

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JULIE HLYWA,

Plaintiff/Counter-Defendant-  
Appellant,

v

LIBERTY PARK OF AMERICA,

Defendant/Counter-Plaintiff,

and

DENISE POND,

Defendant-Appellee.

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UNPUBLISHED

July 15, 2010

No. 291759

Macomb Circuit Court

LC No. 2008-000662-NO

Before: TALBOT, P.J., and FITZGERALD and DAVIS, JJ.

PER CURIAM.

The issue presented in this appeal is whether defendant Denise Pond engaged in reckless misconduct when she allegedly performed a slide tackle that resulted in injury to plaintiff Julie Hlywa while both were participating on opposing teams in an adult indoor soccer game at defendant Liberty Park of America. Plaintiff appeals as of right from the trial court's order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant Pond ("defendant")<sup>1</sup>. This appeal has been decided without oral argument pursuant to MCR 7.214(E). We affirm.

According to plaintiff, she was playing left forward and was near the middle of the field when a pass came up the left side. She looked back, saw the pass, looked forward, saw defendant who was playing goalie, and positioned herself to the ball. She was facing the "left corner kick area" and preparing to take a shot when she observed defendant running toward the ball. Plaintiff did not see any other action because her head was down as she prepared to take a shot. Her foot was in motion to kick the ball. She then felt her feet being taken out from under

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<sup>1</sup> Plaintiff stipulated to the dismissal of her claims against defendant Liberty Park.

her and propelled forward. As she fell, she braced herself with her left arm and injured it. In her opinion, only a slide tackle would have caused her feet to fly up. While she was on the ground, she noticed the goalie on the ground as well. Plaintiff acknowledged that she did not believe that defendant intended to hurt her but, rather, that defendant “was trying to get the ball away from me because she knew I was about to take my shot.” Plaintiff presented the affidavits of two of her teammates who indicated that “the goalie came out of the box and slid feet first to clear the ball.” Defendant testified in her deposition that the ball was between her and plaintiff and she kicked the ball out of bounds. After clearing the ball, defendant was standing and facing the sidelines. She then turned and saw plaintiff on the ground. Defendant did not recall whether she made contact with plaintiff.

This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Id.* at 120. A reviewing court must consider the affidavits, depositions, admissions, and other documentary evidence submitted by the parties and, viewing that evidence in the light most favorable to the nonmoving party, determine whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. *Id.*

Reckless misconduct is the standard of care for coparticipants in a recreational activity. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 89; 597 NW2d 517 (1999). A defendant’s violation of a rule does not necessarily establish reckless misconduct. *Id.* at 91-93; *Behar v Fox*, 249 Mich App 314, 321; 642 NW2d 426 (2001). Rather, the recklessness standard requires that the defendant’s action demonstrate a willingness or indifference to the injury of the coparticipant. *Id.* at 319. Conduct within the range of ordinary activity involved in the sport is not reckless. *Ritchie-Gamester*, 461 Mich at 90 n 10. A participant accepts the risk of injury from dangers that are “inherent in the activity,” and are “obvious and necessary,” *id.* at 87, and players expect that “no liability will arise unless a participant’s actions exceed the normal bounds of conduct associated with the activity,” *id.* at 94.

In granting defendant’s motion, the trial court reasoned that the risk of injury from physical contact is inherent in soccer. We do not disagree with that statement. In *Behar*, 249 Mich App at 318, this Court observed that “the risk of injury from a collision or kick is present whenever an individual plays soccer.” In *Ritchie-Gamester*, 461 Mich at 87-88, the Court emphasized participants’ acceptance of risks inherent in the activity. *Ritchie-Gamester* recognized, however, that a distinction should be drawn between contact that may be described as inherent, obvious, necessary, or within the range of ordinary activity, and contact that results from “egregious conduct,” or that exceeds the normal bounds of conduct associated with the activity. *Ritchie-Gamester*, 461 Mich at 89, 94.

The testimony established that plaintiff had played indoor soccer for three or four years. She was aware that there was a possibility that she could be kicked, tripped, pushed, or shoved. According to plaintiff, a slide tackle occurs when a player goes from a standing position into a sliding position and the foot makes contact with the ball to clear the ball away. Plaintiff acknowledged that a slide tackle is “a recognized move in soccer under the general rules of soccer.” Liberty Park’s decision not to allow the use of slide tackles in its facility, and its designation of the use of a slide tackle as a technical foul in games played in Liberty Park’s facility, does not render the move outside the normal bounds of conduct associated with soccer.

Although plaintiff relies on the prohibition against the use of slide tackles in support of her argument that defendant's conduct was reckless, in *Ritchie-Gamester*, 461 Mich at 93-94, our Supreme Court expressly refused to adopt the concurrence's position that breaches of rules regarding safety should be actionable. See also *Behar* 249 Mich App at 32. Indeed, the facility's inclusion of slide tackling as a specified foul in the facility's rules indicates that the conduct is inherent, foreseeable, and within the range of ordinary activity of soccer. Because plaintiff failed to establish that defendant's conduct exceeded the normal bounds of conduct associated with the activity, summary disposition was properly granted to defendant.

Affirmed.

/s/ Michael J. Talbot  
/s/ E. Thomas Fitzgerald  
/s/ Alton T. Davis