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RINCON TRIBAL COURT

Intertribal Court of Southern California

04-30-09P12:09 RCVD

Marcia LaCour

7 DIANE CHRISTINE KRAFT & SANDRA L.

) Case No.: RINCON-03032008/A03032008

8 BURKE,

) DECISION

9 Plaintiff,

10 vs.

11 , HARRAH'S RINCON CASINO & RESORT,

12 Defendant



14 This matter came regularly before the Rincon Tribal Court on March 9, 2009
15 the Honorable Anthony J. Brandenburg presiding. Plaintiffs Christine Kraft
16 and Sandra L. Burke were present in court and represented by Ms Marcia LaCour
17 and defendants Rincon and Harrah's were represented by Mr. Ron Giusso.

19 Brief History of the Case

21 Following their attendance at a concert held on the Rincon Reservation at
22 Harrah's Casino the plaintiffs were injured as they exited the bleacher
23 stands near the close of the concert. Ms Burke, exiting down the stairs
24 alleged she did not see the last two steps due to the poor lighting
25 conditions. The result of the poor lighting and her not being able to see the
last steps caused her to fall injuring her leg/ankle, which required

1 extensive medical attention. Exiting the bleacher stands from a different
2 set of stairs Ms Kraft claimed she did not see the last step due to poor
3 lighting fell and injured her face/nose again requiring extensive medical
4 attention.

5
6 The parties both claim as the basis of their individual cases that pursuant
7 to the Rincon Tribes "Patron Tort Claims Ordinance" the proximate cause of
8 their injuries was by not providing adequate lighting and taking certain
9 other precautions in constructing the temporary bleachers the Tribe created a
10 Dangerous Condition and as such that condition created a "reasonably
11 foreseeable risk of the kind of injury that was incurred" by the plaintiffs.

12
13 Pursuant to stipulation by counsel the only issue argued at trial was
14 "liability". Following motions and other pretrial matters the case was
15 heard by Chief Judge Brandenburg beginning on March 9,2009. The trial lasted
16 three days with subsequent motions and final arguments following at a later
17 date.

18
19 Discussion

20
21 The incidents of injury both occurred at night. While there was a band and
22 performers on stage the plaintiffs argue the primary cause of their
23 individual mishaps was the lack of proper lighting. There was also some
24 discussion regarding the lack of handrails as a contributing factor to the
25 injuries. Additionally both plaintiffs and some witnesses argued they did
not see the reflector tape at the bottom two steps and further that while

1 defendants claim the bottom step was lit, plaintiffs claim that they did not
2 see it and if in fact it was there they could not see it because it was so
3 dim and or improperly placed.

4
5 On the other hand defendants argued there was in fact sufficient lighting
6 both on and around the steps as well as the ambient lighting from the stage
7 and surrounding lights. They also claim that the reflective tape on the
8 bottom two steps provided further notice of when the steps came to an end and
9 where it was safe and proper so step. While plaintiffs provided an expert
10 with regard to the safety of the steps, lighting and construction of the
11 bleachers the court found her testimony of little help in attempting to
12 resolve the matter.

13
14 Decision

15
16 It should come as no surprise to the parties that the court has struggled
17 with this case. It is of course regrettable that the plaintiffs were
18 injured. It is not a matter to be taken lightly. In their testimony they
19 were both appeared honest and forthright. There was never any doubt in the
20 courts mind that their injuries were real or contrived. The difficulty for
21 the court was in determining if the situation, as it existed on the night of
22 the incidents, was as in fact a "dangerous condition" and that the condition
23 as it existed and was testified to create a "reasonably foreseeable risk of
24 the kind of injury that was incurred"?

1 There is always a potential for danger in darkness. As individuals we are or
2 should be aware of this. It does not seem unreasonable to the court that in
3 taking responsibility for our selves we must be cautious in darkened areas.
4 The question then becomes at what point in a case such as the one at the bar
5 does an individual's responsibility for their own behavior/safety give way to
6 the assumption of liability for the actions of that person's behavior by
7 another? In attempting that fully analyze the situation and in giving due
8 weight to the facts as presented the court must look to the totality of the
9 situation.

10
11 Plaintiff Burke testified she was cold. She was leaving the concert before
12 the end to find a warm spot. She was sitting only four or five rows above
13 the ground in the bleachers. Her husband who is taller than she went ahead
14 of her and successfully managed the steps. It appeared up until the point
15 when where he came to the ground he had been holding her hand. When he
16 reached the ground he then let go of her hand. He was standing on the ground
17 and in front of her when he let go of her hand. At that time she was two
18 steps from the ground. Her feet were even with the seats in the bottom row
19 of the bleachers where patrons were sitting on either side of her. The
20 second to the last step she was standing on had reflector tape at the edge,
21 as did the last step. There was also a small string of lights to the sides
22 of the steps and running along the lip of the bottom step. While she had
23 arrived at the concert venue it was still light out however she claimed at no
24 time did not see either the lights on the steps or the tape and there was
25 insufficient ambient illumination when exiting in the dark for her to safely
manage the last two steps and there were no handrails. Collectively then it

1 was argued that this created a dangerous condition and thus a foreseeable
2 risk of injury.

3
4 Defendants arguments focused on their claim that it was reasonable on their
5 part to assume the plaintiff knew or should have known that she was neither
6 standing on the ground or the last step. Further plaintiffs claimed there
7 was sufficient lighting and warning via the tape and the ambient conditions
8 to successfully manage the stairs. Additionally it was argued that Ms Burke
9 was essentially not paying attention in that a reasonable person would have
10 known and or realized simply by where she was standing in relation to both
11 the patrons sitting in the bleachers near her feet and the fact that her
12 husband was so far below her that there were more stairs to maneuver.
13 Defendants also argued they had no actual or constructive notice of a
14 dangerous condition existing pursuant to a requirement of the Patron Tort
15 Claims Ordinance. Testimony also was presented there had been several other
16 concerts and that defendants had no notice of any condition which would lead
17 them to believe an unsafe condition existed.

18
19 Plaintiff Kraft, on the other hand had been sitting at the top of the
20 bleachers some fourteen or so steps above the ground with her now husband.
21 While she exited the bleachers from a different aisle she also had elected to
22 leave the concert early due to the fact she had to relieve herself. As she
23 ascended the stairs her husband was behind her by a couple of steps. She
24 successfully maneuvered all of the steps except the last one. She testified
25 she also was not able to see the last step, lights or tape. The result being

1 she fell and injured her face/nose. Her argument in support of her position
2 being essentially the same as Plaintiff Burke regarding the unsafe condition.

3
4 Defense here argued Ms Kraft was inattentive. She was in a hurry to relieve
5 herself and was not paying attention. She also entered the bleachers during
6 the daylight and either knew or should have known the conditions as they
7 existed and taken them into consideration when exiting the bleachers prior to
8 the end of the concert.

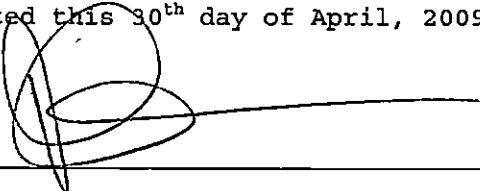
9
10 Again the question in this case as presented is: at what point does
11 responsibility for ones own actions end and the liability for those acts by
12 another begin? The Court looks first to the question, were the conditions as
13 testified to dangerous. Granted it was nighttime however while there is
14 always the potential for danger in darkness it alone is not sufficient to
15 establish a dangerous condition. Is it in the case of either plaintiff
16 reasonable to assume the lighting was insufficient? Witnesses from the
17 Casino testified they has had no problems in the past thus they were not on
18 notice of any foreseeable risks or an existing dangerous condition. Other
19 witnesses for the plaintiffs stated while they were not in the bleachers they
20 as well did not see the tape or lights.

21
22 Each of the plaintiffs left the concert early, that is, prior to the end of
23 the concert. While they testified they did not hurry each had a specific
24 reason for wanting to get out of the bleachers as quickly as possible. Their
25 husbands exited the bleachers safely and there was no testimony they
struggled to maneuver the steps.

1 Considering all facts testified to including the number of persons who have
2 used these same stairs exiting the concerts on that evening and at past
3 concerts and considering in total the situation as it existed on that evening
4 in question it is difficult for the court find that the plaintiffs have
5 established by way of the standard of proof required in cases such as this a
6 dangerous condition existed at the time the plaintiffs injury occurred. This
7 being the case the court finds there was insufficient evidence presented at
8 the time of trial to establish liability on the part of the defendants.
9 Judgment is then for the defense.

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13 It is so ordered

14 Dated this 30th day of April, 2009

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17 _____
18 Anthony J. Brandenburg

19 Chief Judge Rincon Tribal Court
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