

YOUTH SPORTS CONCUSSION AWARENESS POLICY VIOLATION

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In the case of *Walton v. Premier Soccer Club, Inc.*, 2024 Md. App. LEXIS 151 (3/1/2024), the parents of Sydney Walton, age 14, alleged the negligence of Defendants, which included her soccer club and the county department of recreation and parks, had caused their daughter to sustain a traumatic brain injury (TBI) during soccer practice at a county indoor recreational facility.

On December 13, 2017, Sydney, then age 14, practiced with her Premier team at the Northeast Regional Recreation Center ("the NERRC"), a Baltimore County owned facility located in Parkville, Maryland. On the night in question, Sydney's team practiced on Field 2 at the NERRC, which is one of two indoor soccer fields. That field is farther from the entrance and is bordered by a wooden wall that serves as the boundary line for indoor play and is considered part of the field. Coach Gonzaga ran the practice. As Sydney was engaging in a drill in which she attempted to steal the ball from another player, she and the other player collided. Sydney fell into the wooden wall bordering the field, hitting her head, causing a concussion. Her injury was addressed immediately. She no longer can play soccer and claimed to have sustained permanent injuries.

STATUTE ORDINANCE RULE

Based upon the "Statute or Ordinance Rule," Plaintiffs had alleged a "violation of the concussion awareness statute" by the Defendants Premier and the County established negligence liability for Sydney's injuries. As described by the court, this legal doctrine would recognize negligence liability "in some circumstances:"

where there is an applicable statutory scheme designed to protect a class of persons which includes the plaintiff, a defendant's duty ordinarily is prescribed by the statute or ordinance and the violation of the statute or ordinance is itself evidence of negligence.

Liability, however, would still require "the necessary proof of proximate causation in a negligence action that is based on the Statute or Ordinance Rule." To be a proximate cause for an injury, the negligence must be 1) a cause in fact, and 2) a legally cognizable cause. In other words, this particular injury would not have occurred in the absence of the defendant's negligent act, i.e., violating the concussion awareness statute.

CONCUSSION AWARENESS STATUTE

As cited by the court, the concussion awareness statute, HG § 14-50, provided, in pertinent part: "A youth sports program shall make available information on concussions, head injuries, and

sudden cardiac arrest developed by the State Department of Education.” The required concussion awareness information had to be provided in a program covering the following four topics:

- 1) The nature and risk of a concussion or head injury; 2) The criteria for removal from and return to play; 3) The risks of not reporting injury and continuing to play; and 4) Appropriate academic accommodations for students diagnosed as having sustained a concussion or head injury.

In addition, the statute required a coach of a youth sports program to review and implement the following information:

A youth athlete who is suspected of sustaining a concussion or other head injury in a practice or game shall be removed from play at that time. A youth athlete who has been removed from play may not return to play until the youth athlete has obtained written clearance from a licensed health care provider trained in the evaluation and management of concussions.

Moreover, before a youth sports program could use a facility owned or operated by a local government, the statute also required a local government to provide this concussion awareness information to the youth sports program.

The HG § 14-50 concussion awareness statute defined a "youth athlete" to include an "individual who participates in an athletic activity in association with a youth sports program conducted by a recreational athletic organization." The statute further defined a "youth sports program" as a "program organized for recreational athletic competition or instruction for participants who are under the age of 19 years."

EDUCATION CODE CONCUSSION POLICY

Section 7-433 of the Education Article of the Maryland Code also governed concussion policy and awareness, mandating the Maryland State Department of Education (MSDE) to "develop policies and implement a program to provide awareness to coaches, school personnel, students, and the parents or guardians of students, in collaboration with numerous agencies." The mandated concussion policy was required to address the following four topics:

- 1) The nature and risk of a concussion or head injury; 2) The criteria for removal from and return to play; 3) The risks of not reporting injury and continuing to play; and 4) Appropriate academic accommodations for students diagnosed as having sustained a concussion or head injury.

To implement HG § 14-50, an information sheet was to be created by MSDE “based upon publicly available materials created by the Centers for Disease Control and Prevention [CDC] or other public health agencies” to establish "Policies and Programs on Concussions for Public Schools and Youth Sport Programs” throughout the State of Maryland for athletes, their parents or guardians, and their coaches.

This information included fact sheets issued by the CDC "Heads Up" program for youth athletes and their parents. These CDC fact sheets addressed: "recognizing the signs and symptoms of a concussion and determining next steps if an athlete or their parent believes they have suffered a concussion." In addition, a final section in the athlete fact sheet entitled "How can I prevent a concussion?" provided the following recommendations:

Every sport is different, but there are steps you can take to protect yourself.

- Use the proper sports equipment, including personal protective equipment. In order for equipment to protect you, it must be:
 - The right equipment for the game, position, or activity
 - Worn correctly and the correct size and fit
 - Used every time you play or practice
- Follow your coach's rules for safety and the rules of the sport.
- Practice good sportsmanship at all times.

The MSDE also required "each youth athlete and one parent or guardian acknowledge receiving information on concussions" through a written verification of any "history of traumatic head injury/concussion" to include whether the youth athlete had "ever experienced a traumatic head injury (a blow to the head)." The MSDE information, however, did not require coaches to structure practices to avoid concussions. Instead, the MSDE information simply mandated "training for a coach include four components":

- 1) Understanding Concussions, 2) Recognizing Concussions, 3) Signs & Symptoms, and 4) Responses and Action Plan.

TRIAL COURT JUDGMENT

While the negligence claims against the Defendants, Premier Defendants and the County, were based in pertinent part on an alleged violation of the concussion awareness statute, the trial court, found "any violation of the concussion awareness statute was not a proximate cause of Sydney's injury." As a result, the trial court precluded Plaintiffs "from referencing that statute or its implementing regulations before the jury."

Following a trial, the jury found that "none of the defendants were negligent and/or that their negligence was not a cause of Sydney's injury." Accordingly, judgments were entered for the defendants. Plaintiffs appealed.

CONCUSSION AWARENESS CAUSATION

On appeal, the primary issue was whether the trial court had erred in "refusing to instruct the jury on the Statute or Ordinance Rule" because the trial court had found alleged violations of the HG § 14-50 statute and related concussion awareness requirements "were not a proximate cause of Sydney's injuries."

In this case, Plaintiffs had alleged the Statute or Ordinance Rule was applicable because the concussion awareness statute “HG § 14-501, together with its implementing regulations, created a statutory scheme designed to protect a class of persons, youth athletes, of which Sydney was a member, from a particular harm, concussions, which was the type of injury Sydney sustained.”

In so doing, Plaintiffs had argued “the Premier Defendants were ignoring the statutory scheme that governed the parties' responsibilities to provide Sydney, her parents, and Coach Gonzaga with the MSDE Information.” As a result, Plaintiffs contended the requisite proof of “causation” for negligence liability could be shown under the Statute or Ordinance Rule because “Sydney was within the class of persons the statute was designed to protect and the harm she suffered was the type of harm the statute intended to prevent.”

In response, the Premier Defendants maintained that providing the MSDE Information to Sydney would not have protected her from falling and hitting her head on the wall at the NERCC “unless it would have caused her or her parents to withdraw her from practice entirely; and there was no evidence to suggest that that would have occurred.” Furthermore, if HG § 14-501 were intended to prevent youth athletes from suffering the type of harm Sydney suffered, Defendants argued the concussion awareness statute “would have included preventive measures, such as requiring helmets, prohibiting unpadded walls at indoor facilities, or requiring a certain amount of space between the field of play and the perimeter walls.”

STATUTORY DUTY NEGLIGENCE

In general, the appeals court acknowledged a plaintiff must establish the following four elements in any action for negligence:

- 1) that the defendant was under a duty to protect the plaintiff from injury, 2) that the defendant breached that duty, 3) that the plaintiff suffered actual injury or loss, and 4) that the loss or injury proximately resulted from the defendant's breach of the duty.

Moreover, the appeals court found it was “well established” that “a statute or ordinance can prescribe a duty” and that “violation of the statute or ordinance is itself evidence of negligence.” As described by the appeals court, a plaintiff had to satisfy the following two-prong test to establish a prima facie (i.e. on initial review) a case of negligence under the Statute or Ordinance Rule:

First, the plaintiff's injury must be of a type which the statute or regulation was specifically designed to prevent and the plaintiff must be a member of the class that the statute or regulation was designed to protect.

Second, the violation of the statute must be the proximate cause of the injury. If both prongs are satisfied, the violation of the statute is evidence of negligence, but is not negligence per se [i.e., by itself conclusive proof].

PREVENTABLE HARM UNDER STATUTE?

As described by the appeals court, proximate cause for alleged negligence in the violation of a statute or ordinance “may be determined by assessing whether the harm suffered is of a kind which the drafters intended the statute to prevent.” In making this determination, the court focused on understanding the specific “proximate causation issue”:

how the information that might be given to coaches with respect to a concussion protocol, like if your player sustains a concussion then make sure you take them out of play or rest them or whatever, how that would be a proximate cause of the injury in this case unless you're going to tell me that she had prior concussions or something like that.

In particular, the court questioned whether Sydney “wouldn't have played on the team” had she received the MSDE concussion awareness information. Moreover, the court questioned “what is the exact thing or information that had it been given in this case that would have been done differently that would make a difference in the proximate causation chain of the accident and injury here”:

Thus, to show that the alleged violations of HG § 14-501 were a cause in fact of Sydney's injuries, the Waltons had to adduce evidence that would permit a reasonable juror to find that if Sydney and/or her parents had received the MSDE Information, she would not have practiced with her team or would have altered her behavior during practice so as to avoid the injury or that Coach Gonzaga's review of that same information would have caused him to modify the practice so as to prevent the injury to Sydney.

In this case, the appeals court found “no such evidence in the record” to indicate how the MSDE concussion awareness information would have influenced Sydney, her parents, or her soccer coach “to alter their behavior or restructure the practice so that Sydney's injury would have been avoided”:

The information that Sydney and her parents were entitled to receive under HG § 14-501(b) was primarily geared toward understanding and recognizing the signs and symptoms of concussions and ensuring proper reporting to parents, coaches, and medical personnel...

None of these measures were relevant to the prevention of Sydney's injury, which occurred during a routine drill in which she tried to regain possession of the ball and fell into the side barrier wall.

Moreover, the appeals court found “no evidence adduced that Sydney or her parents would have chosen not to allow her to participate in soccer, generally, or this soccer practice, specifically, had she and her parents received a basic fact sheet about concussions.”

As characterized by the appeals court, the concussion awareness statute “mandated only the provision of basic concussion awareness materials.” In this particular case, the appeals court

found “the evidence did not support a rational, non-speculative causal link between the failure to provide information about concussions and the conduct of Coach Gonzaga, Sydney, or her parents during a routine soccer practice.”

CONCLUSION

Since “Plaintiffs had not adduced evidence that the Premier Defendants' failure to make the MSDE Information available to them was a cause in fact of Sydney's injury,” the appeals court held the trial court had correctly ruled that Plaintiffs could not prove the requisite proximate cause to establish negligence liability based on the Statute or Ordinance Rule.

As a result, the appeals court affirmed the judgment of the trial court in favor of the Defendants.

SEE ALSO:

Concussion Training Lacking in Federal Civil Rights Claim

James C. Kozlowski, Parks & Recreation, Oct 2014 Vol. 48, Iss. 10

<https://www.nrpa.org/parks-recreation-magazine/2014/october/concussion-training-lacking-in-federal-civil-rights-claim/>

Head Shots Just Part of the Game

James C. Kozlowski, Parks & Recreation, Feb 2017 Vol. 51, Iss. 2

<https://www.nrpa.org/parks-recreation-magazine/2017/february/head-shots-just-part-of-the-game/>

Lower Liability Standard for Coaches During Competition

James C. Kozlowski, Parks & Recreation, May 2015 Vol. 49, Iss. 5

<https://www.nrpa.org/parks-recreation-magazine/2015/may/lower-liability-standard-for-coaches-during-competition/>

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