

## **Breanne Bennett v. Hidden Valley Golf and Ski, Inc.**

318 F.3d 868 (8th Cir. 2003)

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Breanne Bennett (Bennett) was injured while skiing at Hidden Valley Golf and Ski Resort (Hidden Valley), a downhill snow ski resort in Wildwood, Missouri. Bennett, a skier with limited experience, was injured when she fell after hitting a "bump" (as both parties have referred to it) located on a hill marked for intermediate difficulty. Both parties agreed that the bump had not been intentionally created by Hidden Valley, but had formed as skiers cut across the slope and moved the snow. Bennett alleged that Hidden Valley had been negligent in the design, maintenance, and staffing of its skiing facilities. Bennett subsequently brought a negligence action against Hidden Valley in the District Court for the Eastern District of Missouri. Hidden Valley denied negligence and raised assumption of risk as a defense. The district court entered judgment in favor of the defendant, and Bennett appealed, raising a number of issues, including issues with jury instructions 6 and 7, which she claimed misstated Missouri law. The U.S. Court of Appeals for the Eighth Circuit found that all jury instructions fairly and adequately submitted the issue for the jury, and affirmed the district court's ruling.

Instruction 6 addressed the issue of premises liability, and stated that the jury must find for the plaintiff if the defendant failed to use ordinary care to remove the bump on the slope, and that such a failure resulted in a slope that was not reasonably safe for its intended purpose of skiing. Bennett argued that the inclusion of the phrase "intended purpose of skiing" erroneously suggested that operators of ski areas owe a different duty to customers than other businesses. The court of appeals held that this phrase reflects the principle of Missouri law that the duty of care owed by a ski area operator depends on the particular conditions and circumstances involved in the given case, and therefore the Instruction fairly and adequately submitted the issue for the jury and was not an abuse of discretion.

Instruction 7 addressed Hidden Valley's defense of implied primary assumption of risk, and stated, "Your verdict must be for the defendant if you believe that the conditions that plaintiff encountered on defendant's ski slope on the day of the occurrence were a risk inherent in the sport of skiing." Under Missouri law, this defense relates to the issue of whether the defendant had a duty to protect the plaintiff from the risk of harm. The defense applies where the parties have voluntarily entered in a relationship in which the plaintiff assumes well-known incidental risks. A plaintiff's consent to assume the risk is implied from the act of voluntarily participating in the activity and as to those risks, the defendant has no duty to protect the plaintiff. Bennett alleges that the instruction misstated Missouri law because it did not require the jury to find that she had knowledge of, and appreciated, the specific dangers causing her injury. Hidden Valley argues that under Missouri law, a plaintiff assumes any risk inherent in a sport regardless of her actual knowledge of the risk.

The court concluded that under Missouri law, a voluntary skier assumes the risks inherent in or incidental to skiing, regardless of her subjective knowledge of those risks; and that an operator of a ski area has no duty to protect a skier from those risks inherent in or incidental to skiing. As such, the court ultimately held that by directing the jury to find for Hidden Valley if it determined that the conditions on the ski slope at the time Bennett was injured were inherent risks of skiing, Instruction 7 fairly and adequately submitted the issue to the jury.

The court of appeals found that all of the presented jury instructions, 6 and 7 in particular, fairly and adequately submitted the issue for the jury.

If the operator of a ski area is not found to have been negligent in its design, maintenance, and staffing of its skiing facilities, the operator will be safe from claims arising out of injuries to patrons if such injuries found to be the result of risks inherent in skiing. A skier is assumed to have voluntarily consented and assumed the risks inherent in the activity of skiing, and a remedy will not be provided to a plaintiff who is injured when encountering such inherent risks.