IN THE SUPREME COURT OF OHIO

JEREMY PAULEY; CHRISTINE PAULEY,	:	CASE NO. 2012-1150
Plaintiff-Appellants,	:	On Appeal From The Fourth Appellate District, Pickaway County,
v.	:	Case No. 2010CA0031
CITY OF CIRCLEVILLE,	:	
Defendant-Appellee.	:	

BRIEF OF *AMICUS CURIAE*, OHIO ASSOCIATION FOR JUSTICE, IN SUPPORT OF PLAINTIFF-APPELLANTS, JEREMY PAULEY; CHRISTINE PAULEY

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INTRODUCTION OF AMICUS CURIAE

The *Amicus Curiae* now appearing before this Court is the Ohio Association for Justice ("OAJ"). The OAJ is comprised of over a thousand attorneys practicing personal injury and consumer law in the State of Ohio. The membership of the OAJ is dedicated to preserving the rights of private litigants and to the promotion of public confidence in the legal system.

This matter presents the court with an issue of substantial public importance through the instant personal injury action. This court is asked to find the appropriate balance between the competing needs to hold governmental entities and other property owners responsible for their conduct in specified instances and the public's interest in maintaining suitable limits upon liability when property owners offer use of their property for public recreation. The proposition of law offered by the Appellants provides the court with the perfect analysis for determining the appropriate limitation on immunity from suit. Where, as here, a man-made change to premises decreases rather than enhances the recreational suitability of those premises, the property owner cannot continue to enjoy the immunity under R.C. 1533.181. The OAJ therefore urges this Court to reverse the Fourth District Court of Appeals' decision and remand this matter for trial on the merits.

LAW AND ARGUMENT

PROPOSITION OF LAW: RECREATIONAL USER IMMUNITY DOES NOT EXTEND TO MAN-MADE HAZARDS UPON REAL PROPERTY THAT DO NOT FURTHER OR MAINTAIN ITS RECREATIONAL VALUE

The question posed by Appellees' proposition of law is whether R.C. 1533.181 extends immunity from liability to property owners who create or maintain man-made hazards that do not serve to enhance the recreational value of the property. The Amicus urges this court to find that

it does not. The decision of the court below, if adopted by this court, would countenance an unacceptable danger to the citizenry of Ohio who would unknowingly risk of severe injuries or death by extending unlimited immunity those who create hazardous conditions on their purported recreational property.

1. **Appellants' Proposition of Law is Consistent with the General Assembly's Purpose in Enacting the Recreational User Immunity Statute.**

R.C. 1533.181, provides, in pertinent part:

(A) No owner, lessee, or occupant of premises:

(1) Owes any duty to a recreational user to keep the premises safe for entry or use;

(2) Extends any assurance to a recreational user, through the act of giving permission, that the premises are safe for entry or use.* * *

The sole purpose of recreational immunity statute is to encourage landowners to permit their properties to be used by the public for recreational activities. *Thomas v. Coleco Industs., Inc.*, 673 F. Supp. 1432, 1434 (N.D. Ohio 1987) (citation omitted). This purpose is not undermined by imposing liability where man-made improvements to the property detract from, rather than enhance, the recreational value of the property.

On the contrary, imposing this minimal level of responsibility upon owners of recreational premises protects both reasonable property owners and those Ohioans pursuing recreational pursuits. Foreclosing liability in all circumstances, however, subjects unsuspecting individuals to an unacceptable level of risk not otherwise justified by the quid pro quo contemplated by the statute. The proposition of law offered by the Appellants offer the Court provides the perfect opportunity to define the limitation on the grant of immunity. Where, as here, a man made change to the premises decreases the recreational suitability of those premises, the property owner cannot continue to enjoy the immunity.

This reasoned approach was set forth in Judge Abele's dissent to the lower court's decision, and is consistent with this Court's in decision in *Miller v. City of Dayton*, 42 Ohio St. 3d 113, 114-115, 537 N.E. 2d 1294 (1989). As this Court as made clear, the property owner can be shielded from liability only when the man-made improvements enhance the recreational character of the property. In *Miller v. City of Dayton*, 42 Ohio St. 3d 113, 537 N.E. 2d 1294 (1989), the court explained:

> The significant query is whether such improvements change the character of the premises and put the property outside the protection of the recreational-user statute. To consider the question from a different perspective: Are the improvements and man-made structures consistent with the purpose envisioned by the legislature in its grant of immunity? In other words, are the premises (viewed as a whole) those which users enter upon " *** to hunt, fish, trap, camp, hike, swim, or engage in other recreational pursuits?"

Id., at 114-115. Similarly, in *Huffman v. City of Willoughby*, 11th Dist. No. 2007-L-040, 2007-Ohio-7120, 2007 (Dec. 28, 2007), the court did not dismiss an action arising from the drowning death of two boys on the Chagrin River. *Id.* at p. *1. The Eleventh District upheld the trial court's refusal to grant the defendant's motion to dismiss based on recreational user immunity and held:

> The court found the creation of the dam was not an improvement that was made to encourage the recreational use of this part of the river. Instead, the court found it made that part of the river inherently dangerous and thus not suitable for recreational use.

In the case at bar, it is axiomatic that placing large, immovable objects similar to railroad ties and other debris in large mounds on a known sledding hill makes the hill inherently dangerous and unsuitable for the recreational purpose of sledding. However, the trial court below and the lower court's majority failed to recognize the sound rationale of *Huffman.*

As discussed by this Court in *LiCause v. Canton,* 42 Ohio St. 3d 109, 110, 537 N.E.2d 1298 (1989), although R.C. 1533.181 was not originally enacted to provide immunity with regard

to public land, it has been construed Court to apply to both state and municipal property. *See Moss v. Dept. of Natural Resources* (1980), 62 Ohio St. 2d 138, 404 N.E.2d 742; *McCord v. Division of Parks & Recreation* (1978), 54 Ohio St. 2d 72, 375 N.E.2d 50; *Johnson v. New London*, 36 Ohio St. 3d 60, 521 N.E.2d 793 (1988). Likewise, the scope of the statute has not been limited to only those persons entering land to "* * * hunt, fish, trap, camp, hike, swim * * *." Rather, immunity has encompassed "other recreational pursuits" such as sledding and sitting on a beach. *See Marrek v. Cleveland Metroparks Bd. of Commrs.*, 9 Ohio St. 3d 194, 459 N.E.2d 873 (1984); *Fetherolf v. State*, 7 Ohio App. 3d 110, 454 N.E.2d 564 (1982). These expansions of the statute's reach are undoubtedly consistent with the General Assembly's purpose of encouraging landowners to permit their premises to be used by the public for recreational pursuits. However, a view of the statute that would permit irresponsible and careless property owners to create any type of conceivable hazard on their premises free from liability for injury to unsuspecting recreational users, does nothing to advance the legislature's purposes.

Unfortunately, neither the trial court nor the appellate court majority addressed the *Huffman* court's recognition of the effect of negligently created, man-made hazards on the recreational value of the premises.

Adoption of the Proposition of Law advanced by the Appellant will also be consistent with the Fifth District's holding in *Henney v. Shelby City Sch. Dist.*, 5th Dist. No. 2005-CA0064, 2006-Ohio-1382, 2006 W.L. 747475 (Mar. 23, 2006) (recreational user immunity statute was inapplicable where injury claim was predicated upon the negligent placement of equipment, and not the grounds or structures themselves) and this Court's decision in *Ryll v. Columbus Fireworks Display Co., Inc.*, 95 Ohio St. 3d 467, 469, 2002-Ohio-2584, 769 N.E. 2d 372. In *Ryll,* the Court found no immunity was available to the defendant under the recreational user immunity statute, and reasoned:

> R.C. 1533.181(A)(1) does not state that a recreational user is owed no duty. Instead, R.C. 1533.181(A)(1) immunizes an owner, lessee, or occupant of premises only from a duty "to keep the

> *premises* safe for entry or use." (emphasis added.) The cause of the injury in this case had nothing to do with "premises" as defined in R.C. 1533.181(A). The cause of the injury was shrapnel from fireworks, which is not part of "privately-owned lands, ways, waters, and *** buildings and structures thereon." *Id.* Accordingly, 1533.181(A)(1) and (2) do not immunize Reynoldsburg. **To hold otherwise would allow 1533.181 to immunize owners, lessees, and occupants for any of their negligent or reckless acts that occur on "premises." The plain language of the statute indicates that the General Assembly had no such intention.**

Id. at 469 [emphasis added]. Here, the court must examine whether reasonable jurors could conclude that the mounds of dirt, placed on the premises for storage purposes, changed the character of Barthelmas Park. This simple approach to the determination of the immunity available for man-made hazards is consistent with the plain language of the statute, its intent and this court's prior holdings.

2. Other Jurisdictions Have Adopted and Approach Similar The Proposition of Law.

Eight states have similarly conceived statutes1. While the majority of these expressly impose liability for reckless, wanton or willful conduct on the part of a property owner that causes injury, Florida's statute is similarly silent on the limitations of immunity, providing in pertinent part:

> § 375.251. Limitation on liability of persons making available to public certain areas for recreational purposes without charge
>
> (1) The purpose of this section is to encourage persons to make land, water areas, and park areas available to the public for outdoor recreational purposes by limiting their liability to persons using these areas and to third persons who may be damaged by the acts or omissions of persons using these areas
>
> (2) (a) An owner or lessee who provides the public with an area for outdoor recreational purposes owes no duty of care to keep that area safe for entry or use by others, or to give warning to persons entering or going on that area of any hazardous conditions, structures, or activities on the area. An owner or

[1] See, generally, Cal Civ Code § 846, Fla. Stat. § 375.251, 745 Ill. Comp. Stat. § 65/1 et seq, Ind. Code Ann. § 14-29-6-13, KRS § 65.420, -MCLS § 324.73301, NY--NY CLS Gen Oblig § 9-103 and 68 P.S. § 477-1 et seq

> lessee who provides the public with an area for outdoor recreational purposes:
>
> 1. Is not presumed to extend any assurance that the area is safe for any purpose;
>
> 2. Does not incur any duty of care toward a person who goes on the area; or
>
> 3. Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area

Fla. Stat. §375.251. Florida courts, however, have refused to read this statute as completely absolving property owners in all situations from liability. In *Arias v. State Farm Fire & Casualty Co.*, 426 So. 2d 1136, (Fla. Dist. Ct. App. 1st Dist. 1983), the court held:

> [A]ssuming that the statute's provisions were in all respects applicable, Doris Arias' status on the property would, under the interpretation placed upon the statute by Abdin v. Fischer, be that of a trespasser. If she were a trespasser discovered by Williams, his duty would be to warn her of **dangers known by him that were not open to ordinary observation**.

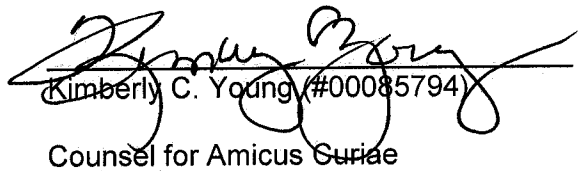
Id. at 1139-1140 [emphasis added]. See also, 745 ILCS 65/1 (App., p. 4), as explained by *Stephens v. United States*, 472 F. Supp. 998 (C.D. Ill. 1979) (it cannot be exaggerated to the point of expressly or impliedly limiting liability for acts voluntarily undertaken).

Here, the decision of the lower court, if affirmed, would indeed exaggerate the reach of the statute beyond its intended purpose. As recognized by Judge Abele, in his cogent dissent, the examination of whether or not the recreational value of the premises is enhanced by any man-made enhancement will allow property owners the freedom to add those improvements to the premises that continue or enhance its recreational value, but not permit those who devalue the recreational value of their property to continue to operate under cover of immunity from the harm their conduct causes.

CONCLUSION

For the reasons set forth above and in the Merit Brief of Appellants, OAJ urges the Court to reverse the Fourth District Court of Appeals, and remand this action for a jury trial upon all claims. Such a conclusion being in the best in interests of the citizens of the State of Ohio as well as consistent with the legislative intent of the General Assembly in enacting R.C. 1533.181.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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*** This document is current with urgency legislation through Chapter 876 ***
of the 2012 Session, propositions approved by the electorate in 2012,
and the 2012 Governor's Reorganization Plan No. 2.

CIVIL CODE
Division 2. Property
Part 2. Real or Immovable Property
Title 3. Rights and Obligations of Owners
Chapter 2. Obligations of Owners

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Civ Code § 846 (2012)

§ 846. Duty of care or warning to persons entering property for recreation; Effect of permission to enter

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

HISTORY:

Added Stats 1963 ch 1759 § 1. Amended Stats 1970 ch 807 § 1; Stats 1971 ch 1028 § 1; Stats 1972 ch 1200 § 1; Stats 1976 ch 1303 § 1; Stats 1978 ch 86 § 1; Stats 1979 ch 150 § 1; Stats 1980 ch 408 § 1; Stats 1988 ch 129 § 1.

NOTES:

Amendments:

*** Statutes and Constitution are updated through the 2012 Regular Session and 2012 Special Session B. ***
*** Annotations current through November 30, 2012 ***

TITLE 28. NATURAL RESOURCES; CONSERVATION, RECLAMATION, AND USE (Chs. 369-380)
CHAPTER 375. OUTDOOR RECREATION AND CONSERVATION LANDS

GO TO FLORIDA STATUTES ARCHIVE DIRECTORY

Fla. Stat. § 375.251 (2012)

§ 375.251. Limitation on liability of persons making available to public certain areas for recreational purposes without charge

(1) The purpose of this section is to encourage persons to make land, water areas, and park areas available to the public for outdoor recreational purposes by limiting their liability to persons using these areas and to third persons who may be damaged by the acts or omissions of persons using these areas.

(2) (a) An owner or lessee who provides the public with an area for outdoor recreational purposes owes no duty of care to keep that area safe for entry or use by others, or to give warning to persons entering or going on that area of any hazardous conditions, structures, or activities on the area. An owner or lessee who provides the public with an area for outdoor recreational purposes:

1. Is not presumed to extend any assurance that the area is safe for any purpose;

2. Does not incur any duty of care toward a person who goes on the area; or

3. Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area.

(b) Notwithstanding the inclusion of the term "public" in this subsection and subsection (1), an owner or lessee who makes available to any person an area primarily for the purposes of hunting, fishing, or wildlife viewing is entitled to the limitation on liability provided herein so long as the owner or lessee provides written notice of this provision to the person before or at the time of entry upon the area or posts notice of this provision conspicuously upon the area.

(c) The Legislature recognizes that an area offered for outdoor recreational purposes may be subject to multiple uses. The limitation of liability extended to an owner or lessee under this subsection applies only if no charge is made for entry to or use of the area for outdoor recreational purposes and no other revenue is derived from patronage of the area for outdoor recreational purposes.

(3) (a) An owner of an area who enters into a written agreement concerning the area with the state for outdoor recreational purposes, where such agreement recognizes that the state is responsible for personal injury, loss, or damage resulting in whole or in part from the state's use of the area under the terms of the agreement subject to the limitations and conditions specified in s. 768.28, owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering or going on the area of any hazardous conditions, structures, or activities thereon. An owner who enters into a written agreement concerning the area with the state for outdoor recreational purposes:

1. Is not presumed to extend any assurance that the area is safe for any purpose;

2. Does not incur any duty of care toward a person who goes on the area that is subject to the agreement; or

3. Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area that is subject to the agreement.

(b) This subsection applies to all persons going on the area that is subject to the agreement, including invitees, licensees, and trespassers.

(c) It is the intent of this subsection that an agreement entered into pursuant to this subsection should not result in compensation to the owner of the area above reimbursement of reasonable costs or expenses associated with the agreement. An agreement that provides for such does not subject the owner or the state to liability even if the compensation exceeds those costs or expenses. This paragraph applies only to agreements executed after July 1, 2012.

(4) This section does not relieve any person of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property. This section does not create or increase the liability of any person.

(5) As used in this section, the term:

(a) "Area" includes land, water, and park areas.

(b) "Outdoor recreational purposes" includes, but is not limited to, hunting, fishing, wildlife viewing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.

HISTORY: SS. 1-5, ch. 63-313; s. 1, ch. 75-17; s. 7, ch. 87-328; s. 1, ch. 2012-203, eff. July 1, 2012.

ILLINOIS COMPILED STATUTES ANNOTATED

*** Statutes current through Public Act 97-1132 of the 2012 Legislative Session ***
Annotations current to State Cases through October 19, 2012 ***

CHAPTER 745. CIVIL IMMUNITIES
RECREATIONAL USE OF LAND AND WATER AREAS ACT

GO TO THE ILLINOIS STATUTES ARCHIVE DIRECTORY

745 ILCS 65/1 (2012)

[Prior to 1/1/93 cited as: Ill. Rev. Stat., Ch. 70, para. 31]

§ 745 ILCS 65/1. [Short title; purpose]

Sec. 1. This Act shall be known and may be cited as the "Recreational Use of Land and Water Areas Act".

The purpose of this Act is to encourage owners of land to make land and water areas available to any individual or members of the public for recreational or conservation purposes by limiting their liability toward persons entering thereon for such purposes.

HISTORY: Source: P.A. 85-959; 94-625, § 5.

Statutes current through Act P.L. 161 of the 2012 Second Regular Session
Annotations current through July 31, 2012 for Indiana Supreme Court cases, through September 6, 2012 for Indiana Appellate Court cases, through September7, 2012 Indiana Tax Court cases, and through September 6, 2012 for Federal court cases.

Title 14 Natural and Cultural Resources
Article 29 Rivers, Streams, and Waterways
Chapter 6 Natural, Scenic, and Recreational River System

Go to the Indiana Code Archive Directory

Burns Ind. Code Ann. § 14-29-6-13 (2012)

14-29-6-13. Acquisition of easements -- Eminent domain -- Financial assistance for land acquisition or facility development.

(a) As used in this section, "conservation easement" has the meaning set forth in IC 32-23-5-2.

(b) As used in this section, "land use easement" means the granting of the right of the general public to use the adjacent land.

(c) As used in this section, "scenic easement" means the granting of protection of adjacent land in the land's present state to preserve the land's natural or scenic characteristics.

(d) As used in this section, "water use easement" means the granting of the right of the general public to travel along or across all water parts of the river.

(e) The director may do the following:

(1) Acquire on behalf of the state land in fee title or any other interest in land, including the following:

(A) Water use easements.

(B) Scenic easements.

(C) Land use easements.

(2) Exercise the right of eminent domain on behalf of the state to acquire the following:

(A) Conservation easements.

(B) Water use easements.

(f) Land or an interest in land may be acquired by purchase with appropriated or donated money, exchanges, donations, or otherwise.

(g) The director may seek financial assistance for land acquisition and for facility development of scenic rivers from the following:

(1) Federal and local governmental sources.

(2) Private groups and individuals.

HISTORY: P.L.1-1995, § 22; P.L.2-2002, § 62.

*** This document is current through 2012 P.A. 1-260, 283, 296, 305 ***

CHAPTER 324 NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT
ARTICLE III. NATURAL RESOURCES MANAGEMENT
CHAPTER 4. RECREATION
SUBCHAPTER 1. RECREATION ADMINISTRATION
PART 733. LIABILITY OF LANDOWNERS

Go to the Michigan Code Archive Directory

MCLS § 324.73301

MCL § 324.73301

§ 324.73301. Liability of landowner, tenant, or lessee for injuries to persons on property for purpose of outdoor recreation or trail use, using Michigan trailway or other public trail, gleaning agricultural or farm products, fishing or hunting, or picking and purchasing agricultural or farm products at farm or "u-pick" operation; definition.

Sec. 73301. (1) Except as otherwise provided in this section, a cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of fishing, hunting, trapping, camping, hiking, sightseeing, motorcycling, snowmobiling, or any other outdoor recreational use or trail use, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(2) A cause of action shall not arise for injuries to a person who is on the land of another without paying to the owner, tenant, or lessee of the land a valuable consideration for the purpose of entering or exiting from or using a Michigan trailway as designated under part 721 or other public trail, with or without permission, against the owner, tenant, or lessee of the land unless the injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee. For purposes of this subsection, a Michigan trailway or public trail may be located on land of any size including, but not limited to, urban, suburban, subdivided, and rural land.

(3) A cause of action shall not arise against the owner, tenant, or lessee of land or premises for injuries to a person who is on that land or premises for the purpose of gleaning agricultural or farm products, unless that person's injuries were caused by the gross negligence or willful and wanton misconduct of the owner, tenant, or lessee.

(4) A cause of action shall not arise against the owner, tenant, or lessee of a farm used in the production of agricultural goods as defined by section 35(1)(h) of the former single business tax act, *1975 PA 228,* or by section 207(1)(d) of the Michigan business tax act, *2007 PA 36, MCL 208.1207* , for injuries to a person who is on that farm and has paid the owner, tenant, or lessee valuable consideration for the purpose of fishing or hunting, unless that person's injuries were caused by a condition which involved an unreasonable risk of harm and all of the following apply:

(a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.

(b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.

(c) The person injured did not know or did not have reason to know of the condition or risk.

(5) A cause of action shall not arise against the owner, tenant, or lessee of land or premises for injuries to a person, other than an employee or contractor of the owner, tenant, or lessee, who is on the land or premises for the purpose of

picking and purchasing agricultural or farm products at a farm or "u-pick" operation, unless the person's injuries were caused by a condition that involved an unreasonable risk of harm and all of the following apply:

(a) The owner, tenant, or lessee knew or had reason to know of the condition or risk.

(b) The owner, tenant, or lessee failed to exercise reasonable care to make the condition safe, or to warn the person of the condition or risk.

(c) The person injured did not know or did not have reason to know of the condition or risk.

(6) As used in this section, "agricultural or farm products" means the natural products of the farm, nursery, grove, orchard, vineyard, garden, and apiary, including, but not limited to, trees and firewood.

HISTORY: Act 451, 1994, p 2215; eff March 30, 1995 (see Mich. Const. note below).

Pub Acts 1994, No. 451, Art. III, Ch. 4, Subch. 1, Part 733, § 73301, as added by Pub Acts 1995, No. 58, imd eff May 24, 1995 (see 1995 note below).

Amended by Pub Acts 2007, No. 174, imd eff December 21, 2007.

*** This section is current through 2012 released chapters 1-491 ***

GENERAL OBLIGATIONS LAW
ARTICLE 9. OBLIGATIONS OF CARE
TITLE 1. CONDITIONS ON REAL PROPERTY

Go to the New York Code Archive Directory

NY CLS Gen Oblig § 9-103 (2012)

§ 9-103. No duty to keep premises safe for certain uses; responsibility for acts of such users

1. Except as provided in subdivision two,

a. an owner, lessee or occupant of premises, whether or not posted as provided in section 11-2111 of the environmental conservation law, owes no duty to keep the premises safe for entry or use by others for hunting, fishing, organized gleaning as defined in section seventy-one-y of the agriculture and markets law, canoeing, boating, trapping, hiking, cross-country skiing, tobogganing, sledding, speleological activities, horseback riding, bicycle riding, hand gliding, motorized vehicle operation for recreational purposes, snowmobile operation, cutting or gathering of wood for non-commercial purposes or training of dogs, or to give warning of any hazardous condition or use of or structure or activity on such premises to persons entering for such purposes;

b. an owner, lessee or occupant of premises who gives permission to another to pursue any such activities upon such premises does not thereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed, or (3) assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.

c. an owner, lessee or occupant of a farm, as defined in section six hundred seventy-one of the labor law, whether or not posted as provided in section 11-2111 of the environmental conservation law, owes no duty to keep such farm safe for entry or use by a person who enters or remains in or upon such farm without consent or privilege, or to give warning of any hazardous condition or use of or structure or activity on such farm to persons so entering or remaining. This shall not be interpreted, or construed, as a limit on liability for acts of gross negligence in addition to those other acts referred to in subdivision two of this section.

2. This section does not limit the liability which would otherwise exist

a. for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or

b. for injury suffered in any case where permission to pursue any of the activities enumerated in this section was granted for a consideration other than the consideration, if any, paid to said landowner by the state or federal government, or permission to train dogs was granted for a consideration other than that provided for in section 11-0925 of the environmental conservation law; or

c. for injury caused, by acts of persons to whom permission to pursue any of the activities enumerated in this section was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger.

3. Nothing in this section creates a duty of care or ground of liability for injury to person or property.

Add, L 1963, ch 576, § 1, with substance transferred from Conserv § 370; amd, L 1965, ch 367, § 1, L 1966, ch 886, § 1, L 1968, ch 7, § 1, L 1979, ch 408, § 1, eff Sept 1, 1979.

Section heading, amd, L 1966, ch 886, § 1, L 1968, ch 7, § 1, eff Sept 1, 1968.

Sub 1, par a, amd, L 1971, ch 343, § 1, L 1972, ch 106, § 1, L 1977, ch 91, § 1, L 1978, ch 147, § 1, L 1978, ch 187, § 1, L 1978, ch 195, § 1, L 1979, ch 336 § 1, L 1979, ch 408, § 1, L 1984, ch 141, § 1, L 1984, ch 286, § 5, eff Oct 24, 1984.

Sub 1, par c, add, L 1980, ch 174, § 1, eff June 2, 1980.