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RUA Immunity at Risk: Understanding What Claims Break the RUA Shield

By Jared J. Andrzejewski **February 21, 2025**

In *Rodgers v Sydow*, unpublished opinion per curium of the Michigan Court of Appeals, issued December 30, 2024 (Docket No. 358698), the Court addressed the scope of landowner immunity under the Recreational Land Use Act (RUA). The Plaintiff sued the Defendant after sustaining injuries in an off-road vehicle (ORV) accident on Defendant's property.

Plaintiff visited Defendant at her property for a social gathering and they consumed alcohol together. Later they picked up a mutual friend, who also consumed alcohol. Defendant then brought out her ORV and offered the mutual friend a chance to drive it with Plaintiff as a passenger. While speeding along a dirt path on Defendant's property, the mutual friend lost control, causing the ORV to tip onto the passenger side. Plaintiff sustained serious head injuries, requiring several days of hospitalization.

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The RUA provides broad immunity to landowners, shielding them from liability unless gross negligence or willful misconduct is proven. Negligent entrustment claims are barred under the RUA because they rely only on proof of simple negligence. Owner's liability claims under the motor vehicle code can only proceed when gross negligence or willful and wanton misconduct is established.

Plaintiff sued for gross negligence, negligent entrustment of the ORV, and owner's liability of the ORV under the motor vehicle code. The trial court dismissed Plaintiff's claims, ruling that Michigan's Recreational Land Use Act provided immunity to the landowner. The RUA provides immunity for landowners for injuries occurring on their property as a result of recreational activities, except in cases of gross negligence or willful misconduct. Riding an ORV is a recreational activity. For immunity to apply, the injured person must be on the land of another without paying the owner any valuable consideration.

On appeal, the Michigan Court of Appeals considered the case in light of the Michigan Supreme Court's recent decision in *Milne v Robinson*, 513 Mich 1 (2024), for the first time. The Michigan Supreme Court in *Milne* clarified the scope of RUA immunity, holding that not only does the RUA apply to premises liability claims, but it applies to any claims against the landowner that do not rise to the level of gross negligence or willful and wanton misconduct.

Negligent Entrustment

Negligent entrustment applies when someone gives another person access to something dangerous, like a vehicle, despite knowing they might use it negligently. To establish negligent entrustment, a plaintiff need show only simple negligence in the entrustment and in the behavior which caused the activity resulting in the injury.

Applying *Milne*, the Court of Appeals upheld the dismissal of Plaintiff's negligent entrustment claim as it relied only on proof of simple negligence and not gross negligence. Accordingly, the Court of Appeals made it clear that a negligent entrustment claim against the landowner cannot survive the immunity provided by the RUA.

Owner's Liability

The owner of a motor vehicle is liable for an injury caused by the negligent operation of the motor vehicle whether the negligence consists of a violation of a statute of this state, or the care standard required by common law. In *Milne*, the Michigan Supreme Court ruled the RUA applies to an owner liability claim arising from the operation of an ORV, requiring the plaintiff to establish the landowner engaged in gross negligence or other willful and wanton misconduct to prevail.

Applying *Milne*, the Court of Appeals reversed the trial court's dismissal, finding that while the RUA does apply to owner's liability, it does not foreclose the claim entirely. The Court of Appeals noted that *Milne* established that a plaintiff must demonstrate gross negligence or willful and wanton misconduct to prevail. Unlike in *Milne*, the Plaintiff in this case presented some evidence of gross negligence (alcohol consumption and reckless driving) allowing the claim to proceed. However, the Court cautioned that Plaintiff's original Complaint with numerous allegations that the ORV was "negligently" operated, does not meet the necessary threshold. The Court of Appeals sent the case back to the trial court for further proceedings on the claims of gross negligence and owner's liability.

This decision reinforces the high burden for plaintiffs seeking to overcome RUA immunity set forth in *Milne*. However, the RUA does not provide absolute immunity to landowners; Plaintiff can still recover damages if she proves gross negligence or willful and wanton misconduct.

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