" as intended by the statute.

Turning to whether the Town's conduct was grossly negligent, the Court examined the evidence presented by Allen in response to the Motion for Summary Judgment. The record demonstrated the lights on two of the field's poles were not functioning, causing "dark spots" in the outfield. The record also showed the Town had known about the issue for several days but did not repair the malfunctioning lights. Finally, the game's umpire, a Town-hired employee, could have halted play, but did not so until after Allen's injury. Based on these factors, the Court of Appeals determined a genuine issue of material fact existed regarding whether the Town's conduct was grossly negligent.

For these reasons, the Court of Appeals affirmed the Superior Court's decision holding the league registration fee was "nominal," but reversed the summary judgment and remanded for further proceedings on the gross-negligence issues.