Court of Appeals Concludes Swimming Pool is Not an Attractive Nuisance

Colt Galloway
cgalloway@mwlaw.com
(479) 464.5686

05/02/2022

In addition, this article was co-authored by former Attorney Lindsey Vechik.

In a case arising from tragic circumstances, the Arkansas Court of Appeals recently concluded that a residential swimming pool located near an elementary school was not an attractive nuisance, and affirmed summary judgment in favor of the property owners.[1]

On March 7, 2017, a six year old student at Vandergriff Elementary School, in Fayetteville, Arkansas, left the playground, walked on to the neighboring property of appellees, and tragically drowned in the appellees' swimming pool. On June 5, 2018, the personal representatives of the student's estate filed suit alleging claims based on attractive nuisance and negligence. The circuit court granted the appellees' motion for summary judgment on both claims.

On appeal, the appellants argued swimming pools are attractive nuisances and should be enclosed in order to keep children safe.[2] The Arkansas Court of Appeals rejected that argument, citing to the 1957 Arkansas Supreme Court decision, *Carmichael v. Little Rock Housing Authority*, 227 Ark. 470, 299 S.W.2d 198 (1957), which held that a natural pond where children congregated was not an attractive nuisance in the absence of any unusually dangerous feature or hidden hazard. The Court found that "bodies of water, natural or artificial, do not constitute an attractive nuisance in the absence of any unusual element of danger" and held "that a case involving a swimming pool should be treated no differently."[3] The Court reasoned that because "no unusual condition existed in or near the appellees' swimming pool that would have masked the inherent danger of a body of water … the circuit court correctly granted summary judgment on appellants' attractive-nuisance claim."[4]

In concluding its opinion, the Court noted:

"[W]e agree with the opinion of our supreme court expressed in *Carmichael*: "The drowning of a child of tender years is a most regrettable tragedy. In determining a claim of legal responsibility for such a deplorable misfortune it is difficult to resist the temptation to substitute sentiment for law and reason." 227 Ark. at 474–75, 299 S.W.2d at 201. However, considering our precedent and the facts presented in this case, we cannot say that the circuit court erred in granting summary judgment on appellants' claims of attractive nuisance and negligence."[5]

Despite the tragic nature of the facts in this case, the Court's decision provides clarification on the potential liability of owners of swimming pools in the state. Read the entire opinion here.

[1] *See Cazort v. Garner*, 2022 Ark. App. 186.

[2] *Id.* at 3.

[3] *Id.* at 4.

[4]*Id.*

[5]*Cazort*, 2022 Ark. App. 186, at 5.