

ALLEGED COACH NEGLIGENCE IN HIGH RISK GYMNASTICS MOVE  
WILSON v. O'GORMAN HIGH SCHOOL

UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH DAKOTA, SOUTHERN DIVISION  
June 26, 2008

Plaintiff, Andrea Wilson, was injured in a gymnastics accident during an O'Gorman High School gymnastics practice. Wilson brought suit against defendants, Shawn Bauer, Lana Bauer, and O'Gorman High School, alleging that her injury was the result of defendants' negligence. Defendants move for summary judgment on Wilson's negligence claim.

FACTUAL BACKGROUND

Andrea Wilson was an accomplished gymnast, who began the sport at a very young age. When she moved to Sioux Falls, South Dakota, in 1997, Wilson joined All American Gymnastics and competed in club gymnastics. Wilson intended to compete in collegiate gymnastics at Cornell University in Ithaca, New York. In addition to club gymnastics, Wilson also intermittently participated in high school gymnastics with O'Gorman High School.

During her junior year of high school, Wilson competed at the highest level of club gymnastics. One of the events in which Wilson competed was the uneven bars. An uneven bar routine consists of a number of different skills, selected for their difficulty and for the fulfillment of requirements. One of the skills that Wilson learned during that year was a move known as the reverse hecht, also known as the Tkatchev. The reverse hecht is a release move performed on the higher bar of the uneven bars, wherein a gymnast releases from the bar while rotating over the top of the bar, and catches the bar after her legs have passed beneath her. The reverse hecht is a high difficulty skill. Wilson was originally taught the reverse hecht by Gene Luke, her club gymnastics coach and the owner of All American Gymnastics.

Near the end of Wilson's junior year she dislocated her elbow, which rendered her unable to compete or practice on the uneven bars. Subsequently, when Wilson was able to work on the uneven bars, she discovered that she had "lost" her ability to do the reverse hecht, because she was no longer able to perform the move with the consistency she had before her injury.

During her senior year at O'Gorman, Wilson decided to compete in both club and high school gymnastics. Wilson would typically attend high school practice after the school day, and then practice with her club team immediately after. Both practices were held at the All American Gymnastics facility, which O'Gorman leased during its practice time. During that year, Wilson worked to relearn the reverse hecht. On January 22, 2003, Wilson was practicing the reverse hecht during her high school practice. O'Gorman coach Shawn Bauer was working with Wilson on the move. Bauer had previously been an assistant coach at All American Gymnastics and had worked with Luke.

Wilson attempted the maneuver a number of times that day, with Bauer spotting her. To spot the move, Bauer stood behind the low bar, which was the direction Wilson moved when she

attempted the skill. Bauer was positioned so that he could prevent Wilson's momentum from causing her to collide into the low bar if she missed the catch. During Wilson's session on the uneven bars, Bauer at one point summoned Luke to observe Wilson's attempts and Bauer conferred with Luke regarding Wilson's technique. Luke observed between one and five attempts by Wilson to perform the reverse hecht and discussed those attempts with Bauer.

The exact number of times Wilson attempted the reverse hecht on January 22, 2003, is disputed. Wilson asserts that she attempted the move as many as thirty times that day. During the final attempt, Wilson released the bar late, and consequently did not rotate her body, causing her to land on her back. As a result of the accident, Wilson was severely injured, and she lost the use of her legs. In her complaint, Wilson asserts a claim of negligence against Shawn Bauer, Lana Bauer, and O'Gorman High School.

## NEGLIGENCE

To establish negligence, as alleged in the first count of the complaint, Wilson must show: (1) a duty on the part of defendants, (2) the failure to perform that duty, and (3) an injury to Wilson resulting from such a failure. The first element of a negligence claim--the existence of a duty--is typically a question of law to be decided by the court. Defendants do not contest the existence of a duty under the first element, and the court finds that defendants did have a duty to Wilson for purposes of establishing the first element of Wilson's negligence claim.

Defendants and Wilson do dispute the applicable standard of care that Shawn Bauer owed Wilson as her coach under the second element. Defendants urge the court to adopt the standard that a coach owes a duty of care not to increase the risk of harm inherent in learning an active sport:

In order to support a cause of action in cases in which it is alleged that a sports instructor has required a student to perform beyond the student's capacity or without providing adequate instruction, it must be alleged and proved that the instructor acted with intent to cause a student's injury or that the instructor acted recklessly in the sense that the instructor's conduct was "totally outside the range of the ordinary activity" involved in teaching or coaching the sport.

Wilson argues that the "reckless" standard in the context of a coach-athlete relationship is not supported by South Dakota law. SDCL 20-9-1 provides:

Every person is responsible for injury to the person, property, or rights of another caused by his willful acts or caused by his want of ordinary care or skill, subject in the latter cases to the defense of contributory negligence.

The South Dakota Legislature has never acted to modify the negligence standard set forth in SDCL 20-9-1 as it applies to the coach-athlete relationship, although it has acted to modify the standard of care in other contexts.

Accordingly, the court finds that the South Dakota Supreme Court would apply the general negligence standard. Although this holding subjects defendants to the common law negligence standard, the court notes that defendants can avail themselves of the defenses of assumption of risk and contributory negligence. The availability of the assumption of risk and contributory negligence defenses in some ways blunts the application of the general negligence statute to the coach-athlete relationship.

Accordingly, the court finds that to succeed on her negligence claim at trial, Wilson must demonstrate that defendant Bauer failed to use reasonable care as Wilson's gymnastics coach.

Viewed in the light most favorable to Wilson, the facts are that Wilson attempted an advanced gymnastics maneuver as many as thirty times on the day that she was injured. Further, her coach, Shawn Bauer, attempted to instruct her on the reverse hecht even though he was not trained in the maneuver. Finally, despite her repeated failed attempts, Bauer did not move her to the foam pit where she could more safely practice the move. Under these circumstances, the court finds that there is a question of material fact with regard to whether Bauer failed to meet the standard of care.

Defendants argue that Bauer cannot be found to be negligent in this case because Wilson's accident was not "foreseeable." The court does not accept defendants' contention that it was unforeseeable as a matter of law that Wilson would make a timing mistake when attempting to relearn the reverse hecht.

Defendants also argue that summary judgment is appropriate because Wilson's injury was not the result of any negligence by defendant, under the third element. Defendants argue that because Bauer was in the correct position to spot Wilson's attempt at the reverse hecht and because there was nothing that Bauer could do from that position to prevent Wilson from injuring herself, Bauer is not the proximate cause of Wilson's injury.

Defendants' position, however, does not fully address Wilson's theory of negligence in this case. Wilson alleges that Bauer improperly allowed her to practice a high difficulty move that he was not properly trained to teach. Wilson further alleges that Bauer should not have allowed her to attempt the maneuver as many as thirty times, and because of Wilson's limited success Bauer should have moved her to the foam pit. Wilson alleges that it was the result of Bauer's negligence that she was in a position to injure herself. Based on these allegations, the court finds Wilson has alleged facts sufficient to create a material dispute of fact regarding the proximate cause of the accident.

#### ASSUMPTION OF RISK

Defendants argue that summary judgment is appropriate because Wilson assumed the risk of injury by participating in gymnastics. Under South Dakota Law, assumption of risk is an affirmative defense to a negligence claim. To prevail on an assumption of risk defense, defendants must demonstrate: (1) that Wilson had actual or constructive knowledge of the risk; (2) that Wilson appreciated the character of the risk; and (3) that Wilson voluntarily accepted the risk, given the time, knowledge, and experience to make an intelligent choice.

Defendants argue that Wilson knew that the sport of gymnastics could cause injury, in part because both she and another gymnast who competed in Sioux Falls had suffered a serious accident during a vault event. Wilson argues that although Wilson knew the sport of gymnastics carried with it inherent risks, she did not assume the risk that her coach would put her in a situation of enhanced danger.

Although one may assume the risk of the negligence of another if he is fully informed of such negligence, one is not, under the doctrine of assumption of the risk, bound to anticipate the negligent conduct of others. Wilson has alleged that Bauer acted negligently, and it was this negligent conduct which was the proximate cause of her injury. In this case, the court finds that there is a material question of fact whether Wilson knowingly assumed the risk that Bauer would act negligently. Accordingly, defendants' motion for summary judgment on that ground is denied.

#### CONTRIBUTORY NEGLIGENCE

Defendants argue that they are entitled to summary judgment because Wilson was contributorily negligent when she released the bar "way too late." Contributory negligence is negligence on the part of a plaintiff which, when combined with the negligence of a defendant, contributes as a legal cause in the bringing about of the injury to the plaintiff. Contributory negligence is an affirmative defense to a negligence claim.

The South Dakota Supreme Court has repeatedly held that issues of assumption of risk and issues of contributory negligence "are for the jury in all but the rarest of cases. The court does not find that the facts of this case support defendants' motion for summary judgment on the basis of contributory negligence. Although Wilson has stated that she released the bar late, the jury could find that that release was not a breach of her duty "to protect [herself] from injury." For example, the late release that caused Wilson injury could be found to be an inevitable result of an athlete attempting a difficult maneuver or the result of negligent coaching decisions. Accordingly, defendants' motion is denied.

Based on the foregoing, it is hereby ORDERED that defendants' motion for summary judgment is denied.