Michigan Court Bases Decision on Safety Record

Golfer Must Exercise Care to Protect Self from Slipping on Floor

BY WILLIAM JABINE

A golfer who slipped and fell when getting a golf cart from a room at a clubhouse owned and maintained by the city of Pontiac, Mich. brought an action against the city charging negligence. The alleged negligence stemmed from the fact that the floor of the cart storage room was made of asphalt while other rooms in the clubhouse were floored with a rubber type tile. The plaintiff, 64 years of age, contended that the cart room floor presented an unjustified hazard to anyone wearing shoes with cleats.

Legal Side of Golf

The Oakland circuit court directed a verdict for the city and the plaintiff appealed to the supreme court of Michigan. He contended that the verdict was contrary to the great weight of evidence and that the trial court had erred in failing to recognize that the degree of care required of the owner of a building is dependent upon the degree of risk involved.

The supreme court reviewed the arguments of plaintiff and defendant as follows: "Plaintiff stresses testimony of the defendant's employees to the effect that the floor of the lobby is safer for a person in golf shoes with cleats than the floor of the cart room which is a soft, spongy material that allows a golfer to use a normal stride because the cleats make an impression that 'springs back up again' a certain percentage of time. The testimony of plaintiff's expert witness, Edward W. Tillitson, associate professor of chemical engineering at Wayne University, states that golf-cleated shoes on asphalt floors are about 2½ times more slippery than shoes with leather soles and, considering the coefficient of friction, the cart room would be 5 times more slippery than the lobby.

"The plaintiff in his brief admits that the asphalt floor in the cart room was clean and free of any defects and, also, while this type of floor is extensively used in kitchens, bathrooms, recreation rooms and stores, yet the defendant was 'negligent in maintaining an asphalt floor ° ° ° where persons wearing golf shoes with metal cleats will use them,' and where there was no warning that the floor in the cart room was different than the floor in the lobby. . . .

Some Helped Selves

"The defendant introduced proof that employees hand the carts from the cart room to the golfers and make an effort to keep people out of the cart room, but admitted that when attendants are busy, patrons in a hurry help themselves. The plaintiff testified that on his previous trips to the club he had never, before the day of the accident, entered the cart room as those he golfed with secured the cart. The plaintiff's son-in-law testified 'there never was any assistance offered' and that he walked into the cart room and got his cart.

"The defendant emphasizes the fact that the testimony of both plaintiff and defendant's witnesses establishes that a person walking on a hard surfaced floor, such as asphalt tile, concrete or wood flooring, should use extraordinary care to protect himself from a fall and that the plaintiff, in hurrying into the cart room, did not exercise that care. ° ° °

No Previous Mishaps

"Evidence was introduced to the effect that between 30,000 and 50,000 rounds of golf are played in a season at the Pontiac course and that the cart room floor was the same from the time it was installed in 1936 up to the day of plaintiff's accident. The record doesn't show that the said conditions caused injury to any person other than the plaintiff, or that defendant was informed or warned that the asphalt floor created a dangerous condition."

After this review of the evidence, the supreme court affirmed the judgment of

the circuit court directing a verdict for the defendant. It said: "The court in its ruling on the motion for a directed verdict stated: 'The proof here submitted merely demonstrates that plaintiff suffered the misfortune of an accident. The plaintiff has fallen far short of the burden which he must bear in proving some actionable element of the negligence charged.'

"The lower court had the advantage of not only observing and hearing the witnesses testify but, also, of inspecting the floors of the lobby and the cart room.

"There was evidence from which the trial judge could find for the defendant. The granting of defendant's motion for directed verdict was not contrary to the clear weight of evidence." (Pais v. City of Pontiac, 127 N.W. 2d 386.)

Kids Picket Philly Course But Renn Refuses to Retreat

Garrett Renn, supervisor of Philadelphia's six municipally owned golf courses, refuses to retreat a single inch in his contention that a course is not a children's playground, and that the city is going to do everything possible to prevent kids from trespassing on its golf layouts.

This summer a group of youngsters picketed Juniata GC, a city owned Philadelphia course because of Renn's stand. The kids were backed up by some of the residents who live in the vicinity of the Juniata course.

Renn points out that kids should be kept away from golf courses for two reasons: They might get hurt or killed; and too many of them come to a course intent on destruction.

Two Children Killed

Two years ago, says the Philadelphia supervisor, a boy was drowned in a creek bordering the Juniata course. In 1948, a teenage girl was struck and killed by a golf ball. Kids have even been known to be hurt by club throwing players.

On the side of vandalism, youngsters have thrown heavy concrete benches into water hazards on the Philadelphia courses, burned footbridges and on quite a few occasions, played tag with tractors and golf cars. Destroying turf on greens and bending flagpoles are among the depredations they have committed.

"Private clubs have their share of trespassing and vandalism," according to Renn. "But we probably have more," he adds. "Juniata, for example, is located in a heavily populated area and the kids would get rid of their excess energy by tearing up the course if something weren't done to prevent it."

Trespassing Cases Are Involved

There is no doubt that Walter Slowinski, legal counsel for both the GCSA and CMAA, would stand squarely behind Renn. Speaking at the GCSA convention last February, Slowinski said that the courts generally have been sympathetic with course owners and operators, but trespassing cases often are so complicated that there is no way of accurately foretelling what the decisions of the courts may be concerning them.

In a trespassing case involving a child it is an accepted legal fact that the course owner has little or no recourse if the child is injured. There are too many "attractive nuisances" to keep kids off of a course, and thus it becomes the obligation of the owner to protect them against almost any kind of a hazard.

The first consideration in any case where a child's trespassing is involved is the immaturity of the child. The court will usually assume that he doesn't know or isn't aware of danger and has to be protected from it. The courts, however, have made an exception of water hazards, assuming that children recognize these as being potentially dangerous. Otherwise, it would be the obligation of the course owner to fence in all water hazards.

Slowinski pointed out that equipment such as a tractor has to be garaged or fenced in in such fashion so as not to make it an "attractive nuisance" or the course owner is liable for any injuries a child may suffer while playing on or around it. He also stated that if a child, and even an adult for that matter, is permitted to frequently or regularly tresspass on a property, the owner is obligated to protect him against even ordinary hazards.