

LOWER LIABILITY STANDARD FOR COACHES DURING COMPETITION

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Head injuries and possible concussions are unavoidable inherent risks in contact sports. Participants necessarily assume the inherent risks in a contact sport, including potential concussions. Accordingly, there is generally no legal duty for coaches to protect against or eliminate such unavoidable risks inherent in a contact sport. Sport coaches, however, do have a legal duty to use reasonable care not to increase the risks to a participant over and above those risks of injury which are unavoidable inherent in the sport.

Once a participant in a contact sport sustains a concussion, the risk of a second more serious concussion increases, particularly when a participant is returned to the competition after exhibiting concussion symptoms. As a result, once a participant exhibits readily observable symptoms of a concussion, a coach may owe a legal duty to restrict an injured player's participation to avoid further aggravation of the initial head injury sustained during a competition

While a coach in a contact sport owes a legal duty not to aggravate a pre-existing condition, even one sustained moments earlier during a competition, the federal court in the *Mercier* case described herein still had to determine whether a coach in a contact sport will only be held liable for reckless misconduct, not mere negligence.

BASKETBALL HEAD INJURY

In the case of *Mercier v. Greenwich Academy, INC.* 2013 U.S. Dist. LEXIS 103950 (Dist. Conn. 7/25/2013), plaintiff Jessica Mercier claimed her coach was negligent and reckless in failing to properly respond to her head injury during a basketball game. Mercier was a student at Westminster and a member of Westminster's varsity women's basketball team. On or about January 4, 2011, Westminster's and Greenwich's varsity women's basketball teams played a game in Greenwich, Connecticut. During the second half of the game, Mercier was struck in the front of the head by a player on Greenwich's team. Bryan Tawney, Westminster's coach, called a timeout.

Mercier told Tawney that she was dizzy, that her eyes were blurry, and that she needed to sit down. She sat on the bench for approximately five minutes, during which time Mercier alleges that she exhibited signs of a concussion and acted out of character. Tawney asked Mercier whether she was ready to return to the game. Mercier re-entered the game. During one play, she lost her balance and alleges that she felt disoriented. Sometime thereafter, Mercier was struck in the head a second time by a player on Greenwich's team. Mercier asked to be removed from the game. Tawney removed her and did not put her back in for the remainder of the game.

Mercier alleged she suffered a concussion and other injuries. In so doing, Mercier claimed Coach Tawney was "aware of the symptoms of head injuries and concussions

and had received training and education in the prevention, recognition, and treatment of head injuries." Moreover, Mercier contended "Tawney was aware that Westminster protocol required that athletes exhibiting symptoms of a concussion could not return to play before being evaluated by an athletic trainer or physician."

In her complaint, Mercier alleged Tawney was "negligent in failing to have Mercier examined and evaluated after the first strike to her head." Moreover, Mercier claimed Tawney was negligent "in failing to remove Mercier from the game "as a result of her concussion like symptoms."

APPROPRIATE LEGAL STANDARD

In response, Tawney argued that "Connecticut law bars negligence claims in the context of competitive contact sports." Specifically, in the case of *Jaworski v. Kiernan*, 241 Conn. 399, 696 A.2d 332 (1997), the Connecticut Supreme Court had adopted a reckless or intentional conduct standard of care for co-participants in contact team sports.

In applying this legal standard, the federal district court noted the initial issue was "whether the harm to the plaintiff was foreseeable." If the plaintiff's injury was found to be foreseeable, the following four *Jaworski* factors would determine the extent of a co-participant's responsibility:

- (1) The normal expectations of the sports in which the plaintiff and defendant were engaged;
- (2) the public policy of encouraging continued vigorous participation in recreational sporting activities while weighing the safety of the participants;
- (3) the avoidance of increased litigation; and
- (4) the decisions of other jurisdictions.

The Connecticut Supreme Court subsequently applied this *Jaworski* rule to include coaches as well as co-participants. Specifically, the state supreme court had held reckless or intentional conduct was "the appropriate standard of care to be imposed on coaches for injuries caused by their players."

FORESEEABILITY

Accordingly, in this particular instance, the initial issue was whether the basketball coach should have foreseen that a head injury and possible concussion could arise out of conduct during this competition.

As noted by the federal district court, "[d]etermining foreseeability requires analyzing whether a reasonable person in the defendant's position, knowing what he knew or should have known, would have anticipated the harm that resulted from his actions."

As noted by the court, Mercier had alleged that she was "struck in the head," and she had told Tawney that "she was really dizzy and her eyes were blurry and she needed to sit down." Despite these comments regarding her head injury and symptoms, approximately

five minutes later, Mercier claimed Tawney "asked her if she was ready to go in." Under these circumstances, the federal district court found Mercier had alleged sufficient facts to establish foreseeability.

A coach can reasonably foresee that failing either to have a player checked out or to keep a player out of a game after that player complained of dizziness and blurred vision might result in the type of injuries that allegedly resulted in this case.

Having found foreseeability, the court then applied the first of the *Jaworski* factors cited above, viz. the normal expectations of the sport in which Mercier and Tawney were engaged. As noted by the court, "the normal and reasonable expectations of participants in contact team sports" would include "the potential for injuries." Accordingly, the court found "Mercier had a reasonable expectation of injury while playing in the basketball game."

CHILLING COMPETITION

The federal district court then considered the second *Jaworski* factor, i.e., weighing the "public policy of encouraging continued vigorous participation in recreational sporting activities" against "the safety of the participants."

According to the court, holding coaches liable for negligence could "dampen coaches' willingness to aggressively coach their athletes."

Coaches are often required to make split-second decisions during a game, and holding coaches liable for negligence for such decisions, including player substitution decisions, would dampen their willingness to coach aggressively and would unreasonably threaten to chill competitive play.

Moving on to the third *Jaworski* factor, the avoidance of increased litigation, the federal district court acknowledged that "there exists the potential for a surfeit of lawsuits when it becomes known that simple negligence will suffice as a ground for recovery for an athletic injury." Similarly, in the opinion of the court, "[h]olding coaches to a negligence standard of conduct for decisions made during athletic competitions would certainly create an influx of litigation against coaches and schools for injuries directly caused by other players."

In her complaint, Mercier argued her coach should be held liable for his negligent "conduct related to his supervision of her during a competitive event." The federal district court disagreed. In the opinion of the court, consistent with court decisions in other jurisdictions, coaches should be held to the lower standard of care applicable to co-participants during a competitive sporting event, requiring recklessness or intentional conduct as a legal basis for liability, as opposed to ordinary negligence. In the opinion of the court, "holding coaches such as Tawney to a negligence standard of care could improperly chill the coach's role, which is to push athletes to perform in the context of a

competition.”

[C]oaching decisions involve split-second, subjective decisions. Because such decisions are particularly prone to second-guessing, permitting a negligence-based standard of care would open the door to a surfeit of litigation and would impose an unfair burden on coaches such as Tawney.

That being said, the court acknowledged the more stringent standard of reasonable care to avoid negligence liability might still be applicable to “situations where a coach failed to provide adequate instruction or supervision before directing the player to take action that resulted in injury.” In so doing, the coach recognized the different relationship between coaches and co-participants in a sport outside the heat of competition.

Accordingly, the federal district court held “a recklessness or intentional conduct standard of care” should apply in determining whether coach liability should be imposed in this particular competitive situation.

RECKLESSNESS

The specific issue was, therefore, whether Mercier had alleged sufficient facts which would support a claim of recklessness against her coach. As noted by the federal district court, the Connecticut Supreme Court had defined “recklessness” as follows:

Recklessness is a state of consciousness with reference to the consequences of one's acts. It is more than negligence, more than gross negligence. The state of mind amounting to recklessness may be inferred from conduct. But, in order to infer it, there must be something more than a failure to exercise a reasonable degree of watchfulness to avoid danger to others or to take reasonable precautions to avoid injury to them. Wanton misconduct is reckless misconduct. It is such conduct as indicated a reckless disregard of the just rights or safety of others or of the consequences of the action.

Reckless conduct involves an extreme departure from ordinary care, in a situation where a high degree of danger is apparent. Such aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simply inattention. An actor must recognize that his conduct involves a risk substantially greater than that which is necessary to make his conduct negligent.

Applying this definition to the facts of the case, the federal district court found Mercier had alleged sufficient facts which, if proven at trial, would “plausibly support a claim of recklessness.”

In this particular instance, the complaint did not allege “Tawney observed Mercier being

struck in the head.” Instead, Mercier alleged she had “told Tawney she had been hit in the head, that her eyes were blurry, and that she needed to sit down. “ Moreover, while on the bench, Mercier claimed she “uncharacteristically sat quietly with her head in her hands and leaning on her knee.” Further, Mercier alleged “Tawney was aware of the symptoms of head injuries and had been trained and education in recognizing, preventing, and treating such injuries.” Nevertheless, Mercier alleged Tawney then asked her “whether she was ready to go back into the game.” Accordingly, under the circumstances of this particular case, the federal district court Mercier had alleged sufficient facts to establish recklessness.

Even if Tawney did not intend for his request to constitute an order, one could find that asking Mercier to return to a game, after she told Tawney she had been struck in the head and had blurry vision, constituted “an extreme departure from ordinary care.”

One could also find that failing to request and provide medical treatment for Mercier after learning she had been struck in the head and had blurry vision involved “a reckless disregard of the just rights or safety of” Mercier.

CONCLUSION

Having found the appropriate legal standard for coach liability in a competition to be recklessness, the federal district court would not allow Mercier’s negligence claims to proceed to trial. The federal district court, therefore, granted defendants’ motion to dismiss Mercier’s negligence claims. The federal district court, however, would allow further trial proceedings to fully consider the issue of recklessness to determine potential coach liability in this particular instance.

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