

YOU AND THE LAW

Negligence in Sport

Stephen Picucci, Michael G. Hypes, Julia Ann Hypes

Jennifer Bradley, Plaintiff, v. National Collegiate Athletic Association, et al., Defendants

United States District Court for the District Of Columbia,
April 12, 2017, Decided

Jennifer Bradley (plaintiff) was a junior year student athlete at the University in Washington, D.C. Bradley played field hockey for the university, and in September 2011, she was hit on the head during a field hockey game between the university and Richmond University. After that hit, she began experiencing symptoms of a concussion, but continued to play hockey in practice and games. The plaintiff was not advised to sit out of practices and games, despite her symptoms persisting and a diagnosis of a concussion being confirmed. The plaintiff claimed the injury caused harm to her physical, emotional, and mental state. Paying monetary damages and the staff failing to appropriately treat her condition led to this situation. The plaintiff filed actions against the National Collegiate Athletic Association (NCAA), the Patriot League, the University, the Medicine Center, David L. Higgins, and Aaron Williams.

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The issues of this case include (1) NCAA being careless and negligent by breaching the duties of care it assumed for the benefit of the plaintiff; (2) NCAA negligence leading to severe emotional distress; (3) NCAA for false representation to her by stating it “undertook and assumed a duty to protect the physical and mental well-being of all student-athletes participating in intercollegiate sports . . . [and] to protect student-athletes from brain injuries”; (4) NCAA for failing to protect her physical and mental well-being and protecting her from brain injuries; (5) NCAA for medical malpractice and not providing the care she needed; (6) the Patriot League for carelessness and negligence by breaching the duties of care assumed for the benefit of the plaintiff, especially for failing to “provide and oversee a management system for [the treatment of the] concussion” that she suffered; (7) the Patriot League for negligent infliction of emotional distress; (8) the Patriot League for breach of contract; (9) the Patriot League for medical malpractice; (10) The University for negligence through breaching duties of care assumed for benefit of plaintiff; (11) the University for negligent infliction of emotional distress; (12) the University for breach of contract; (13) the University for medical malpractice; and (14) the Medicine Center, Dr. Higgins, and the Higgins Practice for negligent infliction of emotional distress.

Findings in the Case

1. The NCAA filed a motion to dismiss the claim of negligence. The claim of negligence alleged that the NCAA was careless and negligent by breaching the duties of care it owed the plaintiff. The plaintiff had to establish that the defendant owes a duty of care to the plaintiff, the defendant breached that duty, and the breach of duty proximately caused damage to the plaintiff. The plaintiff was able to plead facts sufficient to establish a claim of negligence as the NCAA took a duty to protect the physical and mental well-being of all student athletes participating in intercollegiate sports and a duty to protect student athletes from brain injuries. The plaintiff claimed that this negligence caused her to suffer economic and noneconomic damages as well as deterioration of her mental status. The court denied the NCAA’s motion to dismiss with respect to plaintiff’s negligence claims against it.

2. The NCAA's motion to dismiss claims of gross negligence, negligent infliction of emotional distress, fraudulent misrepresentation, breach of contract, and medical malpractice were granted as the plaintiff asserted a claim of gross negligence only for the purpose of recovering punitive damages. As neither gross negligence nor punitive damages are stand-alone cause of actions in the District of Columbia, the court dismissed gross negligence claim against the NCAA. The plaintiff did not plead facts sufficient to state a claim of negligent infliction of emotional distress nor did she allege any facts to demonstrate how the NCAA's representations were allegedly false or sufficient facts to establish a valid contract between her and the NCAA for the full duty or obligation to provide her medical treatment. Finally, the medical malpractice claim was dismissed as the plaintiff failed to show how she was entitled to relief through either direct liability or vicarious liability against the NCAA.
3. The Patriot League filed a motion to dismiss claims of negligence. The claim of negligence alleged that the Patriot League caused a negligent infliction of emotional distress, a breach of contract, and medical malpractice. The plaintiff was not able to show reasonable inference that the Patriot League owed her a legal duty of care. The plaintiff did not allege facts sufficient to plausibly state a claim of negligent infliction of emotional distress against the Patriot League, and because her allegations did not rise to the level necessary to state a claim of entitlement to relief, this was also dismissed. For both breach of contract and medical malpractice against the Patriot League, the plaintiff failed to identify a valid contract between her and the Patriot League and to demonstrate that the Patriot League is an authorized health provider, and therefore they are not liable for her alleged injuries.
4. The University was found to be negligent by breaching the duties of care assumed for the benefit of the plaintiff. The court concluded that it was reasonably foreseeable that the University did not take the necessary precautions to minimize additional risks to her injuries by prohibiting her from participating in field hockey activities with a risk of additional

injuries. Therefore, the plaintiff had alleged facts sufficient to show a duty of care from the University. Their motion to dismiss was denied. The motion to dismiss the plaintiff's medical malpractice claim was also denied without prejudice as the University provided health care to its student athletes and the plaintiff was shown to have a concussion from tests the University's athletic trainers and physicians gave her, which were considered medical services.

5. The plaintiff failed to allege facts sufficient to show the university had a special relationship with her that implicated her emotional well-being; therefore, the emotional distress claim against the University was dismissed, as was the breach of contract, as the plaintiff failed to provide any contracts including an obligation or duty owed by the University.
6. The motion of the Medicine Center, Dr. Higgins, and the Higgins Practice to dismiss was granted as the plaintiff did not allege that her serious emotional distress was caused by the medical defendants' negligent performance of care, but instead she relied on medical research suggesting that head injuries may lead to depression or other brain injuries. Her complaint was therefore dismissed.

Verdict of the Court

The court found the plaintiff was able to plead facts sufficient to establish a claim of negligence against the NCAA, as they took a duty to protect the physical and mental well-being of all student athletes participating in intercollegiate sports and a duty to protect student athletes from brain injuries. The motion was granted for the plaintiffs' claims of negligence, but denied for the other claims.

The court found the University was liable for breaching the duties of care assumed for the benefit of the plaintiff by not taking the precautions necessary to prevent her from further damage from her concussion. The court also found the University provided her with medical tests through the athletic trainers, which was sufficient to show her medical malpractice case against the University could not be dismissed. The plaintiffs claim of negligence and medical malpractice claims were granted, and the motion to dismiss by the university was denied.

Definition of Terms

- **Borrowed servant doctrine:** The common law principle that the employer of a borrowed employee, rather than the employee's regular employer, is liable for the employee's actions that occur while the employee is under the control of the temporary employer. Sometimes referred to as borrowed employee doctrine.
- **Sovereign immunity:** A legal doctrine that says that a state cannot be sued by a citizen of the state.
- **Exhaustion requirements (exhaustion of remedy):** The principle that states that you should do everything possible to correct the situation before seeking help from a court.
- **Fraudulent concealment:** Intent to deceive or defraud in a contractual arrangement by deliberate hiding, nondisclosure, or suppression of a material fact or circumstance legally or morally bound to reveal. Also referred to as suppression of evidence.
- **Tortfeasor:** A person who commits a tort, delict, or quasi-offense.
- **Prima facie:** Lat. At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably. "A litigating party is said to have a *prima facie* case when the evidence in his favor is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on the other side. In some cases the only question to be considered is whether there is a *prima facie* case or no. Thus a grand jury are bound to find a true bill of indictment, if the evidence before them creates a *prima facie* case against the accused; and for this purpose, therefore, it is not necessary for them to hear the evidence for the defense" (Mozley & Whitley, 1904, p. 238; see also *State v. Hardelein*, 109 Mo. 579, 70 S. W. 130; *State v. Lawlor*, 28 Minn. 210, 9 N. W. 698).

Risk Management

An issue that sometimes arises within this setting is whether the university is liable under respondeat superior for negligent acts of University athletes. Courts have ruled that applicability of the doctrine requires an individualized determination of whether a master servant relationship exists between the tortfeasor and the university. Whether on scholarship or not, the athlete is not an employee and the university is not liable for the athletes negligent acts.

In this situation, the University motion to dismiss the case of negligence was denied as the education of the staff at the university was not at the level it should have been to appropriately treat the athlete.

Therefore, some risk management tips include the following:

1. Education for athlete coaches on concussions, including what to look for if an athlete has had any kind of injury to the head. The athlete and coach should also build a trust in the athletes to be able to report any potential concussions to the coaches if it occurred away from the coach. The coach should be educated on signs and symptoms to look out for in athletes to know when to send the athlete to get medical treatment and sit out of practice and games if they are showing signs or symptoms of concussion.
2. Education for the medical staff at the university is also critical, and a procedure should be created for the staff to follow upon first report of any kind of concussion. This should involve immediate cessation of all exercise once the athlete first reports the concussion until the athlete has either had enough time to recover or their symptoms are completely gone. There should also be education on how to follow up on the athlete and keep track of which athletes have had concussions, as well as education on what to do if an incident should happen again. Every person within the athletic training department, as well as any outside medical professionals who work with the team, should be given some training on treating concussions correctly.

3. An athlete consent form for concussions should be created to hold the athlete liable for their injuries and requiring that they report any head injuries immediately and openly share the symptoms they are experiencing for an extended period after the concussion. The athletes should be given some education with the consent form to be aware of all the symptoms they may face and how serious this can be if ignored.
4. The athletes should also be given information on how to report their concussion and how long they should expect to experience symptoms and therefore sit out of practice. They should be educated on why lying to medical staff about feeling better will leave them liable for further medical issues.

References

Mozley, H. N., & Whitley, G. C. (1904). *Mozley and Whiteley's Law dictionary*. Butterworth. <https://archive.org/details/mozleyandwhitel00westgoog/page/n252/mode/2up>