

COACH BREAKS PLAYER'S ARM DEMONSTRATING TECHNIQUE

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Generally, sport coaches and instructors owe a legal duty to exercise ordinary reasonable care to protect participants from unassumed, concealed or unreasonably increased risks. Participants, on the other hand, assume the risk of injury associated with the obvious, unavoidable, and inherent risks in a sport, or any physical activity. When a particular activity involves coaching or instruction, the participant also assumes the risk of injury associated with challenging instruction.

Accordingly, a coach or instructor who asks a participant to take on a challenge in order to better his or her skills will not necessarily be liable for injuries resulting from the participant's failure to meet that challenge. On the contrary, unless there is evidence of intentional misconduct, recklessness, or other egregious risk-increasing conduct on the part of the coach/instructor, the participant assumes the risk of injury resulting from reasonable challenges which, in hindsight, prove to have been beyond the participant's abilities. However, in the *Koffman* case described herein, the court found evidence that the coach's use of physical force to demonstrate a technique unreasonably increased the risk of injury to the participant.

SPORT RISK?

In the case of *Koffman v. Garnett*, 574 S.E.2d 258 (Va. 2003), the Virginia supreme court considered whether an injured football player had alleged sufficient facts to establish a claim of gross negligence, as well as assault and battery, against his coach. The facts of the case were as follows:

In the fall of 2000, Andrew W. Koffman, a 13-year old middle school student at a public school in Botetourt County, began participating on the school's football team. It was Andy's first season playing organized football, and he was positioned as a third-string defensive player. James Garnett was employed by the Botetourt County School Board as an assistant coach for the football team and was responsible for the supervision, training and instruction of the team's defensive players.

The team lost its first game of the season. Garnett was upset by the defensive players' inadequate tackling in that game and became further displeased by what he perceived as inadequate tackling during the first practice following the loss.

Garnett ordered Andy to hold a football and "stand upright and motionless" so that Garnett could explain the proper tackling technique to the defensive players. Then Garnett, without further warning, thrust his arms around Andy's body, lifted him "off his feet by two feet or more,"

and "slammed" him to the ground. Andy weighed 144 pounds, while Garnett weighed approximately 260 pounds. The force of the tackle broke the humerus bone in Andy's left arm. During prior practices, no coach had used physical force to instruct players on rules or techniques of playing football.

Andy and his parents (collectively "the Koffmans") alleged that "Andy was injured as a result of Garnett's simple and gross negligence and intentional acts of assault and battery." In response, Garnett argued that the Koffmans had not alleged "sufficient facts to support a lack of consent to the tackling demonstration and, therefore, did not plead causes of action for either gross negligence, assault, or battery."

The trial court agreed with Garnett and dismissed the case. In so doing, the trial court held that, under state law, "Garnett, as a school board employee, was entitled to sovereign immunity for acts of simple negligence." Further, the trial court found the facts alleged by the Koffmans were "insufficient to state causes of action for gross negligence, assault, or battery because the instruction and playing of football are 'inherently dangerous and always potentially violent'." The Koffmans appealed to the state supreme court.

GROSS NEGLIGENCE?

As defined by the state supreme court, "gross negligence" involves "that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete of the safety of another." Further, to establish gross negligence, the court found the conduct involved "must be such a degree of negligence as would shock fair minded people although something less than willful recklessness." Applying these principles to the facts of the case, the state supreme court found the Koffmans had alleged sufficient facts which, if proven at trial, would support a claim for gross negligence.

The disparity in size between Garnett and Andy was obvious to Garnett. Because of his authority as a coach, Garnett must have anticipated that Andy would comply with his instructions to stand in a non-defensive, upright, and motionless position. Under these circumstances, Garnett proceeded to aggressively tackle the much smaller, inexperienced student football player, by lifting him more than two feet from the ground and slamming him into the turf. According to the Koffmans' allegations, no coach had tackled any player previously so there was no reason for Andy to expect to be tackled by Garnett, nor was Andy warned of the impending tackle or of the force Garnett would use.

As the trial court observed, receiving an injury while participating in a tackling demonstration may be part of the sport. The facts alleged in this case, however, go beyond the circumstances of simply being tackled in the course of participating in organized football.

Here Garnett's knowledge of his greater size and experience, his instruction implying that Andy was not to take any action to defend himself from the force of a tackle, the force he used during the tackle, and Garnett's previous practice of not personally using force to demonstrate or teach football technique could lead a reasonable person to conclude that, in this instance, Garnett's actions were imprudent and were taken in utter disregard for the safety of the player involved.

ASSAULT & BATTERY?

The state supreme court then considered whether the Koffmans had alleged sufficient facts to support their claims of assault and battery. As noted by the court, assault and battery, although closely related, constitute "two independent torts."

The tort of assault consists of an act intended to cause either harmful or offensive contact with another person or apprehension of such contact, and that creates in that other person's mind a reasonable apprehension of an imminent battery. Restatement (Second) of Torts § 21 (1965)

The tort of battery is an unwanted touching which is neither consented to, excused, nor justified.

Although these two torts "go together like ham and eggs," the difference between them is "that between physical contact and the mere apprehension of it. One may exist without the other." W. Page Keeton, Prosser and Keeton on Torts § 10 at 46.

In this particular instance, the state supreme court found the Koffmans' assault claim did "not include an allegation that Andy had any apprehension of an immediate battery." Since "Andy had no warning of an imminent forceful tackle by Garnett" and the alleged battery "was in progress... in the very short period of time that it took the coach to lift Andy into the air and throw him violently to the ground," the state supreme court found insufficient evidence "as a matter of law to establish a cause of action for civil assault."

On the other hand, the supreme court found the trial court had erred in holding that the Koffmans' allegations were "insufficient as a matter of law to establish a claim for battery."

The Koffmans pled that Andy consented to physical contact with players "of like age and experience" and that neither Andy nor his parents expected or consented to his "participation in aggressive contact tackling by the adult coaches." Further, the Koffmans pled that, in the past, coaches had not tackled players as a method of instruction. Garnett asserts that, by consenting to play football, Andy consented to be tackled, by either other football players or by the coaches.

Whether Andy consented to be tackled by Garnett in the manner alleged was a matter of fact. Based on the allegations in the Koffmans' second amended motion for judgment, reasonable persons could disagree on whether Andy gave such consent.

Having found the Koffmans had alleged sufficient facts “to establish a cause of action for the tort of battery,” as well as claims of gross negligence, the state supreme court reversed the trial court’s judgment in favor of Garnett and remanded (i.e., sent back] the case to the trial court for “further proceedings consistent with this opinion.”

DISSENTING OPINION

While agreeing with the majority opinion that the Koffmans had alleged sufficient facts to proceed with a claim of gross negligence, the dissenting judge in this case found insufficient evidence to support a claim for battery. In so doing, the dissenting judge reminded the majority “acts that might give rise to a battery on a city street will not do so in the context of the sport of football.”

A football coach cannot be expected to extract from the game the body clashes that cause bruises, jolts and hard falls. Instead, a coach should ensure that players are able to withstand the shocks, blows and other rough treatment with which they would meet in actual play by making certain that players are in sound physical condition, are issued proper protective equipment, and are taught and shown how to handle themselves while in play. The instruction on how to handle themselves during a game should include demonstrations of proper tackling techniques.

Moreover, the dissenting judge noted that “[t]ackling and instruction on proper tackling techniques are aspects of the sport of football to which a player consents when making a decision to participate in the sport.”

Absent fraud, consent is generally a defense to an alleged battery. Restatement (Second) of Torts § 13, cmt. d (1965). In the context of this case, taking part in a game manifests a willingness to submit to such bodily contacts or restrictions of liberty as are permitted by its rules or usages. Restatement (Second) of Torts § 50, cmt. b (1965).

In so doing, however, the dissenting judge acknowledged that “one responsibility of a football coach is to minimize the possibility that players will sustain ‘something more than slight injury’ while playing the sport.”

[P]articipating in a particular sport does not manifest consent to contacts which are prohibited by rules or usages of the game if such rules or usages are designed to protect the participants and not merely to secure the better playing of the game as a test of skill. Restatement (Second) of Torts § 50, cmt. b (1965).

In this particular instance, however, the dissenting judge found no evidence that “the tackle itself violated any rule or usage of the sport of football.” On the contrary, since Andy could have been “tackled by a larger, physically stronger, and more experienced player either during a game or practice,” the dissenting judge found the alleged battery was still within the participant’s scope of consent to bodily contacts permitted by the rules and usages of football.