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When Warning Signs Are Not Enough

By Anne M. Miller **November 3, 2026**

On September 21, 2026, the Court of Appeals, in *Hill v Recreational Adventures Campground, LLC*, revived a Plaintiff's case arising from a premises liability action that resulted in a drowning death of a minor at Defendant's campground. *Hill v Recreational Adventures Campground, LLC*, unpublished per curiam opinion of the Court of Appeals, issued September 21, 2026 (Docket No. 375034), 2026 WL 2832938. In this case, the decedent, a 15-year-old boy, went swimming in the man-made swimming pond at Defendant's campground. Slip op. at 1. There were eighteen signs present throughout the campground and surrounding the pond stating that no lifeguard was present, parents were responsible for watching their children, and that swimmers swam at their own risk. *Id.* at 1-2. However, the pond had an eight-inch thick "soft murky bottom" and zero visibility below six feet in depth. *Id.* at 2. The deepest part in the center of the pond, which ranged from a depth of 2.2 to 3.1 feet, was cordoned off by buoy line and four additional warning signs; however, the deepest point within that marked zone averaged nearly eleven feet in depth—again, with no visibility below six feet. *Id.*

The decedent and two other boys went swimming in the pond, but the decedent did not have very much swimming experience. *Id.* The other boys crossed to the other side of the buoy line and raced each other underwater; however, when they resurfaced after finishing racing, they were unable to locate the decedent. *Id.* The decedent's body was eventually found on the bottom of the pond at a depth of approximately eight to nine feet. *Id.* The decedent's mother brought the instant case on behalf of the estate of her son alleging negligence and premises liability, asserting that the pond was a hazardous condition and Defendant failed to exercise reasonable care in placing warning signs because they were insufficient to make the dangerous nature of the water apparent to guests. *Id.* Additionally, Plaintiff asserted that Defendant was on notice of the danger and her son's death was foreseeable because of another drowning incident that occurred the previous year. *Id.* Both Plaintiff and Defendant submitted expert reports in support of their positions.

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On its face, this case gives conflicting thoughts. On the one hand, ***eighteen*** signs plus the warnings on Defendant's website, and the floatation rings next to the pond would seem to be enough to warn of the danger and move the assumption of the risk for injury to those who still choose to swim. On the other hand, another child's death in the same pond just a year earlier would seem sufficient to alert a reasonably prudent landowner that existing precautions were inadequate and additional measures might be needed to make the pond reasonably safe. This also gives rise to an important question: Defendant posted no less than ***eighteen*** signs warning swimmers that they swam at their own risk. Shouldn't this have been enough to protect the Defendant from liability?

The issue here is both more and less complex: the *number* of signs was likely sufficient; however, the *contents* of the signs and *who* the signs were attempting to warn were what mattered. Though the signs gave general warnings of the dangers of swimming, they failed to specify the actual dangers (murky bottom, lack of visibility, depth, etc.) specific to the swimming pond – making the contents of the signs insufficient to address the dangers. Further, the signs addressed ***parents***, not the adolescents using the pond. Although the minors could *read* them, their ability to appreciate the risks and assess their swimming abilities was less clear. Minors—especially in groups—tend to overestimate their abilities and underestimate risks. Thus, even eighteen signs were inadequate because they omitted the pond's specific hazards and relied on parents to control their adolescents' behavior and swimming at all times.

The decedent was an invitee and Defendant owed him "a duty to 'exercise reasonable care to protect [him] from an unreasonable risk of harm caused by a dangerous condition of the land.'" *Id.* at 5 (internal citations omitted). Thus, Defendant owed not just a duty to warn of dangers, but also a duty to make the premises safe. *Id.* Defendant maintained that the signs were sufficient warning of the dangerous condition; however, Plaintiff maintained that the signs were not sufficient, particularly considering the lack of visibility below six feet of depth and the previous drowning. In determining whether Defendant breached its duty of care, case law in the wake of *Kandil-Elsayed* states that the question to be considered is '"whether an average person with ordinary intelligence would have discovered the hazard, and whether the defendant would have anticipated the harm despite it being open and obvious.'" Slip op at 5 (internal citations omitted). Therefore, the decision for the trial court on Defendant's Motion for Summary Disposition was '"whether defendant's conduct in the particular case is below the general standard of care.'" Slip op at 5 (internal citations omitted).

The expert reports were particularly important here, as was the previous death only a year prior to the death from which this case arose. Plaintiff's human factors expert noted, in particular, that swimming ponds are different than swimming pools, which could result in misperceptions, and the murkiness of this particular pond made it difficult to accurately assess the conditions within the pond. Slip op at 6. Said expert also addressed the contents of the signs themselves, which did not explicitly *prohibit* swimming and only indicated deep water without explaining the danger to inexperienced swimmers. *Id.* The additional lack of a lifeguard, "despite the hazard being 'clearly recognized by [Defendant]'" was also addressed. *Id.* Defendant's expert, in contrast, pointed to the *eighteen* signs in addition to the information available on the website and the available flotation rings located at the pond as fulfilling its duty to exercise reasonable care to warn or protect invitees. *Id.* However, though Defendant's human factors expert opined that "enough information was provided by the campground for *parents* to make assessments about the skill levels of their children" and the decedent's father admitted that the decedent would have been able to read the signs with the warnings, said expert's report also concluded with a section on '"Adolescence and Fun-Seeking Behavior' to indicate [that the decedent] chose to enter deep water … despite a potential mismatch between his abilities and his evident desire to swim in deep water" with his friends. *Id.* (emphasis added).

In a unanimous decision, the Court of Appeals reversed the trial court's grant of summary disposition for Defendant, holding that a genuine issue of material fact remained as to "whether the swimming pond present[ed] an unreasonable risk of harm and [was] a dangerous condition on the premises." Slip op at 5. The Court of Appeals agreed that "[v]iewing the facts in the light most favorable to plaintiff, reasonable persons could conclude that the swimming pond constituted a dangerous condition posing an unreasonable risk of harm to invitees." *Id.* Moreover, the Court of Appeals also agreed that, "[v]iewing the evidence in the light most favorable to plaintiff, reasonable persons could disagree on whether [the decedent] knew or had reason to know of the condition and the risk involved, whether defendant should have expected that [the decedent] would not have discovered the hazard before falling victim to it, and whether defendant failed to take adequate precautions to protect swimmers." Slip op at 6. Consequently, because reasonable people could disagree, a genuine issue of material fact remained, making the issue improper for summary disposition. Accordingly, the Court of Appeals reversed and remanded the case to the trial court for further proceedings.

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Premises Liability Practice Group Chair
Mark F. Masters | mmasters@secrestwardle.com or 248-539-2844

For questions pertaining to this article
Anne M. Miller | AMiller@secrestwardle.com or 616-272-7966

Website LinkedIn YouTube Email

SECREST WARDLE

Troy | 248-851-9500
Grand Rapids | 616-285-0143

www.secrestwardle.com

Contributors

Premises Liability Practice Group

Chair
Mark F. Masters

Editors
Sandie Vertel
Susan Willcock

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