

CONTACT SPORTS EXCEPTION IN MARTIAL ARTS DEMONSTRATION  
BEVOLO v. CARTER

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT  
April 20, 2006,

[Note: Attached opinion of the court has been edited and citations omitted.]

Thomas Bevolo filed suit against Alan Carter for personal injuries he sustained during a demonstration at a martial arts banquet. The district court granted summary judgment for Carter. Bevolov appeals. For the reasons set forth below, we affirm.

## BACKGROUND

On October 23, 2003, Bevolo and his family attended a martial arts banquet for the Christian Kajukenbo Ministry. Bevolo, an Illinois resident, was a student of Kajukenbo, a Hawaiian form of martial arts. Bevolo had been studying various forms of martial arts for five years; he had been studying Kajukenbo since January 2002. At the banquet, Bevolo was to be promoted to an orange belt. He was wearing his Gi, a black uniform worn by martial arts practitioners. Bevolo's class warmed up and sparred during the first thirty minutes of the banquet. During this time, while other classmates sparred with each other, Bevolo warmed up solo. The warm-up and sparring session was followed by a promotions ceremony and "dinner, fellowship, and photos."

One of the "very special guests" from Missouri (and featured speaker) that evening was Professor Carter, a Kajukenbo expert and an 8th degree black belt. Evidently, Carter has the rare ability to "move people with his mind." After dinner, Bevolo was introduced to Carter and asked Carter to demonstrate this uncanny skill. With a group of onlookers (including Bevolo's own family) present and with cameras in hand, Carter began his demonstration. The demonstration, however, included the use of Carter's well-trained hands as well as his well-trained mind. The mood in the air was light, and Carter demonstrated various pressure points on Bevolo, including pulling his hair and touching his arms. During the demonstration, Carter was talking with the crowd while Bevolo's family took pictures. After performing several maneuvers, including two that put Bevolo on the ground, Carter hit him in the neck. Carter did not intend to injure him, but serious damage was done with that one blow. None of the previous blows or maneuvers had caused any injury.

One of the stated goals of Kajukenbo is that, "when attacked, a student's instincts will take over and the body will react to the situation, diffusing it without hesitation." Unfortunately for Bevolo, his body did not react to Carter's demonstration, nor did it make any attempt to diffuse the situation. As the old saying goes, "it's all fun and games until someone loses an eye," or in this case, until someone injures his neck and has to have a cadaver bone and a titanium plate surgically inserted. We are not surprised to learn Bevolo incurred more than \$ 75,000 in damages.

## ANALYSIS

Illinois courts have established the "contact sports exception" to negligence. Under this exception, voluntary participants in contact sports may be held liable for injuries to co-participants caused by wilful and wanton or intentional misconduct, but they are not liable for injuries caused by ordinary negligence. A player is liable for injury in a tort action if his conduct is such that it is either deliberate, wilful or with a reckless disregard for the safety of the other player so as to cause injury to that player. The parties agree the exception has been expanded to include unorganized, informal, and spontaneous sports activities.

Bevolo contends he did not expect, nor would a reasonable person expect, any physical contact when inquiring about Carter's ability to move people with his mind. Perhaps this may be true if the circumstances involved a magic show or some telekinetic demonstration. But that is not what we have here. The situation arose during a martial arts event.

Bevolo had been coming to this same location for some time to engage in martial arts training, where physical contact with other participants was the norm. Carter was a master and instructor in the martial arts, a role that Bevolo and all the other attendees were aware. The entire evening was organized for the members of this particular group. The attendees were actually engaged in martial arts training that night, warming up, sparring with each other, and discussing Carter's role as master. A reasonable person would have understood in this context that the particular form of martial art being taught, including moving people with their minds, inherently involved physical contact.

The way Bevolo tells the story, and his counsel demonstrated at oral argument, Bevolo was just standing in front of Carter, arms at his side with no defensive positioning, when Carter basically attacked him. But this misrepresents the record. Carter began to physically engage Bevolo. According to Bevolo's own testimony, he was forcibly taken to the ground twice through a series of maneuvers before the fateful blow to the neck was delivered. Tellingly, Bevolo did not object at any time prior to that blow. He argues no reasonable person would dare object to such a dangerous and intimidating figure's attacks. But we are unpersuaded.

Bevolo did not yell "Stop it!" or make any attempt to runaway or simply stay on the ground after he was (twice) taken there. Nor did he otherwise make any attempt whatsoever to stop the encounter. For example, he did not look pleadingly at the onlookers, silently asking for someone to help him. He did not yelp in pain. Even the spectators, consisting of Bevolo's own family, were laughing and taking pictures throughout the demonstration. In the end, it is Bevolo's own deposition testimony that makes it crystal clear he was a willing participant:

Q: What did you tell him, if anything, when he was [performing the demonstration]?

A: I was going along with it. You know, we were having fun. And I thought this was at the end of this, or maybe somewhere in there it would be the mind moving thing.

Bevolo's own deposition testimony shows he had a complete understanding of the situation as well as his role as a willing participant. Therefore, the district court was correct to conclude the contact sports exception to negligence applied to this situation, and Carter could only be liable for Bevolo's injuries if Carter's behavior amounted to wilful and wanton misconduct.

Bevolo next argues Carter's conduct was reckless, thereby making Carter liable for his injuries. As we alluded to earlier, Carter can only be liable if his conduct was "either deliberate, wilful or with a reckless disregard" for Bevolo's safety. Wilful and wanton action demonstrates actual or deliberate intent to harm or shows an utter indifference or conscious disregard for someone's safety.

What little argument there is on the subject focuses solely on Carter's alleged recklessness. In effect, Bevolo has waived any argument concerning whether Carter's actions were deliberate. In fact, Bevolo conceded as much at oral argument when he stated Carter's acts were not intentional.

As to recklessness, once again, Bevolo's own testimony is dispositive. The mood was light, the parties were talking, and all outward appearances reflected that everyone was having an enjoyable time during the demonstration. Bevolo explained, "We were in a real good mood. He was talking with like my sister-in-law, my wife. And, you know, it was just demonstrating a personality. There wasn't any overtones of evil or anything."

As for the actual blow that caused the injury, Bevolo stated, "And I don't think he hit me with any seriousness about hurting me; just that was one of those places where it's sensitive." There is simply no evidence Carter was behaving recklessly; he was performing a martial arts demonstration with a willing participant, as he had done numerous times before. This type of physical contact is inherent in martial arts training, and there is no evidence Carter evinced an utter indifference to or conscious disregard for Bevolo's safety.

## CONCLUSION

For the reasons set forth above, the decisions of the district court are **AFFIRMED**.