

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.

Court of Appeals: Twelfth District

Case Name: *Brennan v. Schappacher*, 2009-Ohio-927

Decided: March 2, 2009

Issue(s): Premises liability for injuries to social guests and primary assumption of the risk

Summary of Opinion: On July 4, 2005, the Schappacher family held a picnic on their family farm. The Brennan family was among the guests who attended the party. The Schappachers offered a hayride for their guests and their children as part of the festivities. Guests loaded onto a hay wagon driven by the Schappacher's 14 year old son, Donald. Donald was an experienced tractor driver, having operated tractors since the age of 6.

During the hayride, the tractor crested a rise in the field and proceeded down a slope. The tractor began to dramatically increase in speed and Donald lost control. The Brennans jumped or fell off the wagon. After the Brennans jumped, the tractor jackknifed and the remaining passengers were thrown from the wagon. Andrea Brennan suffered an injury to her ankle and brought suit.

The trial court granted summary judgment to the Schappachers, finding that the hayride was a recreational activity and that the Brennans' claims were barred by the doctrine of primary assumption of the risk. The trial court also held that the Brennans could not establish the cause of the accident and that the Schappachers did not negligently entrust the operation of the hayride to Donald.

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On appeal, the Twelfth District Court of Appeals first considered whether the Brennans' claims were barred by the doctrine of primary assumption of the risk. As invited social guests, the Brennans were owed duties by the Schappachers to:

- 1) to exercise ordinary care not to cause injury by any act of the hosts or by any activities carried on by the hosts while the guests were on the premises, and
- 2) to warn the guests of any condition of the premises that was known to the hosts and which persons of ordinary prudence and foresight should reasonably consider dangerous.

The hosts' duty to warn only occurs if the hosts have reason to believe that the guests do not know and will not discover the dangerous condition.

When an individual engages in a recreational activity, however, he or she assumes the ordinary risks of the activity and cannot recover for any injury unless it can be shown that the other participant's actions were either reckless or intentional. The Court of Appeals held that the controlling issue was what the inherent or ordinary risks associated with hayrides were. "Only those risks directly associated with the activity in question are within the scope of primary assumption of risk." In this case, the court acknowledged that a hayride is a recreational activity with some associated risks, and it noted that on a hayride, "the wagon is pulled across hill and dale over uneven terrain that might contain holes or ruts." In this case, the court held that the fall from the wagon did not occur because the wagon encountered a hole or rut in the terrain. Rather, the injury resulted from the tractor losing control and sliding down a rise in a hayfield. "Losing control of the tractor-pulled hayride is not an inherent risk of hayrides." Therefore, the court held that the Brennans did not assume a risk inherent in hayrides when they decided to participate in the activity.

The second issue on appeal was the plaintiffs' claim of negligent entrustment. In order to be successful on a claim of negligent entrustment, plaintiffs were required to show that:

- 1) Donald was incompetent to operate the tractor,
- 2) his parents knew or should have known that he was incompetent,
- 3) his parents entrusted Donald to operate the tractor, and
- 4) Donald's incompetence was the proximate result of the accident.

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The court held that the Brennans failed to present evidence to support a claim of negligent entrustment. The evidence demonstrated that Donald was an experienced tractor driver and, in their depositions, the Brennans admitted that they were comfortable riding in the wagon driven by Donald. There was simply no evidence that the accident was the result of inexperience.

The Court of Appeals reversed the trial court's grant of summary judgment and remanded for a trial on the merits.

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