

ANGRY HOCKEY DAD FIGHTS FIVE YEAR BAN FROM CITY ARENA

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In the case of *Kelly v. City of Mentor*, No. 2001-L-066 (Ohio App. Dist.11 12/31/2002), the issue before the court was whether a director of parks and recreation had the legal authority to ban a parent from entering a public recreational facility following an altercation in another municipality.

In this particular case, plaintiff Robert Kelly was the head coach of his son's team in a youth hockey league in the City of Mentor. Following allegations that he was "too physically and verbally rough," Kelly was removed from his position as head coach in November 1999. Shortly thereafter, the manager of the Mentor Civic Arena, Terri Rosenwald called a meeting "to allow the parents to air their differences." At the meeting, Rosenwald warned the parents that "poor behavior would cause her to have to ask the parent to leave the arena, to remove a parent from watching practices or games for the season, or to disband the team."

On February 28, 2000, Kelly's son's youth hockey team traveled outside of the City of Mentor to play a game at the Garfield Heights Ice Arena. The incident which gave rise to the lawsuit occurred during this trip. The circumstances were as follows:

After the game, which the Mentor team lost in overtime, the children were in the locker room removing their equipment, with parental assistance. Kelly's wife came into the locker room and made a comment about the coaching being bad. One of the coaches replied: "wah, wah, wah."

Kelly then came into the locker room and accused the coach of mocking his wife. Kelly said to the coach, "[y]ou're nothing but a puss; I'm gonna kick your ass back in Mentor," During the same incident, Kelly also told three other coaches that he would "kick their ass [sic] back in the City of Mentor." No altercations occurred at the Mentor Civic Arena or in the City of Mentor.

After the Garfield Heights incident, Ms. Rosenwald sent Kelly a letter notifying him that it would be investigated. Ms. Rosenwald also sent letters to all the parents who were present, requesting a written statement describing what occurred that evening. Kelly also submitted his account of what had happened.

After reading these accounts, Ms. Rosenwald made a recommendation to the Director of Parks, Recreation and Public Lands, Kurt Kraus ("Kraus"). She recommended that Kelly be banned from entering the locker room and the bench area for five years.

Kraus reviewed the statements and the recommendation and sent a letter to Kelly informing him that he was prohibited from entering the entire

Mentor Civic Arena for five years. Kraus told Kelly, in his letter, that Kelly was permitted to pick up and drop off his wife and children in front of the arena, but that, should he enter the arena, he would be arrested and prosecuted for trespassing. Kraus intended this penalty to punish Kelly for his actions, on February 28, 2000.

Kelly filed suit, seeking a court order to prevent Mentor from enforcing the five year ban on him. The trial court returned a judgment in favor of Kelly which prohibited the City from "enforcing an order issued by Mentor's Director of Parks, Recreation and Public Lands, banning Robert Kelly from entering the Mentor Civic Arena for five years." Mentor appealed.

#### AUTHORITY FOR ACTIONS?

On appeal, Mentor claimed that their parks and recreation director was authorized to issue such a ban because Kelly's conduct had constituted "threats" to harm others. Without specific legal authority to issue the ban, Kelly maintained that the director of parks and recreation had "acted in an arbitrary and capricious manner" in denying him access to the civic arena.

According to the appeals court, "[t]he powers possessed by Kraus are only those which were delegated to him." Pursuant to Mentor Municipal Ordinance 31.52, the appeals court further noted that Kraus, as the Director of Parks, Recreation and Public Lands, was delegated the authority by Mentor to "be responsible for the maintenance and operation of municipal public lands and related programs."

In the opinion of the appeals court, this "delegation of authority" to maintain and operate public parks and programs did not include "unilateral authority to gather evidence, hold quasi-judicial proceedings, punish patrons for bad behavior, or prohibit someone from entering the public properties under his control." Accordingly, the appeals court found Kraus could not "independently perform these functions" because "Klaus personally lacked the authority to ban Mentor from entering the Mentor Civic Arena." In reaching this conclusion, the appeals court noted the lack of any policy or guidelines which would have authorized the director's actions:

At the time that evidence of Kelly's bad behavior was solicited and Klaus determined that Kelly was guilty of "egregious behavior," neither the City of Mentor nor the Department of Parks, Recreation and Public Lands had established a conduct policy or guidelines as to what the consequences would be if the policy were violated.

A "zero tolerance policy," published by USA Skate, the organization that sanctioned the league, was posted on a wall of the arena, but there is no evidence that this policy was ever adopted by the city or the Department of Parks, Recreation and Public Lands. Further, this policy only covered actions occurring during a game, and only provided that a violator could be asked to leave the arena.

Moreover, the appeals court found that “Klaus lacked the authority to punish Kelly for acts committed in another arena in another city.”

Given “the recent tragedies involving out-of-control parents and spectators at youth sporting events,” the appeals court found that “Klaus' desire to prevent a similar tragedy from occurring in the Mentor Civic Arena is commendable.” While commendable, the appeals court cautioned that this “laudable goal must be pursued from within the structure of lawful authority.” In so doing, the court noted that “[t]he director may utilize available lawful means to accomplish these ends.” Specifically, the appeals court found that the City of Mentor and its director of parks and recreation were “not left powerless to take reasonable steps to provide for the safety and welfare of those using the Mentor Civic Arena.” On the contrary, the appeals court found Mentor had “at its disposal the full panoply of criminal law” pursuant to the City’s “authority to maintain, operate, and police its facilities.”

Security officers can be provided. .. Should a similar incident occur in the Mentor Civic Arena, the offender should be charged with disorderly conduct or menacing, or another appropriate charge. If Mentor wished to prevent an offender from entering its property, it could secure a restraining order. Furthermore, Mentor could adopt rules governing the conduct of persons in the arena and delegate the authority to enforce those rules.

In the absence of rules governing the conduct of persons in the arena and authority to enforce such rules delegated to the director of parks of recreation, the appeals court determined that Mentor’s ban on Kelly was void and unenforceable. The appeals court, therefore, affirmed the judgment of the trial court which had vacated the director’s order and prohibited Mentor from enforcing the ban.

#### DISSENTING OPINION

Stating “I do not get it,” the dissenting judge in this case questioned why, in a “civilized society,” should “Kelly feel he has the right to threaten a coach in a locker room in front of children.”

A parent went into a locker room full of six to eight-year-old hockey players who had just lost an away game. The parent then proceeded, in front of the children, to inform the coach that he was "gonna kick [his] ass" when they returned to Mentor. Curiously, the trial court found this language not to constitute a threat, but characterized it as an invitation to fight later. I would suggest this is a distinction without a difference. It is the threatening behavior, not the outcome of physical violence, which is at the core of this matter.

Moreover, the dissenting judge found such threatening behavior had “a clear nexus to the City of Mentor Civic Center” even though it occurred in Garfield Heights.

The incident occurred in the locker room of a Mentor youth hockey team, which plays its home games at the Mentor Civic Center. Defendant City of

Mentor clearly has the right to regulate the conduct of athletic teams that use its facilities.

In the opinion of the dissenting judge, "someone must make the rules" in response to such threatening behavior. In this particular instance, the judge found that Mentor had appropriately done so when its director had "conducted an informal inquiry, and then banned the parent from its ice arena for five years."

Here is the rule that the City of Mentor has announced. If you go into a children's locker room and threaten the coach with physical violence, you lose your right to be there. It really is that simple. The City of Mentor acted properly in banning this parent from their facility. What were they to do? Wait until the fisticuffs erupted in the locker room?

According to the dissenting judge, "[t]he trial court got it wrong, and the City of Mentor's order should be upheld." Under the majority opinion, the dissenting judge envisioned similar problems involving attempts to control behavior in public recreational facilities.

If the trial court's ruling is upheld, a new question will arise. When a lifeguard in Mentor sees one child "dunking" another child in the pool...will they be able to put them in "time-out?" Or would that require a hearing with the right to confront witnesses. Then an evidentiary hearing would ensue, poolside, to determine whether the offending lifeguard had somehow ventured into the forbidden "quasi-judicial" arena when they put the youngster in "time-out." As I said, in a civilized society, someone has to make the rules.

However, as described above, the City in this particular instance had failed "to make the rules." There was no established conduct policy or guidelines as to what the consequences would be if the policy were violated.