SUPERVISED FIELD TRIP PERMISSION SLIP

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In the case of *Sweeney v.. City* of *Bettendorf* (Ia. 3/13/2009), the Iowa state supreme court had to determine whether "a permission slip signed by the parent of the injured girl amounted to an enforceable anticipatory release of future claims against the City." In this case, eight-year-old Tara Sweeney was injured by a flying baseball bat at a minor league game while on a field trip sponsored by the Bettendorf Parks and Recreation Department.

FACTS

Eight-year-old Tara Sweeney participated in field trips to Davenport, Iowa, sponsored by the Bettendorf Parks and Recreation Department to see minor league baseball games. Prior to a field trip in 2003, Tara's mother, Cynthia Sweeney, signed the following "Permission Slip," which the Department required of all participants:

> I hereby give permission for my child Tara M. Sweeney to attend the Bettendorf Park Board field trip to John O'Donnell Stadium with the Playgrounds Program on Monday, June 30, 2003. I realize that the Bettendorf Park Board is not responsible or liable for any accidents or injuries that may occur while on this special occasion. Failure to sign this release as is without amendment or alteration is grounds for denial of participation.

At the game, the children did not sit behind screening as they had in the past. Instead, Tara was required by the Department to sit on bleachers or the adjacent grassy area along the third base line that was unprotected by screening or netting. Tara chose a seat in the third or fourth row of bleachers. The Department supervisors did not allow the children to move to another location in the stadium.

At a midpoint in the game, a player lost his grip on a bat. The bat flew a distance of about 120 feet along the third base line at a height of approximately six feet. The bat was airborne for two or three seconds before it struck Tara on the right side of her head. Prior to being struck by the bat, Tara had turned to talk to a friend.

At the time of the incident, no supervisors from the Department were in Tara's immediate vicinity. One supervisor who viewed the incident from a distance testified that an adult in the area could possibly have done something, either trying to knock down the bat or yelling for the kids to duck. Tara's mother, however, testified at her deposition that the incident could not have been avoided had an adult been in Tara's place.

In her lawsuit, Sweeney alleged the city parks and recreation department was negligent in "not providing direct supervision for children under their care." In response, the City contended that it had not breached any applicable legal duty owed to Sweeney. The trial court agreed, finding Sweeney had not presented "sufficient evidence to establish a breach of duty owed" to her. Moreover, the trial court found that 'the permission slip constituted a valid waiver" of Sweeney's

negligence claims. As a result, the trial court granted the City's motion for summary judgment, effectively dismissing Sweeney's lawsuit. Sweeney appealed to the state supreme court.

PERMISSION SLIP WAIVER

On appeal, the City contended that the permission slip constituted a waiver of claims Sweeney's negligence claims. In so doing, the City noted the language in the permission slip specifically stated that a parent realizes that the "Bettendorf Park Board is not responsible or liable for any accidents or injuries that may occur while on this special occasion" and that "[f]ailure to sign this release" is "grounds for denial of participation."

In response, Sweeney contended that "the permission slip did not amount to a valid anticipatory release of future claims based upon the City's negligent acts or omissions." In addition, Sweeney claimed "public policy prevents a parent from waiving such claims on behalf of a minor child."

As characterized by the state supreme court, "[t]his case involves an exculpatory provision contained in a permission slip signed by the parent of a minor child in connection with recreational activities sponsored by a municipality." In researching this issue, the supreme court found courts were reluctant to "provide defendants who sponsor recreational activities a more lenient framework" which would effectively "relieve a defendant from liability for its own negligent acts or omissions." On the contrary, the state supreme court found that other courts "have imposed a demanding requirement that the intention to exclude liability for acts and omissions of a party must be expressed in clear terms."

Further, looking at cases involving recreational activities in other jurisdictions, the supreme court found "language similar to that used by the City in this case has been found insufficient to support a release of a party's own negligence." Similarly, under the circumstances of this case, the court held "the language in the permission slip in this case does not constitute an enforceable anticipatory release of claims against the City for its negligent acts or omissions in connection with the field trip."

> [T]he permission slip contains no clear and unequivocal language that would notify a casual reader that by signing the document, a parent would be waiving all claims relating to future acts or omissions of negligence by the City. The language at issue here refers only to "accidents" generally and contains nothing specifically indicating that a parent would be waiving potential claims for the City's negligence.

Having determined that "[t]he general language in this permission slip simply does not meet the demanding legal standards" necessary to release future negligence claims, the state supreme court then examined the applicable legal duty of care owed by the City to Tara under the circumstances of this case.

INHERENT RISK

On appeal, the City had claimed the "inherent risk doctrine" was applicable and limited the City's legal duty of care owed to Tara. Specifically, the City contended that the risk of being injured by flying bats and balls when seated outside screening is unavoidable as it is an inherent part of

attending a baseball game." Consequently, the City argued that it had "no duty to protect "Tara because "being struck by a bat is an inherent risk of attending a minor league baseball game."

In response, Sweeney had argued that the limited spectator duty of care was not applicable because "the City had a much greater control over the activities of the children in this case." In so doing, Sweeney noted that she was "directed" by the City "to sit in an unprotected area and then did not provide adequate direct supervision in that area."

The state supreme court agreed with Sweeney that this particular case did "not involve a premises liability claim against the owner or operator of a baseball stadium." In so doing, the court concluded "the question on appeal relates not to the duty of the owner-operator of a baseball facility, but to the duty of the City to properly supervise Tara while attending the game."

As a result, the state supreme court found the trial court had "erred in granting summary judgment in a negligent supervision case against the City based on its view that the injury was due to an inherent risk in attending the baseball game."

NEGLIGENT SUPERVISION

When analyzed as a negligent supervision case, the state supreme court found "the City had a duty to act reasonably, under all the facts and circumstances, to protect the children's safety at the ball park." Further, in light of testimony by Sweeney's expert that the City "did not follow customary practices for the safety of children when engaged in recreational activities," the court found a jury would ordinarily determine "whether the acts and omissions of the supervisors were reasonable under all the facts and circumstances."

> The gist of the plaintiffs' claim is that a substantial cause of the injury was the supervisors' decision to allow the children, who cannot be expected to be vigilant at all times during a baseball game, to be seated in what a jury could conclude was an unreasonably hazardous location behind third base instead of behind the safety of protective netting.

In response, City argued on appeal that any alleged negligent supervision was not the legal cause of Tara's injuries because "there was nothing that the City should have done to avoid the accident."

CAUSATION

According to the court, Sweeney had to offer sufficient evidence for a reasonable jury to find, more likely than not, her injuries would not have occurred without negligent supervision. In so doing, the court acknowledged that Sweeney "need not show certainty or inevitability, but the plaintiff must offer something beyond mere conjecture and speculation." In general, the court found "[m]ere guesswork about what might have occurred is not enough."

Applying these principles to the facts of the case, the court concluded that Sweeney had not demonstrated that the alleged negligent supervision had caused her injuries. On the contrary, the court found "the City could have met the plaintiffs' expert's standard for direct supervision without affecting the outcome of this tragic affair."

> Here, the evidence simply is not sufficient to allow a reasonable fact finder [i.e., jury] to conclude that in all likelihood the injuries to Tara would have been avoided if the City would have provided the direct adult supervision as urged by plaintiffs' expert. Even if the City provided direct supervision in the ratio of one adult for every ten children, there no is reason to believe that an adult supervisor would likely have been able to knock down the bat or warn Tara effectively to avoid injury.
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> In order to block the flying bat, the supervisor would have had to have seen the bat leave the hands of the batter and would have had to have sufficient presence and verve to thrust himself or herself into harm's way to knock down the projectile. This scenario is improbable enough, but there is also no reason to believe that a supervisor would have been sitting in sufficiently close proximity to be physically able to knock down the bat.

Similarly, in response to plaintiff's "warning theory," the court found it was "anyone's guess as to whether a sharp verbal warning, even if immediately given, would have done the job."

> While an adult seated in the vicinity of Tara would have been in a position to provide a louder and more direct warning to her than a supervisor at a greater distance, a reasonable fact finder could not conclude that the accident would have likely been avoided if there was direct supervision as suggested by plaintiffs' expert. The errant bat in this case did not fly like a helicopter seed dropping from some tree, but rapidly ripped through the air at a low elevation to its unhappy destination.

Moreover, the court noted that "Tara's mother testified in this case that there was nothing a supervisor sitting in the vicinity could have done to avoid Tara's injuries." As a result, the state supreme court found plaintiff had "failed to generate a fact question on the proposition that enhanced direct supervision would have provided sufficient warning to Tara to avoid the injuries." Consequently, the state supreme court concluded that the City was entitled to summary judgment, effectively dismissing Sweeney's claims.