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## MOTORIZED SHOPPING CARTS: WHO'S RESPONSIBLE FOR ACCIDENTS?

BY JAN ROLLER

More than 830,000 Ohio citizens have an ambulatory disability that makes walking difficult. The Food Marketing Institute and other retail merchant associations state their stores provide motorized shopping carts as a courtesy throughout Ohio to help people complete basic tasks like grocery shopping. But customers have been struck and injured by other customers driving motorized carts. Who's responsible? Certainly the driver of the cart; but should the store also be responsible when it does not provide any operational instructions on its carts, assumes all individuals who use the carts know how to drive them and does not post any warnings for customers other than the cart operators? What if the cart operator has dementia? Should the store interrogate customers on their fitness and ability to properly operate a motorized cart?

These were the questions posed in the recent case *Rieger v. Giant Eagle, Inc.*, 2019-Ohio-3745, decided by the Ohio Supreme Court on September 19, 2019. In *Rieger*, the plaintiff was struck and injured by another customer, Ruth Kurka, operating a motorized shopping cart. Rieger was knocked to the ground and injured. She was not able to stand after the accident and was taken to the hospital by ambulance. She incurred \$11,511 in medical bills. Kurka died prior to trial, but her estate settled with Rieger for \$8,500 and the estate was dismissed as a party in the lawsuit.

At trial, Rieger testified on her own behalf. She also presented portions of deposition testimony from the decedent's husband, George Kurka, and corporate representatives

from Giant Eagle. During his deposition, George Kurka testified that his wife had been diagnosed with dementia prior to the incident at Giant Eagle and that his wife had never been trained on how to operate the motorized cart. Giant Eagle's corporate representative testified in his deposition that 1) Giant Eagle provides motorized carts for customers with mobility limitations, 2) there are no operational instructions on carts, 3) Giant Eagle assumes that all individuals who use carts know how to drive them, and 4) the warnings posted on the carts are for the cart operators.

Over objection, the trial court permitted evidence of 117 incidents involving motorized carts at various corporate owned Giant Eagle stores from 2004 to 2012. Giant Eagle moved for a directed verdict on the plaintiff's claims of negligence and negligent entrustment. The motion was denied and the jury awarded the plaintiff \$121,000 in compensatory damages and \$1,198,000 in punitive damages.

The parties stipulated that any compensatory damages awarded by the jury would be offset by the \$8,500 settlement between Rieger and the Kurka estate. Rieger's counsel filed a motion, which Giant Eagle opposed, asserting that R.C. 2315.21, Ohio's statute limiting punitive-damage awards to two times the amount of the compensatory-damages award, was unconstitutional as applied to her case. Following the hearing, trial court Judge John D. Sutula agreed with Rieger and found the statutory cap on punitive damages

unconstitutional as applied to her case. Consequently, the trial court entered judgment awarding Rieger \$112,500 in compensatory damages and \$1,198,000 and punitive damages.

Giant Eagle timely appealed and asserted, among other arguments, that the trial court erred when it denied Giant Eagle's motion for directed verdict on the issues of negligence, negligent entrustment and punitive damages. The Eighth District Court of Appeals disagreed and held that reasonable minds could have found in Rieger's favor on each issue. However, it reversed the trial court's judgment that R.C. 2315. 21 was unconstitutional as applied to Rieger's case and reduced her punitive damage award from \$1,198,000 to \$242,000. Giant Eagle then timely appealed to the Ohio Supreme Court.

Giant Eagle presented several arguments, but the Supreme Court decided that it need only address the proposition of law regarding proximate causation. The Court held, "there is insufficient evidence as a matter of law establishing causation to support Rieger's claims of negligence and negligent entrustment against Giant Eagle. The trial court should not have denied Giant Eagle's motion for directed verdict and the court of appeals should not have affirmed the trial court's judgment." Accordingly, the court entered judgment in favor of Giant Eagle.

The court reasoned that as in any negligence action, a plaintiff must show the existence of a duty, a breach of the duty, and an injury that was proximately caused by the breach. Based on this requirement, the court considered whether there was any evidence that Rieger would not have been injured had Giant Eagle provided Kurka with training or instruction on how to operate a motorized cart.

The court determined the only element of negligence the court of appeals found was that Rieger had established the existence of a duty. The court went on to state that even if a duty was found, Rieger still had to prove that Giant Eagle's failure to provide Kurka with instruction or training on how to operate the motorized cart caused her injuries.

The Supreme Court found that the court of appeals was silent on the element of causation. On this issue, the Supreme Court concluded that it was pure speculation on Rieger's part that her accident would have been prevented if customers had been instructed on how to use motorized carts. She presented no evidence that the cause of the prior 117 accidents was due to motorized cart drivers' lack of instruction or training. Nor did she present evidence that Giant Eagle's lack of instruction and training was the cause of the accident in her case. The court also stated that even if Kurka's dementia was somehow a contributing factor to the accident, Rieger did not present any evidence that Kurka's dementia was discernible.

So big box stores across the country can breathe a sigh of relief, at least for now, regarding the use of motorized carts by their customers. Disabled and elderly customers can continue to benefit by using motorized carts for their shopping. But the case leaves open whether another plaintiff can produce sufficient evidence that the lack of instruction and training on how to use a motorized cart caused his/her injury. It may be only a matter of time.



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