

PARTICIPANT IMMUNITY FOR ORDINARY CONTACT SPORT MISCONDUCT  
KARAS v. STREVELL

SUPREME COURT OF ILLINOIS  
February 22, 2008

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

Plaintiff, Robert Karas, filed a complaint on behalf of his minor son, Benjamin Karas, alleging that Benjamin was injured while playing in an organized ice hockey game when he was bodychecked from behind by two opposing players. The complaint alleged that the opposing players' conduct was willful and wanton, and further alleged that the opposing players' team, the governing association of the officials who refereed the game, and the amateur hockey league to which the opposing teams belonged, had both negligently, and willfully and wantonly, caused the injury.

Both the player and organizational defendants filed motions to dismiss. The circuit court of Du Page County, relying primarily on the contact sports exception dismissed plaintiff's complaint in its entirety.

On appeal, the appellate court reversed in part and affirmed in part. The court concluded that plaintiff had successfully pled willful and wanton conduct on the part of the player defendants, had successfully pled negligence on the part of the organizational defendants. However, the appellate court affirmed the circuit court's dismissal of plaintiff's allegations of willful and wanton conduct against the organizational defendants.

For the reasons that follow, we reverse that portion of the appellate court judgment which allowed the claims of willful and wanton conduct on the part of the player defendants, and negligence on the part of the organizational defendants, to go forward. We affirm that portion of the appellate court judgment which dismissed the allegations of willful and wanton conduct against the organizational defendants. We also remand the cause to the circuit court with instructions.

## BACKGROUND

In January of 2004, Benjamin Karas was a member of the Barrington High School Hockey Club's junior varsity hockey team. Russell Zimmerman and Joseph Strevell, the player defendants, were members of a junior varsity hockey team run by defendant Naperville Central Redhawk Hockey Association (Redhawk Hockey). Both teams were members of a hockey league, defendant Amateur Hockey Association Illinois, Inc. (the Hockey Association), and were governed by hockey rules which the Hockey Association promulgated. One of these rules was a prohibition against bodychecking players from behind.

On January 25, 2004, the Barrington team played the Naperville team in an organized ice hockey game. The game was refereed by officials with defendant Illinois Hockey Officials Association (the Officials Association). On the back of each player's jersey the word "STOP," had been sewn

above or between the player's number to reinforce the rule against bodychecking players from behind. According to plaintiff's complaint, during the game, the player defendants struck Benjamin "from behind on his back area causing his head to strike the boards resulting in serious personal injury, including neck and head injuries."

On September 14, 2004, plaintiff filed an eight-count, complaint in the circuit court of Du Page County. Count I of the complaint alleged that Benjamin's injuries were caused by the player defendants' willful and wanton conduct. The complaint states:

"10. On January 25, 2004, the Unknown Defendants, JOSEPH STREVELL and RUSSELL ZIMMERMAN, showed willful and wanton disregard for the safety of the Minor Plaintiff, BENJAMIN S. KARAS, in one or more of the following ways:

- a. Struck the Minor Plaintiff from behind when he was in such a position that they knew or should have known of the possibility of inflicting serious injury on him;
- b. Struck the Minor Plaintiff from behind when he was in close proximity to the boards [such] that they knew or should have known of the possibility of inflicting serious injury on him;
- c. Struck the Minor Plaintiff from behind when he was in such a position and close proximity to the boards that they knew or should have known of the possibility of inflicting serious injury on him;
- d. `Back checked`<sup>1</sup> the Minor Plaintiff at a time when he was partially bent over and looking down with his head pointing towards the boards;
- e. Failed to refrain from `back checking` the Minor Plaintiff in violation of contest rules;
- f. Were otherwise reckless."

Count II alleged that Redhawk Hockey "failed to instruct its players" to refrain from bodychecking opposing players from behind; "failed to discipline, sanction or otherwise control its players" who were known to bodycheck from behind; "promoted, encouraged or otherwise condoned its players" to bodycheck from behind; and "failed to supervise the activities of its players."

Count IV of the complaint alleged that the Hockey Association "failed to instruct its authorized member teams to refrain their players" from bodychecking from behind; "failed to instruct [the Officials Association] to strictly enforce" the rule against bodychecking from behind; "failed to discipline, sanction or otherwise control" both Redhawk Hockey and the Officials Association; "promoted, encouraged or otherwise condoned" bodychecking from behind; and "failed to supervise" both Redhawk Hockey and the Officials Association.

Count VI alleged that the Officials Association "failed to strictly enforce" the rule against bodychecking from behind; "failed to discipline, sanction or otherwise control its member officials regarding their known failures to strictly enforce" the rule against bodychecking from behind; "promoted, encouraged or otherwise condoned its member officials to fail to strictly enforce" the rule against bodychecking from behind; and "failed to supervise the activities of its member officials."

The player and organizational defendants moved to dismiss plaintiff's complaint. On March 14, 2005, the circuit court granted the motions filed by the player defendants and dismissed count I of the complaint. On July 1, 2005, the circuit court dismissed the remaining counts of the complaint.

In a written order, the circuit court explained the reasons for the dismissals, including the previous dismissal of count I. With respect to count I, the court noted the rule, adopted by this court *Pfister v. Shusta*, 167 Ill. 2d 417 (1995), that a plaintiff who is injured by a coparticipant while engaged in a contact sport may only recover if the injury was the result of intentional or willful and wanton conduct. The circuit court concluded that the ice hockey game at issue was a contact sport, and that plaintiff had failed to plead willful and wanton conduct on the part of the player defendants.

With respect to the negligence counts directed against Redhawk Hockey, the Hockey Association and the Officials Association, the court concluded that "no duty of care exists in Illinois for claims arising out of negligence in high school contact sports." Accordingly, the circuit court dismissed these counts.

The court also dismissed counts III, V, and VI for failing to allege willful and wanton conduct on the part of the organizational defendants. The court noted, however, that in counts III and V plaintiff alleged that Redhawk Hockey and the Hockey Association had "promoted, encouraged or otherwise condoned players" to bodycheck from behind. The circuit court observed that actively encouraging a player to violate the rules went beyond mere negligence, but also found that, as pled, plaintiff's allegations of active encouragement were conclusory and did not state a cause of action.

On appeal, the appellate court reversed the trial court's dismissal. With respect to the player defendants, the appellate court held that plaintiff had adequately pled willful and wanton conduct and, in particular, a "conscious disregard for [plaintiff's] safety":

"Plaintiff alleged not only that Strevell and Zimmerman broke the rules of hockey, but that they broke a rule of such special emphasis that players' jerseys were altered to reinforce it. Plaintiff also alleged circumstances surrounding Strevell's and Zimmerman's actions—they allegedly checked Benjamin when he was defenseless and in a position of acute vulnerability—that evince a conscious disregard for his safety. These allegations taken as true create an inference that Strevell's and Zimmerman's actions exceeded those acceptable during the excitement of play and were so reckless that they were likely to cause, and indeed did cause, injury to another. Therefore, we conclude that the first count of plaintiff's complaint should be reinstated so that he has an opportunity to prove the truth of the allegations."

With respect to the organizational defendants, the appellate court affirmed the circuit court's dismissal of counts alleging willful and wanton conduct, but reversed the dismissal of counts alleging negligence.

Regarding the negligence counts, the appellate court concluded that the contact sports exception may apply, as a general matter, to nonparticipant defendants, but that the exception did not apply in this case. The court stated:

While the contact sports exception may insulate the organizational defendants from liability based on negligently caused injuries sustained as a result of rough play, the injury here, as discussed above, is alleged to have been the result of willful and wanton conduct. As such, it falls beyond the scope of protection the contact sports exception affords. Because we hold above that plaintiff successfully pled Strevell's and Zimmerman's willful and wanton conduct, we hold that the contact sports exception does not protect the organizational defendants for their negligence leading to the allegedly willful and wanton conduct.

Accordingly, the appellate court reversed the trial court's dismissal of the negligence counts against the organizational defendants.

Regarding the willful and wanton counts against the three organizational defendants, however, the appellate court affirmed the trial court's dismissal, stating:

Plaintiff's essential contention regarding all three organizational defendants is that they failed to enforce hockey safety rules sufficiently, and that this failure led to, and perhaps encouraged, Strevell's and Zimmerman's allegedly improper conduct, which caused Benjamin's injury. While we do not dispute plaintiff's assertion that omissions or failures to act can constitute willful and wanton conduct [citation], we hold that the omissions and failures alleged here, even if proven, would not amount to willful and wanton conduct.

We granted the player and organizational defendants' petitions for leave to appeal and consolidated the cases for review. Plaintiff has cross-appealed the appellate court's judgment affirming the dismissal of the counts of willful and wanton conduct against the organizational defendants.

## ANALYSIS

In general, every person owes a duty of ordinary care to guard against injuries to others. A person who breaches this duty is deemed negligent and may be held financially liable if his conduct proximately causes injury to another. However, *Pfister v. Shusta*, 167 Ill. 2d 417 (1995), this court adopted an exception to the standard of ordinary care for participants engaged in contact sports. Under this exception, a participant in a contact sport may not be held liable for negligent conduct which injures a coparticipant. Instead, liability will arise only if a participant intentionally, or willfully and wantonly, injures a coparticipant. Stated otherwise, in a contact

sport the duty owed by a participant to a fellow participant is the "duty to refrain from willful and wanton or intentional misconduct."

*Pfister* explained the rationale for limiting participants' liability in contact sports:

The contact sports exception strikes the appropriate balance between society's interest in limiting liability for injuries resulting from physical contact inherent in a contact sport and society's interest in allowing recovery for injuries resulting from willful and wanton or intentional misconduct by participants. Those who participate in soccer, football, softball, basketball, or even a spontaneous game of can kicking, choose to play games in which physical contact among participants is inherent in the conduct of the game. Participants in such games assume a greater risk of injury resulting from the negligent conduct of coparticipants...

The contact sports exception allows recovery for injuries resulting from willful and wanton and intentional misconduct while taking into account the voluntary nature of participation in games where physical contact is anticipated and where the risk of injury caused by this contact is inherent.

The public policy underlying the contact sports exception today is the need to strike a balance between protecting participants in sporting activities and the voluntary nature of participation in games where physical contact is inherent and inevitable.

*Pfister* also noted that a rule limiting the liability of participants in contact sports was necessary to avoid a chilling effect on the way these sports are played. As the court observed, if a negligence standard were imposed on participants, contact sports would be fundamentally altered or, perhaps, eliminated altogether. Numerous other courts have voiced the same concern and have stated that a primary justification for limiting liability in the sports context is to avoid fundamentally altering, or discouraging participation in, the sport at issue.

In addition, several courts have recognized a need for a rule limiting liability in the sports context in order to avoid a flood of litigation. As one court has stated:

If simple negligence were adopted as the standard of care, every punter with whom contact is made, every midfielder high sticked, every basketball player fouled, every batter struck by a pitch, and every hockey player tripped would have the ingredients for a lawsuit if injury resulted. \*\*\* [T]here exists the potential for a surfeit of lawsuits when it becomes known that simple negligence, based on an inadvertent violation of a contest rule, will suffice as a ground for recovery for an athletic injury. This should not be encouraged. *Jaworski v. Kiernan*, 241 Conn. 399, 409-10, 696 A.2d 332, 338 (1997).

The practical effect of applying an ordinary negligence standard would be to open a legal Pandora's box, allowing virtually every participant in a contact sport, injured by another during a 'warm-up' or practice, to bring an action based on the risks inherent in virtually every contact sport. This is exactly the type of result the courts have sought to avoid.

Importantly, although *Pfister* referred to the contact sports exception in terms of the risks assumed by the plaintiff, the exception is not an affirmative defense, nor does it require the court to determine the plaintiff's subjective awareness of the risks associated with the sport. Rather, the contact sports exception is an objective doctrine that defines the scope of the defendant's duty. What courts often call "primary assumption of risk" is actually a doctrine about the defendant's liability or duty.

When deciding whether the contact sports exception applies, the court must consider the nature of the sport at issue and determine, based on its inherent risks, whether it is a contact sport. When the court concludes that "physical contact among participants is inherent" in the game, a player owes no duty to a coparticipant to avoid ordinary negligence.

Whether a particular case is subject to the contact sports exception is properly resolved by examining the objective factors surrounding the game itself, not on the subjective expectations of the parties. A court need not ask what risks a particular plaintiff subjectively knew of and chose to encounter, but instead must evaluate the fundamental nature of the sport and the defendant's role in or relationship to that sport in order to determine whether the defendant owes a duty to protect a plaintiff from the particular risk of harm.

In the case at bar, there is no dispute regarding the nature of the sport at issue. The parties agree that ice hockey, played in a game in which bodychecking is permitted, is a contact sport. Thus, pursuant to *Pfister*, the duty owed by the player defendants to Benjamin was the "duty to refrain from willful and wanton or intentional misconduct."

*Pfister* defined willful and wanton conduct as "a course of action which shows actual or deliberate intent to harm or which, if the course of action is not intentional, shows an utter indifference to or conscious disregard for a person's own safety or the safety or property of others."

The appellate court below concluded that plaintiff had pled conduct on the part of the player defendants that met this standard. According to the appellate court, because plaintiff alleged that the player defendants knowingly violated a rule against bodychecking from behind, and because they knew that Benjamin was in a position near the edge of the rink, or boards, when he was struck, plaintiff sufficiently pled a "conscious disregard" of Benjamin's safety by the player defendants. Before this court, plaintiff repeats this line of reasoning.

We note that *Pfister* did not consider the application of the traditional willful and wanton standard to full-contact sports such as ice hockey and tackle football where physical contact between players is not simply an unavoidable byproduct of vigorous play, but is a fundamental part of the way the game is played. In these sports, holding participants liable for consciously disregarding the safety of coparticipants is problematic.

Striking or bodychecking a person who is standing on two thin metal blades atop a sheet of ice is an inherently dangerous action. Even a cleanly executed body check, performed according to the rules of ice hockey, evinces a conscious disregard for the safety of the person being struck. Yet, in an ice hockey game where bodychecking is permitted, players are struck throughout the game.

This conduct is an inherent, fundamental part of the sport. Similarly, in tackle football players must necessarily disregard the risk of injury to others, simply because of the way the game is played:

The playing of football is a body-contact sport. The game demands that the players come into physical contact with each other constantly, frequently with great force. The linemen charge the opposing line vigorously, shoulder to shoulder. The tackler faces the risk of leaping at the swiftly moving legs of the ball-carrier and the latter must be prepared to strike the ground violently. Body contacts, bruises, and clashes are inherent in the game. There is no other way to play it. *Vendrell v. School District No. 26C*, 233 Or. 1, 15, 376 P.2d 406, 412 (1962).

In full-contact sports such as tackle football, and ice hockey where bodychecking is permitted, a conscious disregard for the safety of the opposing player is an inherent part of the game.

A standard of care that holds a player liable based on conduct that is inherent in the sport is contrary to the underlying rationale of *Pfister*. As noted, the rule announced in *Pfister* is based on the longstanding principle that certain sports contain inherent risks for which a defendant owes no duty of care. Although they evince a conscious disregard for the safety of other players, bodychecking and tackling are an inherent part of the sports of ice hockey and football. Pursuant to *Pfister*, a participant has no duty to avoid such conduct.

Moreover, imposing liability under the conscious disregard of safety standard would have a pronounced chilling effect on full-contact sports such as ice hockey and football. If liability could be established every time a body check or tackle resulted in injury—because that conduct demonstrates a conscious disregard for the safety of the opposing player—the games of ice hockey and football as we know them would not be played.

Finally, the conscious disregard of safety standard is unfair to defendants in full-contact sports such as ice hockey. In full-contact sports, such as ice hockey where bodychecking is allowed, and tackle football, the traditional willful and wanton standard is both unworkable and contrary to the rationale underlying *Pfister*. To remain consistent with the reasoning of *Pfister*, a standard of care must be employed that more accurately accounts for the inherent risks associated with these sports.

As this court observed in *Pfister*, in numerous sports, "players regularly commit contact beyond that which is permitted by the rules even as applied. In basketball, such an illegal contact is described as a foul for which a sanction is imposed. Sometimes the player fouled is injured. This is to be expected.' "

Even in sports where there are rules governing the permissible degree of physical contact, rule infractions are inevitable and justify a lower standard of care than ordinary negligence.

In athletic competitions, the object obviously is to win. In games, particularly those involving some degree of physical contact, it is reasonable to assume that the competitive spirit of the

participants will result in some rules violations and injuries. That is why there are penalty boxes, fouls shots, free kicks, and yellow cards.

Policy reasons also justify the holding that rules violations, by themselves, are insufficient to impose liability in a contact sport. Even when a participant's conduct violates a rule of the game and may subject the violator to internal sanctions prescribed by the sport itself, imposition of *legal liability* for such conduct might well alter fundamentally the nature of the sport by deterring participants from vigorously engaging in activity that falls close to, but on the permissible side of, a prescribed rule.

At the same time, courts have uniformly recognized that not all misconduct can be considered an inherent aspect of the sport being played. Some of the restraints of civilization must accompany every athlete on to the playing field.

Courts have expressed a standard of care that balances these concerns and, in particular, acknowledges the risks inherent in certain sports, in various ways. Perhaps the most frequently cited standard is that adopted by the Supreme Court of California *Knight v. Jewett*, 3 Cal. 4th 296, 834 P.2d 696, 11 Cal. Rptr. 2d 2 (1992). There, the court stated that a participant breaches a duty of care to a coparticipant "only if the participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport."

Other authorities have adopted similar standards. Regardless of the precise wording, these standards all draw a line in a way that permits recovery for extreme misconduct during a sporting event that causes injury, while at the same time foreclosing liability for conduct which, although it may amount to an infraction of the rules, is nevertheless an inherent and inevitable part of the sport. We agree with the standards set forth in the above authorities, and conclude that, in a full contact sport such as ice hockey or tackle football, a participant breaches a duty of care to a coparticipant only if the participant intentionally injures the coparticipant or engages in conduct "totally outside the range of the ordinary activity involved in the sport."

As currently pled, nothing takes the play at issue in this case totally outside the range of ordinary activity associated with ice hockey in a game in which bodychecking is allowed. The complaint contains no allegation that Benjamin was deliberately targeted by the player defendants, either in retaliation for an earlier incident or some other purpose, or that the player defendants had any intent to hurt him. Although the complaint alleges that Benjamin was struck while next to the boards at the edge of the rink, there is no allegation that body checks are prohibited in that area, or that the body check was in some way out of the normal area of play. Nor does the complaint allege that plaintiff was struck after play had been stopped.

The key allegation in plaintiff's complaint is that the player defendants violated a rule against checking from behind when they struck Benjamin. However, as noted, rules violations are considered an inherent, unavoidable risk of playing a contact sport. As pled then, plaintiff's complaint fails to allege conduct totally outside the ordinary range of activity associated with ice hockey. The circuit court properly dismissed count I of plaintiff's complaint, and the judgment of the appellate court reinstating that count must be reversed.



This is not to say, however, that conduct totally outside the ordinary range of activity associated with ice hockey did not occur in this case. For example, if Benjamin was struck by the player defendants, not in the heat of play while struggling to gain possession of the puck, but away from the puck and the action of the game, that might well be a breach of the standard adopted here. However, in his complaint, plaintiff does not include any indication of where Benjamin was in relation to the puck, and any ongoing play, when the contact took place. A plaintiff cannot successfully plead a cause of action for conduct which is totally outside the range of ordinary activity involved in the sport without including facts that describe the play that was occurring at the time of injury.

The appellate court below suggested that the defendant players could raise the location of the puck as an issue in rebuttal, to defeat the inference of willful and wanton conduct raised by plaintiff's complaint. However, this would improperly shift the burden to defendants. It is a plaintiff's responsibility to plead facts that establish a defendant's duty, and thus, in a full-contact sport, it is plaintiff's responsibility to plead facts that show conduct totally outside the range of ordinary activity involved in the sport.

Finally, we acknowledge that the standard of care we adopt today, while necessitated by the underlying rationale of *Pfister*, was not explicitly set forth in that decision. Under these circumstances, to avoid any unfairness to plaintiff, we deem it appropriate to remand this cause to the circuit court with instructions to permit plaintiff to amend count I of his complaint in conformance with the standard of care set forth in this opinion, if he is able to do so.

#### ORGANIZATIONAL DEFENDANTS

Plaintiff's complaint contains three counts, counts II, IV and VI, that allege negligence on the part of the organizational defendants, Redhawk Hockey, the Hockey Association, and the Officials Association. The organizational defendants initially contend that the negligence counts are barred by the contact sports exception and, therefore, that the appellate court erred in reversing the circuit court's dismissal of these counts.

Whether the contact sports exception may be applied to a nonparticipant in a sporting event, such as the organizational defendants here, is an issue of first impression in this court. In considering this issue, both parties direct our attention to the Supreme Court of California's decision *Kahn v. East Side Union High School District*, 31 Cal. 4th 990, 75 P.3d 30, 4 Cal. Rptr. 3d 103 (2003).

In *Kahn*, the plaintiff was a novice member of a high school swim team who broke her neck after diving off a starting block into a shallow racing pool. The plaintiff filed suit against the school district and her swimming coach, alleging that she had been inadequately instructed in how to safely dive into a racing pool and had been pushed beyond her capabilities. The circuit court granted summary judgment in favor of the defendants. The intermediate appellate court affirmed, holding that shallow-water diving presents dangers that are inherent in competitive swimming and that "coaches who merely challenge their students to move beyond their current level of performance have not breached a duty of care."

On appeal, the Supreme Court of California considered the standard of care that should be applied to the defendants. The court noted that a number of cases had declined to impose liability on a coach or instructor on the basis of ordinary negligence in urging students to go beyond their current level of competence. In these cases, the court noted, the analysis had focused generally on the circumstances of the sport and its inherent risks, the relationship of the parties to the sport and to each other, and "whether imposing broader liability on coaches and instructors would harm the sport or cause it to be changed or abandoned." Discussing these same criteria, the Supreme Court of California noted that "the risks associated with *learning* a sport may themselves be inherent risks of the sport, and that an instructor or coach generally does not increase the risk of harm inherent in learning the sport simply by urging the student to strive to excel or to reach a new level of competence." (Emphasis in original.) The court also noted that "[t]o impose a duty to mitigate the inherent risks of learning a sport by refraining from challenging a student, as these cases explain, could have a chilling effect on the enterprise of teaching and learning skills that are necessary to the sport. At a competitive level, especially, this chilling effect is undesirable."

The court concluded that an ordinary negligence standard was inappropriate, stating:

In the present case, we recognize that the relationship of a sports instructor or coach to a student or athlete is different from the relationship between coparticipants in a sport. But because a significant part of an instructor's or coach's role is to challenge or 'push' a student or athlete to advance in his or her skill level and to undertake more difficult tasks, and because the fulfillment of such a role could be improperly chilled by too stringent a standard of potential legal liability, we conclude that the same general standard should apply in cases in which an instructor's alleged liability rests primarily on a claim that he or she challenged the player to perform beyond his or her capacity or failed to provide adequate instruction or supervision before directing or permitting a student to perform a particular maneuver that has resulted in injury to the student. A sports instructor may be found to have breached a duty of care to a student or athlete only if the instructor intentionally injures the student or engages in conduct that is reckless in the sense that it is "totally outside the range of the ordinary activity" involved in teaching or coaching the sport.

The general principles which the *Kahn* decision relied upon to determine the standard of care for a nonparticipant are persuasive, consistent with *Pfister*, and applicable here. As the appellate court below noted, plaintiff's essential allegation against all three organizational defendants is that they failed to adequately enforce the rule against bodychecking from behind. Yet, as noted earlier, rules violations are inevitable in contact sports and are generally considered an inherent risk of playing the game.

Further, in an organized contact sport, such as the one at issue here, the enforcement of the rules directly affects the way in which the sport is played. Imposing too strict a standard of liability on the enforcement of those rules would have a chilling effect on vigorous participation in the sport.

Finally, as the organizational defendants point out, coaching and officiating decisions involve subjective decisionmaking that often occurs in the middle of a fast moving game. It is difficult to observe all the contact that takes place during an ice hockey game, and it is difficult to imagine activities more prone to secondguessing than coaching and officiating.

Applying an ordinary negligence standard to these decisions would open the door to a surfeit of litigation and would impose an unfair burden on organizational defendants such as those in the case at bar. Accordingly, we conclude that, under the facts alleged here, the contact sports exception applies to the organizational defendants. To successfully plead a cause of action for failing to adequately enforce the rules in an organized full-contact sport, plaintiff must allege that the defendant acted with intent to cause the injury or that the defendant engaged in conduct "totally outside the range of the ordinary activity" involved with coaching or officiating the sport.

Because the contact sports exception applies to the organizational defendants, the circuit court properly dismissed plaintiff's complaint alleging negligence against the organizational defendants.

The appellate court below, however, concluded that the negligence counts could go forward. According to the appellate court, plaintiff had successfully pled willful and wanton conduct on the part of the player defendants and "the contact sports exception does not protect the organizational defendants for their negligence leading to the allegedly willful and wanton conduct." We disagree.

As discussed above, whether the contact sports exception applies to a nonparticipant defendant is a policy determination that rests on the circumstances of the sport and its inherent risks, the relationship of the parties to the sport and to each other, and whether imposing broader liability on the defendant "would harm the sport or cause it to be changed or abandoned." Application of the exception is not based, as the appellate court concluded, on whether the defendant's conduct causes a third party to violate a standard of care. The appellate court erred in allowing the negligence counts to proceed.

As currently pled, nothing in plaintiff's complaint, the counts alleging willful and wanton conduct on the part of the organizational defendants, alleges conduct totally outside the range of ordinary activity involved with coaching or officiating the sport of ice hockey. Plaintiff does not allege that the organizational defendants completely failed to enforce the rule against bodychecking from behind and, indeed, the complaint alleges that all the players in the game at issue were wearing a "stop" warning on the back of their jerseys in an effort to enforce the rule. Moreover, as noted previously, although plaintiff's complaint alleged that Redhawk Hockey and the Hockey Association actively encouraged violation of the rule against bodychecking from behind, plaintiff conceded that he could not plead any facts to support that conclusory allegation. We conclude, therefore, that the appellate court properly affirmed the circuit court's dismissal.

However, we again note that the standard of care for the organizational defendants, while consistent with the rationale of *Pfister*, was not explicit in that decision. To avoid any unfairness to plaintiff, we remand this cause to the circuit court with instructions to permit plaintiff to

amend his complaint in conformance with the standard of care set forth in this opinion, if he is able to do so.

#### CONCLUSION

The judgment of the circuit court dismissing plaintiff's complaint in its entirety is affirmed. The cause is remanded to the circuit court with instructions to permit plaintiff to amend his complaint in conformance with the standards of care set forth in this opinion, if he is able to do so.