Burke v. Dartmouth College CV-02-312-JM 01/24/03

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

Sarah Burke

v. Civil No. 02-312-JM
Opinion NO. 2003 DNH 016

Dartmouth College

O R D E R

In a motion which is notable for both its brevity and its precision (it cites the two dispositive precedents and wastes neither ink nor trees) the defendant moves to dismiss Counts II and III of plaintiff's complaint. In plaintiff's response she stipulates to dismissal of Count III but objects as to Count II.

Discussion

Count II, in this diversity case, sets forth a claim under the "attractive nuisance doctrine".[1] The doctrine was rejected in New Hampshire in 1886. Frost v. Eastern R.R., 64 N.H. 220 (1886). Justice Griffith clearly stated the Court's rejection of the attractive nuisance doctrine and clearly set forth the

[1]The origin of the "attractive nuisance" doctrine is credited to an 1875 Minnesota case involving a seven-year old injured on a revolving railroad turntable. Keffe v. Milwaukee & St. Paul Ry., 21 Minn. 207 (1875). As revised by Justice Holmes, the doctrine only applies where a child was attracted to the premises by the very thing which injured her. United Zinc & Chemical Co. v. Britt, 258 U.S. 268 (1922).

controlling premises liability standard. See Ouellette v. Blanchard, 116 N.H. 552, 555-557 (1976). This standard has been reaffirmed as recently as August 10, 2001. Morse v. Goduti, 146 N.H. 697, 699 (2001). As defendant maintains, Count II, alleging an attractive nuisance, does not state a claim cognizable under New Hampshire law.

Plaintiff's counsel should have read the cases cited by defendant and stipulated to dismissal of Count II.[2]

For the reasons set out above the motion (document no. 4) is granted.

SO ORDERED.

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James R. Muirhead
United States Magistrate Judge

Date: January 24, 2003

cc: Peter E. Hutchins, Esq.
James C. Wheat, Esq.

[2]Plaintiff's counsel miscites Restatement (Second) of Torts § 339 ("attractive nuisance") as § 889 ("abatable artificial nuisance"). Section 339 was considered at least twice by the New Hampshire Supreme Court and never adopted. See Ouellette, 116 N.H. at 558 (concurring opinion); Labore v. Davison Construction, 101 N.H. 123, 126 (1957).