Featured Blogs of the Month

Blogs selected for this column are published through the State Bar of Wisconsin's section blogs as well as WisLawNOW, the State Bar's aggregated community of Wisconsin legal bloggers.

Agricultural Tourism Immunity and Barn Weddings: The Plaintiff

BY AMY M. RISSEEUW

Does the agricultural tourism immunity statute protect farms operating as a wedding venue? The author explores the question for a plaintiff injured at a barn wedding. Arguments for the defense follow in the companion piece below.

According to various wedding websites, approximately 15-20% of couples are choosing to hold rustic wedding ceremonies and receptions at a barn, farm, or ranch.

While many attorneys practicing personal injury law may have come across a premises liability claim regarding a fall that occurred at a wedding, the agricultural tourism immunity statute, Wis. Stat. section 895.524, adds an interesting layer to an injury claim that occurred at a barn or farm wedding.

The Case

I represented a woman who was injured in a fall at a wedding reception held on a farm in a barn. The wedding ceremony took place in a field. Guests were transported to the ceremony on a hay wagon. After the ceremony, the guests were transported on the hay wagon back to the barn where the reception meal was served followed by dancing and drinks.

As guests at the wedding, attendees were permitted to visit the animals on the farm. It rained during the wedding ceremony. After my client was transported back to the barn, she left with her husband to go home and change before returning to the farm for the reception in the barn.

After her meal, my client fell while walking to the bar to get a drink and sustained significant injuries.

Plaintiff's Arguments

As always, the true liability facts are more complex, but for the purpose of this blog I focus on the agricultural tourism immunity statute: Section 895.524 went into effect April 2014, and there are no known appellate decisions to date that interpret this statute.

This specialized immunity statute provides immunity as follows:

(2) Immunity from liability. (a) Subject to par. (b), an agricultural tourism provider is immune from civil liability for injury to or the death of an individual who is participating in an agricultural tourism activity on property owned, leased, or managed by the agricultural tourism provider if all of the following apply:

1. The participant is injured or killed as a result of a risk inherent in an agricultural tourism activity.

2. The agricultural tourism provider posts and maintains, in a clearly visible location at each entrance to the property where the agricultural tourism activity takes place or at the location of each agricultural tourism activity, a sign that contains the following notice in black lettering, each letter a minimum of 1 inch in height, on a white background: "Notice: A person who observes or participates in an agricultural tourism activity on this property assumes the risks inherent in the agricultural tourism activity. Risks inherent in the agricultural tourism activity may include conditions on the land, the unpredictable behavior of farm animals, the ordinary dangers associated with equipment used in farming operations, and the potential that a participant in the agricultural tourism activity may act in a negligent way that may contribute to injury or death. The agricultural tourism provider is not liable for the injury or death of a person involved in an agricultural tourism activity resulting from those inherent risks.

In addition, an "agricultural tourism activity" is defined in section 895.524(1)(a) as:

"'Agricultural tourism activity' means an educational or recreational activity that takes place on a farm, ranch, grove, or other place where agricultural, horticultural, or silvicultural crops are grown or farm animals or farmed fish are raised, and that allows members of the general public, whether or not for a

fee, to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural production, harvesting, or husbandry that occurs on the farm, ranch, grove, or other place."

Is Attending a Wedding an Agricultural Tourism Activity?

In bringing this action, I expected and was not surprised when the farm wedding venue raised agricultural tourism immunity in its answer. The defense moved for summary judgment on this issue.

In response, the plaintiff emphasized that she fell while attending a wedding reception at the barn. She did not get kicked by a cow, bitten by a goat, or trip on a rut while visiting piglets. The plaintiff argued that in attending a wedding reception, she was not participating or touring any element of agricultural production, harvesting, or husbandry. Guests were permitted to experience those aspects of the farm, but the plaintiff did not participate in those activities. She was not engaged in any agricultural activity at the time she fell other than the fact she was physically inside a barn used to host a wedding.

Further, the plaintiff argued this was not an event open to the general public. I have personally been at this farm with my children on a Saturday. The farm closes to the general public in the early evening and only wedding guests are allowed after that point.

Does the Agricultural Tourism Immunity Statute Provide Any Immunity?

In addition to the arguments surrounding the definition of an agricultural tourism activity, the plaintiff further argued that there was no immunity for the farm wedding venue, as she alleged the facility failed to exercise ordinary care.

This immunity statute provides an exception to immunity for tortfeasors that act with "willful or wonton disregard," but defines that as follows:

(b) 1. Subject to subd. 2., an agricultural tourism provider is not immune from civil liability for injury to or the death of a participant if any of the following applies:

a. The agricultural tourism provider acts with a willful or wanton disregard for the safety of the participant. *In this subd. 1.a., "willful or wanton disregard" means conduct committed with an intentional or reckless disregard for the safety of others, such as by failing to exercise ordinary care to prevent a known danger or to discover a danger.*

(Emphasis added).

The failure to exercise ordinary care is a negligence standard, but in this section, is by definition willful or wanton disregard for safety.

Court's Considerations

In oral arguments for summary judgment, the court was much more interested in discussion of the factual circumstances and whether attending a wedding constituted an agricultural tourism activity. The judge pondered whether he has a choice to attend a wedding, implying that it may be more of an obligation and as such, the guest is not choosing the location to enjoy the agricultural atmosphere. The court also seemed to be convinced that a wedding is not an event open to the public.

Decision Pending

The defense has agreed to write a blog post next month, presenting the other side of the argument. Stay tuned for the final decision! **WL**

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Agricultural Tourism Immunity and Barn Weddings: The Defense

BY PAMELA M. SCHMIDT

Does the agricultural tourism immunity statute protect farms operating as a wedding venue? The author presents arguments for the defense.

Weddings held at a farm, ranch, or orchard not only provide a relaxed and fun alternative to traditional venues but can also be an income lifeline to family farms, thereby helping to preserve Wisconsin's agricultural heritage. But, opening agricultural premises to nontraditional uses like weddings comes with risks.

Wisconsin's agricultural tourism statute, Wis. Stat. section 895.524, can protect premises owners from losing the family farm if someone is injured at a wedding. It immunizes agricultural tourism providers who post a specific notice from civil liability to individuals as a result of a risk inherent in an "agricultural tourism" activity on property controlled by the agritourism provider.[1]

Podcast of the Month

Rural Practice with Karina O'Brien of Arcadia

Drive 170 miles northwest on I-90 from Madison, and you will find Arcadia, Wisconsin, which Karina O'Brien calls home. The 2014 U.W. Law School graduate grew up in Arcadia and didn't think she would return. But a local firm, and her father, convinced her to give it a shot.

Now almost a decade later, there's no place Karina would rather be. In the September episode of the Bottom Up podcast (Episode 13), produced by the State Bar of Wisconsin, co-hosts Emil Ovbiagele and Kristen Hardy catch up with Karina, who practices law at Kostner, Koslo & Brovold LLC.

Sharp-witted with good humor, Karina highlights a day in the life of her rural practice, including the sense of community that comes with it. Amidst shortages of attorneys in rural areas – with many older rural attorneys retiring – the trio discusses what can be done to attract attorneys to rural parts of the state in order to serve the rural communities that need lawyers just as much as urban and suburban ones.

Check out the Bottom Up podcast at www.wisbar.org/blog/Pages/Bottom-Up-Podcast.aspx, or wherever you get your podcasts. **WL**

I recently represented a farm that was sued by a woman who suffered injuries while attending a barn wedding. She misstepped off an elevated area, which was an original feature of a barn built in the 1800s.

The farm had posted the notice required by statute and was clearly "an agricultural tourism provider." The issue of immunity, therefore, turned on whether the plaintiff was injured "as a result of a risk inherent in an agricultural tourism activity."[2]

Although plaintiffs' counsel prevailed in convincing the circuit court that weddings were not "agricultural tourism," there is no reported appellate decision supporting this view, and I remain convinced that barn weddings fall within the statute.

Defining Agritourism

Under Wisconsin's statute, an "agricultural tourism provider" is "a person who operates, provides, or demonstrates an agricultural tourism activity."[3]

The Wisconsin Department of Agriculture, Trade, and Consumer Protection broadly defines agritourism as: "any agricultural-based activity that brings visitors to a farm or ranch, agritourism encourages a connection – and for many a reconnection – to agriculture by providing venues that foster a sense of connection to food and those who produce it."

And, the National Agricultural Law Center defines agritourism as: "... a form of commercial enterprise that links agricultural production and/or processing with tourism to attract visitors onto a farm, ranch, or other agricultural business for the purposes of entertaining and/or educating the visitors while generating income for the farm, ranch, or business owner."[4]

Regardless of the definition, agritourism usually includes four factors:

- combining tourism and agriculture;
- drawing visitors to agricultural operations;
- increasing farm income; and
- providing recreation, entertainment, and/or education to visitors.[5]

Most farms, ranches, and orchards will easily qualify as agricultural tourism providers. My client both grew crops and raised animals, hosted weddings, provided tours to school groups, and was open to the general public.

When operating as a wedding venue, the farm incorporated agritourism by featuring hayrides to a wedding site in the farm fields, permitting guests to interact with animals, and staging receptions in a historic barn.

Farm Weddings Are Agricultural Tourism

Although the trial court disagreed, there is reason to believe a barn wedding falls within the agricultural tourism statute.

Agricultural tourism activities are educational or recreational activities occurring where agricultural, horticultural, or silvicultural crops are grown or farm animals raised, and that "allows members of the general public, whether or not for a fee, to tour, explore, observe, learn about, participate in, or be entertained by an aspect of agricultural production, harvesting, or husbandry that occurs on the farm. ..."[6]

In defending against the plaintiff's claim, the farm argued it satisfied the statutory test because the general public, including wedding guests – and specifically including the plaintiff – toured, explored, and observed crops, farm animals, and historic farm buildings.

Notably, the fee charged by the farm for the wedding included use of the historical agricultural buildings, interaction with farm animals, and hayrides for the guests. Moreover, the plaintiff's injury occurred as she mingled with other guests inside a historic barn. Dining, dancing, chatting, touring historic buildings, and viewing fields and livestock, are elements of tourism, entertainment, socializing, and recreation.

The statute does not require the injury to be related to any particular agricultural process. Rather, it immunizes an agricultural tourism provider for injuries inherent in "agricultural *tourism* activity."[7] Thus, even if a plaintiff is not kicked by a cow or bitten by a goat, the immunity conferred by the agritourism

immunity should bar claims arising from injuries occurring on agricultural property during social, recreational, educational, or entertainment events.

Moreover, included within the nonexclusive list of inherent agricultural tourism risks are the ordinary dangers associated with structures used for agricultural activities and conditions of the land.[8] Weddings and receptions may not be intrinsically "agricultural," but they certainly fall within the ambit of "agricultural tourism."

Further, a guest's protestations that she was attending a wedding rather than recreating cannot be dispositive. If a participant's subjective, self-serving declaration regarding the nature of the activity negated application of the statute, it would lack any force at all. Wisconsin rejected that argument within the context of the recreational immunity statute.[9]

While the court may view wedding attendance as a social obligation rather than recreation, if being taken against one's will to anticipatorily view a planned fishing spot is a recreational activity, a social event at a dedicated agricultural tourism venue featuring agriculturally themed activities qualifies as agricultural tourism.[10]

The Exception to Statutory Immunity Is Problematic

Immunity does not exist if the agritourism provider acts with "willful or wanton disregard for the safety of the participant."[11] The statute defines "willful or wanton disregard" as "conduct committed with an intentional or reckless disregard for the safety of others, such as by failing to exercise ordinary care to prevent a known danger or to discover a danger."

Of course, a breach of ordinary care is the standard for negligence – not willful or wanton conduct. Accordingly, the statute is not merely ambiguous, but runs contrary to well-established definitions for willful and wanton. If a breach of ordinary care is an exception to immunity, then the grant of immunity would be illusory.

Courts should not look at a single, isolated sentence, but at the role of the relevant language within the entire statute.[12] Within the context of the statute, the first sentence makes plain that immunity is only withdrawn when the agricultural tourism provider acts with "willful or wanton disregard."

Wisconsin's recreational immunity statute similarly grants immunity to landowners who open their property to the public for recreational purposes, but withdraws immunity for malicious acts or malicious failure to warn of unsafe conditions.[13]

Likewise, participants in team contact sports may not pursue tort claims against others involved unless injury is inflicted recklessly or with intent.[14]

Should the issue arise again, the exception to agritourism immunity should be interpreted in accord with these similar statutes. **WL**

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ENDNOTES

[1]Wis. Stat. § 895.524(2)(a).
[2]Wis. Stat. § 895.524(2)(a).
[3]Wis. Stat. § 895.524(1)(b).
[4]The National Agricultural Law Center, https://nationalaglawcenter.org/overview/agritourism/.
[5]*Id.*
[6]Wis. Stat. § 895.524(1)(a).
[7]Wis. Stat. § 895.524(2)(a) (emphasis added).
[8]Wis. Stat. § 895.524(1)(e).
[9]*Linville v. City of Janesville*, 184 Wis. 2d 705, 715, 516 N.W.2d 427 (1994).
[10]*See id.* at 711.
[11]Wis. Stat. § 895.524(2)(b)1.a.
[12]*See Alberte v. Anew Health Care Servs. Inc.*, 2000 WI 7, ¶ 10, 232 Wis. 2d 587, 605 N.W.2d 515 (2000).
[13]*See* Wis. Stat. §§ 895.52(3)(b), (4)(b), (5), and (6)(b)-(c).
[14]Wis. Stat. § 895.525(4m). **WL**