STATE OF MICHIGAN

COURT OF APPEALS

ROBERT SCOTT SWANSON and BONNIE SWANSON,

Plaintiffs-Appellants,

v

BITTERSWEET SKI RESORT, INC., and CHRISTINA REGALADO,

Defendants-Appellees.

FOR PUBLICATION
January 09, 2026
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No. 366258
Allegan Circuit Court
LC No. 2022-065127-NO

ON REMAND

Before: PATEL, P.J., and RICK and FEENEY, JJ.

PER CURIAM.

This matter returns to this Court on remand after our Supreme Court reversed Part III(B) and vacated Part III(A) of this Court's ruling in *Swanson v Bittersweet Ski Resort, Inc*, ___ Mich App ___; ___ NW3d ___ (2024) (*Swanson I*) (Docket No. 366258). On remand, we hold that the terms of the release of liability at issue in this case does not release defendants from claims of common-law gross negligence. We further hold that the Ski Area Safety Act of 1962 (SASA), MCL 408.321 *et seq*., does not categorically preempt plaintiffs' gross negligence claim.

We affirm in part, reverse in part, and remand.

I. FACTUAL BACKGROUND

In *Swanson I*, we provided the following pertinent factual background:

> This action arises out of injuries sustained by plaintiff Robert Swanson on February 9, 2019, at Bittersweet Ski Resort in Otsego, Michigan. Robert was working as a volunteer ski patroller at the resort. At approximately 3:30 p.m. that day, Robert boarded a ski lift to go back to the top of the ski hill. He was carrying a toboggan, which needed to be hooked to the ski lift for transport. Usually, a toboggan would be hooked to the bottom of the ski lift seat so that it is "directly in

> line with the chair." On the day in question, defendant Christina Regalado was operating the ski lift that Robert was using. According to Robert, Christina directed him to approach the chair on an angle and took the toboggan from him, pulling it in front of the moving chair. She pulled the toboggan in front of the advancing chair at an angle not in line with the direction of travel of the chair, then shifted it so it was in line with the chair over the top of Robert's right ski. Robert was forced to grab the toboggan, which weighed approximately 70 to 80 pounds, and hook it to the chair while the lift was in motion.
>
> As the ski lift left the loading platform and rose into the air, Robert's ski was still trapped by the toboggan. Robert's right ski snagged on an unidentified object—possibly snow or ice—causing his leg to twist under the toboggan. Robert began yelling for Christina to stop the lift. Robert flipped off the back of the chair and was hanging onto it with his right arm as it moved forward. According to Robert, Christina did not notice him or stop the lift. Christina testified in her own deposition that she had approximately seven seconds to load each chair and could not continue watching Robert because she was already moving on to load the next chair. She further testified that before the ski lift moved off the loading platform, she asked Robert "if he was good," and stated that he gave her a thumbs up and said that he was fine. She did not see him struggle with the toboggan after leaving the loading platform. Robert lost his grip and fell approximately 20 feet to the ground. Robert was injured in the fall and transported to a local hospital by ambulance for treatment. [*Swanson v Bittersweet Ski Resort, Inc.*, unpublished per curiam opinion of the Court of Appeals, issued August 29, 2024 (Docket No. 366258)].

Robert and his wife, plaintiff Bonnie Swanson, filed a five-count complaint in the trial court, alleging a violation of the Ski Area Safety Act of 1962 (SASA), MCL 408.321 *et seq.*, negligence, premises liability, gross negligence, and loss of consortium. *Swanson*, unpub op at 2. Defendants moved for summary disposition under MCR 2.116(C)(7) (claim barred by operation of law), (C)(8) (failure to state a claim), and (C)(10) (no genuine issue of material fact). *Id*. The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(8) and (C)(10). *Id*. at 3. Relevant to this appeal, the trial court rejected the claim that Robert was exempt from the SASA. *Id*. The trial court additionally ruled that plaintiffs' claims were barred because Robert signed a release of liability form, and that the release of liability did not violate public policy. *Id*.

On appeal, we reversed the order granting defendants' motion for summary disposition and remanded for further proceedings. *Id*. at 10. We held that Robert was not a "skier" as defined in the SASA because he was not "participating in the sport of skiing when he was injured on the ski lift." *Id*. at 6. We further found ambiguity in the release signed by Robert, as it did not indicate that it was applicable to Robert in his capacity as a ski patroller. *Id*. at 10. Given that conclusion, we declined to address plaintiffs' public-policy argument. *Id*.

Defendants applied for leave to appeal to our Supreme Court. In lieu of granting leave to appeal, our Supreme Court ordered as follows:

> [W]e REVERSE Part III(B) of the judgment of the Court of Appeals. The Court of Appeals erred by holding that the release in question is ambiguous. Instead, the release clearly states that plaintiff Robert Swanson "voluntarily assume[d] all risks of . . . personal injury . . . while on the premises of the ski areas" and he "expressly release[d] from liability the ski area, [its] agents, [and its] employees . . . from any and all claims . . . which [he] now has or which may hereafter accrue on account of any foreseen or unforeseen bodily injuries and/or damages." "[A]ny and all claims" clearly include those claims that arose while Robert was working as a volunteer ski patroller. The Court of Appeals erred by "creat[ing] ambiguity where the terms of the contract are clear." *Kendzierski v Macomb Co*, 503 Mich 296, 311[; 931 NW2d 604] (2019) (quotation marks and citation omitted). In lieu of addressing the merits of the defendants' argument regarding the Ski Area Safety Act of 1962, MCL 408.321 *et seq*., we also VACATE Part III(A) of the judgment of the Court of Appeals and REMAND this case to that court for consideration of the issue raised by the plaintiffs but not addressed by that court during its initial review of this case. [*Swanson v Bittersweet Ski Resort, Inc*, ___ Mich ___; 20 NW3d 543 (2025).]

On remand, the parties were permitted to submit supplemental briefing, including a number of reply briefs. *Swanson v Bittersweet Ski Resort, Inc*, unpublished order of the Court of Appeals, entered June 23, 2025 (Docket No. 366258); *Swanson v Bittersweet Ski Resort, Inc*, unpublished order of the Court of Appeals, entered August 8, 2025 (Docket No. 366258). We now address this matter on remand.

II. ANALYSIS ON REMAND

Plaintiffs argue that the release of liability form that defendants required Robert to sign violates public policy. We agree in part.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5-6; 890 NW2d 344 (2016). Questions of law, including questions of statutory interpretation, are also reviewed de novo, *Milot v Dep't of Transp*, 318 Mich App 272, 276; 897 NW2d 248 (2016), as are questions regarding the proper interpretation of contracts. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003).

In their supplemental briefing, defendants argue that our Supreme Court's remand order directed this Court to address whether the SASA abrogates plaintiffs' common-law claims of negligence, rather than whether the release of liability violated public policy. Defendants point out that we did not address this argument in our prior opinion. We note, however, that the public-policy argument was clearly raised on direct appeal, and was the only question listed in plaintiffs' statement of the issues presented that we did not specifically address in our prior opinion. See *Swanson*, ___ Mich App at ___ n 4; slip op at 10 n 4. We acknowledge that the terms of the remand order are somewhat difficult to understand, but given the foregoing, we are inclined to believe that the Supreme Court has directed us to address plaintiffs' public-policy argument on remand. However, because that public-policy issue implicates plaintiffs' ability to bring common-law claims of negligence and gross negligence against defendants, our analysis in this matter will necessarily address both parties' concerns.

As noted, plaintiffs argue that the release of liability in this case violated public policy. However, this Court has definitively held that "[i]t is not contrary to public policy for a party to contract against liability for damages caused by its own ordinary negligence." *Skotak v Vic Tanny Int'l, Inc*, 203 Mich App 616, 617-618; 513 NW2d 428 (1994). Taking *Skotak* into account, to the extent that the release was intended to absolve defendants of liability for plaintiff's ordinary negligence claim, it did not violate public policy.[1] Under Michigan law, though, a party may not contract against liability for gross negligence. *Lamp v Reynolds*, 249 Mich App 591, 594; 645 NW2d 311 (2002). Gross negligence is generally defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." *Xu v Gay*, 257 Mich App 263, 269; 668 NW2d 166 (2003) (quotation marks and citation omitted). Preventing parties from contracting against liability for gross negligence clearly aligns with the broader public policy goal of ensuring accountability for conduct that demonstrates an egregious lack of concern for the safety of others. The trial court thus erred by holding that the release of liability barred *all* of plaintiffs' claims, including the claim of gross negligence.

On that point, defendants argue in their supplemental briefing that plaintiffs' common-law claims are abrogated by the SASA. Although defendants' argument is largely couched in the context of their broader challenge regarding the scope of our Supreme Court's remand order, the challenge is a fair one—if the SASA abrogates or preempts common-law claims, plaintiffs' gross-negligence claim would be extinguished.

As we discussed in our prior opinion, the SASA generally governs liability in the context of recreational skiing in Michigan. Under MCL 408.342(2),

> [e]ach person who participates in the sport of skiing accepts the dangers that inhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; collisions with ski lift towers and their components, with other skiers, or with properly marked or plainly visible snow-making or snow-grooming equipment.

This Court has largely interpreted the SASA as limiting the liability of ski area operators, with very few exceptions.

In support of their argument, defendants cite this Court's recent ruling in *Round*, ___ Mich App at ___; slip op at 8. In *Round*, the plaintiff brought a premises-liability claim on behalf of the decedent, who was killed after colliding with snow-making equipment while skiing on an unlit hill. *Id*. at ___; slip op at 1-2. This Court ruled that the SASA preempted that claim. *Id*. at ___; slip op at 8. This Court explained:

[1] On appeal, plaintiffs have not challenged the trial court's ruling that the release of liability barred their claims for premises liability and loss of consortium. They instead limit their argument, both on direct appeal and in their supplemental briefing, to the claims of ordinary negligence and gross negligence.

> While ski-area operators may not be absolutely immune from all liability that may arise from the operation of their business, we conclude that the SASA abrogated premises liability claims against ski-area operators arising from injuries sustained by skiers while participating in the sport of skiing. In other words, the SASA preempts such common-law negligence claims. This conclusion is especially applicable in this case where plaintiff's decedent's injuries arose from the obvious and necessary dangers that inhere in the sport of skiing. See MCL 408.342(2). As our Supreme Court recognized in *Anderson* [*v Pine Knob Ski Resort, Inc*], 469 Mich at 23; 664 NW2d 756, the Legislature "enacted the SASA in an effort to provide some immunity for ski-area operators from personal-injury suits by injured skiers." And while a skier does not assume the risk that the ski-area operator will violate its duties prescribed under the SASA—and thus a ski-area operator could be liable for such violation—a skier does assume the risk of dangers that inhere in the sport of skiing that are obvious and necessary. [*Round*, ___ Mich App at ___; slip op at 8.]

Although Defendants contend that *Round* applies to bar all of plaintiffs' common-law claims, *Round* does not contemplate common-law claims of gross negligence. Indeed, no Michigan caselaw stands for the proposition that common-law gross-negligence claims are preempted by the SASA. See, e.g., *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 739-742; 613 NW2d 383 (2000) (upholding the dismissal of an ordinary negligence claim under the SASA); *Schmitz v Cannonsburg Skiing Corp*, 170 Mich App 692; 428 NW2d 742 (1988) (finding that the plaintiff's claims of negligence and intentional nuisance were barred by the SASA). The SASA instead limits liability for ski area operators only with respect to injuries arising from the "obvious and necessary" dangers inherent to skiing, while leaving open the possibility of common-law claims—including gross negligence—outside those statutory immunities. See MCL 408.342(2). This Court conceded as much in *Round*, noting that the SASA does not grant ski-area operators total immunity from liability. *Round*, ___ Mich App at ___; slip op at 8.

In our prior opinion, we held that the SASA did not apply in this matter because Robert was acting in his capacity as a volunteer ski patroller when he was injured. *Swanson*, ___ Mich App at ___; slip op at 4-9. Assuming *arguendo* that the SASA applies to this matter, we conclude that the law does not act as a bar to plaintiffs' common-law gross-negligence claim because the SASA does not require skiers to assume the risk that a ski lift operator might entirely fail to adhere to the proper procedures for loading skiers and their equipment onto a ski lift.

To instead find that all common-law claims are preempted by the SASA would suggest that the Legislature intended the SASA to serve as a complete bar to claims of injury, including those based on dangers *not* inherent to the sport of skiing. But that was never the Legislature's intent; rather, the SASA was merely enacted "in an effort to provide *some* immunity for ski-area operators from personal-injury suits by injured skiers." *Round*, ___ Mich App at ___; slip op at 6 (quotation marks and citation omitted; emphasis added). Beyond that, the SASA was intended to provide ski-area operators immunity from liability for injuries that arise out of the "obvious and necessary dangers of skiing." *Id*. at ___; slip op at 8 (citation omitted). We are loath to conclude that Robert assumed the risk that Christina's misconduct would ultimately cause him to fall 20 feet to the ground when he boarded the ski lift on the day of his injury.

Typically, this Court and our Supreme Court have dealt with fact patterns where some evidence exists to support the conclusion that the plaintiff assumed a risk inherent to the sport of skiing. For example, in *Anderson v Pine Knob Ski Resort*, 469 Mich 20, 22, 26; 664 NW2d 756 (2003), our Supreme Court found no liability under the SASA where the plaintiff collided with a timing shack. The Court reasoned that a collision with an "unnatural hazard[]" on a ski hill was a danger inherent to the sport. *Id*. at 24-25. In *Grieb v Alpine Valley Ski Area*, 155 Mich App 484, 486-487; 400 NW2d 653 (1986), this Court reached the same result in a case where the plaintiff collided with another skier. The same is true of *Schmitz*, 170 Mich App at 693, 696, where the plaintiff collided with a tree while skiing, and even *Kent*, 240 Mich App at 732-733, where the plaintiff was injured on a ski lift after his five-year-old grandson slipped off of the lift.

Kent perhaps illustrates the point most clearly. There, the plaintiff was getting on a ski lift with his grandson when the child slipped and fell under the lift. *Id*. Prior to getting on the lift, which was operating normally, the lift operator asked the plaintiff if he needed help. *Id*. at 733. The plaintiff responded that he did not, and was subsequently injured when his arm got tangled in the lift chair as he attempted to reach for his grandson. *Id*. This Court ruled that the SASA barred the plaintiff's ensuing negligence claim because collisions with ski towers and their components are expressly mentioned in the SASA as dangers inherent to the sport of skiing. *Id*. at 733-734. In contrast to the *Kent* plaintiff and the injuries described in the foregoing cases, Robert's injuries were not a clear product of user error, so to speak—in other words, he was not injured due to a collision with an object, a person, a ski tower, or other ski equipment, as described in MCL 408.342(2). Instead, Robert alleges that his injuries were caused by Christina's failure to properly load the toboggan onto the ski lift and her failure to stop the lift when it became apparent that Robert was in danger of falling. Here, reasonable minds could conclude that Robert was grievously injured because of Christina's misconduct and that his injuries were not a result of risks inherent to the sport of skiing. MCL 408.342(2). The failure to properly load a toboggan, resulting in a passenger becoming trapped and falling, goes beyond the scope of risks that the Legislature intended skiers to assume under the SASA. We thus conclude that, although the SASA limits liability to risks inherent to the sport of skiing, it does not completely insulate ski resorts from liability for grossly negligent conduct demonstrating a clear lack of concern for skier safety. Accordingly, plaintiffs' gross-negligence claim is not preempted by the SASA.

III. CONCLUSION

In sum, although it was not against public policy for defendants to contract against liability for plaintiffs' claim of ordinary negligence, defendants could not contract against liability for gross negligence. Thus, the terms of the release of liability do not preclude plaintiff's claim of gross negligence. Additionally, the SASA does not categorically preempt that claim.

Affirmed in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction.

/s/ Sima G. Patel
/s/ Michelle M. Rick
/s/ Kathleen A. Feeney