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Docket: 52051
Registry: Kelowna

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
The Honourable Madam Justice Beames
In Chambers
May 31, 2002

BETWEEN:

JAMES EDWARD INGRAM

Plaintiff

AND:

THE CORPORATION OF THE DISTRICT OF
PEACHLAND, JOHN DOE and JIM ROE

Defendants

Counsel for Plaintiff: C.R. Penty

Counsel for Defendants: F.R. Scordo

Place and Date of Hearing: Kelowna, B.C.
May 31, 2002

[1] THE COURT: On July 19, 2000, the plaintiff was injured while he was swimming with his children at Swim Bay in Peachland, which is a lifeguarded facility operated by the District of Peachland ("Peachland"). The plaintiff alleges that the lifeguards on duty at the time of his accident were negligent. The defendant submits that its lifeguards met the

appropriate standard of care and allege that the plaintiff was negligent.

[2] The facts of the case are these. Swim Bay is a park and beach area operated by the District of Peachland, which is geared towards families. The beach area and the portion of the lake which is between two parallel docks that jut out from the beach is lifeguarded by lifeguards employed by Peachland. The main dock is equipped with two diving boards, a low board and a high board, perpendicular to each other.

[3] On July 19, 2000, the plaintiff picked up his two youngest children after work and took them to Swim Bay. He and his children are accomplished swimmers. Mr. Ingram and his daughter, along with many others, were using the low diving board. As they used the board that afternoon, there was a lifeguard on the dock. Some four or five minutes before the incident which brings this matter to court, a group of teenaged boys all ran off the board and entered the water, nearly simultaneously, which is against the rules posted on the sign on the dock and, I will note, offends common sense. The lifeguard on duty noticed this incident and verbally reprimanded the boys while they were still in the water. Mr. Ingram and his daughter continued to stand in line, used the board in turn, and then came back onto the dock to take

another turn. Mr. Ingram's daughter was in front of him in the line, and when she got on the board, Mr. Ingram stepped up on the step for the board. The lifeguard noticed this and asked Mr. Ingram to step down until his daughter was off the board, and the plaintiff complied.

[4] The plaintiff then took his turn and did what was referred to during the trial as an Olympic style dive; namely, a deep dive followed by an underwater tucked turn, so that Mr. Ingram surfaced close to the point of entry into the water. As he surfaced, he was jumped on by a young boy who must have been the next person in line off the diving board. Unfortunately, the lifeguard did not see the accident. Mr. Ingram did not ever see the person who jumped on him. His daughter saw the actual impact but did not see the boy come off the board. She identified the boy as being approximately eight or nine years of age. The young boy swam away immediately after the accident and has never been identified. No other witnesses have been located or produced.

[5] Although I have heard only the liability portion of the trial, it appears that the plaintiff suffered a significant injury as a result of being jumped on.

[6] The plaintiff's case is essentially that there is a duty of care upon lifeguards to prevent accidents, such as this

one, and that the lifeguard who was positioned on the dock that day breached that duty by failing to prevent the young boy from jumping off the board while Mr. Ingram was still in the immediate vicinity of the board.

[7] The defendant takes the position that the lifeguard on duty was not negligent, that the plaintiff is attempting to have a standard of perfection applied to the lifeguard, and that Mr. Ingram should not have done the kind of dive he did, as it involves more risk because the diver does not clear the diving board area as quickly as he would if he executed a shallow dive, or a dive without the underwater tuck, and instead started to swim away while still underwater.

[8] There is no question, on the evidence I heard, that the boy who jumped on the plaintiff was negligent, but he is not before the court and, as I said, has not been identified. There is, in my mind, equally no question that Mr. Ingram was not negligent in choosing to dive as he did. While there was quite a lineup of people waiting to use the board, and it might reasonably be anticipated that the next jumper or diver would enter the water relatively shortly after Mr. Ingram, the very presence of a lifeguard, even one who is not actively directing the use of a board, would, in my view, reasonably have reassured Mr. Ingram that the process would be orderly.

[9] I turn now to the issue of the lifeguard and his conduct. I heard from all three lifeguards who were on duty on July 19, 2000 at Swim Bay, and I also have expert evidence from Mr. Miller with respect to the manner in which a lifeguard performs his or her duties. The evidence is that lifeguards are trained to prevent drownings and other aquatic accidents, and that they do that, in large measure, through a process of "active scanning". Scanning is the term used by lifeguards to describe the process of looking at patrons one-by-one, in the lifeguard's area of primary and secondary responsibility, to assess whether there is an impending hazard, or any areas or patrons requiring special attention. Lifeguards are trained to scan back and forth over their areas of responsibility over a period of fifteen to twenty seconds per scan.

[10] On July 19, 2000, as I indicated, there were three lifeguards on duty. At the time of this specific incident, one was on a lunch break. The two lifeguards actually guarding at the time were positioned one on the dock and one on the lifeguard chair on the grassed area above the beach. The lifeguard on the dock was primarily responsible for scanning the two diving boards, the water where the high diving board users would land and swim, and the area immediately in front of the dock which would include, and was

primarily focused on, the area under and around the low diving board area. I accept that the lifeguard on the dock could not reasonably have been expected to watch only the low diving board, or the water under and around it, and he could not be expected to control all of the use of the low diving board. Had he done so, the remainder of his area of responsibility would have been unguarded, including the area of the high diving board. I accept that the process of scanning is reasonable and meets, as long as it is executed properly, the high standard of care expected of lifeguards. Indeed, scanning is perhaps the only way in which lifeguards can vigilantly observe a number of patrons spread throughout a body of water.

[11] Obviously, as Mr. Ingram was struck as he surfaced from his dive, the young boy who jumped on him went off the board within seconds of Mr. Ingram using the board. It is not, in my view, proof of negligence that the lifeguard did not see the incident or prevent the incident, given that he should have been, and I accept he was, scanning his entire area of responsibility. Clearly, the lifeguard in question was being vigilant that day, as he had seen and reprimanded the teenagers within minutes before the accident, and he saw and gave appropriate instructions to Mr. Ingram about the use of

the diving board by one person at a time, seconds before Mr. Ingram dove. Although such incidents, and the presence of children on the dock, should have resulted in the lifeguard having a heightened attentiveness to the dock area, the lifeguard also had to continue scanning over his areas of primary responsibility. There is no evidence to suggest that the young boy in question should have been identified by the lifeguard as a person who required increased attention or, at least, any more attention than any other young child at Swim Bay that day. The lifeguard could not have been expected to anticipate that the young boy who jumped on Mr. Ingram would do as he did. As one of the lifeguards before me testified, intervention for unsafe behaviour normally happens after the fact, because lifeguards cannot necessarily anticipate what patrons are going to do.

[12] I have sympathy for Mr. Ingram who was injured through no fault of his own. However, legal actions cannot be determined based on sympathy. The plaintiff in an action in negligence must prove that the defendant owed a duty of care to him, which this defendant clearly did, and that the duty of care was breached. I am unable to find that the duty of care owed to the plaintiff by the defendant's lifeguards, which I accept

is of a high standard, was breached. Consequently, I must dismiss the plaintiff's case.

[13] Anything arising?

[14] MR. SCORDO: With respect to -- I should clarify this, My Lady, there is obviously, as a defendant, Peachland, and there is also a, I believe, John Doe who was Mr. Mitchell. Do I understand then you are dismissing the claim against both of them, and I understand there is also a third person who is supposed to be the child?

[15] THE COURT: The action as against the District of Peachland and against the lifeguard who has not been specifically named is dismissed.

[16] MR. SCORDO: All right. And, costs, My Lady?

[17] THE COURT: You want to pursue those, do you, Mr. Scordo?

[18] MR. SCORDO: Well, if you are indicating that you want me to obtain instructions and return to court, if there is a problem there, I will certainly do that, My Lady.

[19] THE COURT: I would reserve the issue of costs and give leave to either party to make application. It can be done by telephone or in writing, if it is necessary to do so.

[20] MR. SCORDO: All right. I appreciate that, My Lady, and thank you for your time.

[21] THE COURT: Thank you, counsel.

[22] MR. PENTY: Thank you, My Lady.

A handwritten signature in black ink, appearing to read 'A. J. Beames', written over a horizontal line.

The Honourable Madam Justice Beames

