YOU AND THE LAW

Sports Injury Litigation: The Changing Landscape—1979–2020

Thomas H. Sawyer

The changing landscape of sport injury litigation from 1979 to the present can be best understood through a review of the basic principles of law, findings, and facts from leading sports injury cases such as *Hackbart v. Cincinnati Bengals, Inc.* (1979) and *Tomjanovich v. California Sports, Inc.* (1979). These underlying cases provide the basic legal foundation and requirements necessary in litigation involving sport injuries to establish the legal principles for liability and recovery in sports injury cases. The basic legal principles and holdings set forth in the *Hackbart* and *Tomjanovich* cases are alive and well today and should be considered in cases that involves sports injuries in modern litigation. These cases and their holdings relate to sports injury litigation involving the individual player or corporate owner regarding negligence, intentional tort, and gross negligence. They are normally not connected from a products liability theory.

Since the decisions of *Hackbart* (1979) and *Tomjanovich* (1979), many courts have held that an injury resulting from an intentional tort, negligence, or recklessness may have grounds for recovery of damages for the injured athlete. However, the majority of cases have established liability through an intentional tort involving illegitimate conduct not within the rules of the game or by the establishment of recklessness. While many courts have rejected a negligence cause of

Thomas H. Sawyer, Department of Kinesiology, Recreation, and Sport, Indiana State University. Please send author correspondence to Thomas.Sawyer@live.com

action, the defense of the assumption of risk doctrine has proven effective in defeating cases for the plaintiff, as well as in the consideration of public policy. This essay mentions some of the cases that involve these legal principles, tort theories, and defenses. However, that is about to change.

The case of *Turcotte v. Fell* (1986) involved a professional jockey who was injured in a fall during a thoroughbred horse race and brought action against another jockey, owner of horse which that jockey was riding, and owner-operator of the racetrack. The Court found that the plaintiff jockey consented to relieve defendant jockey of legal duty to use reasonable care to avoid crossing into plaintiff jockey's lane of travel during the race. The Court also held that the racetrack owner-operator was not liable for alleged negligence in caring for the track because the plaintiff jockey's participation in prior races, ability to observe the condition of the track, and his general knowledge and experience established that he was well aware of cupping conditions and possible dangers from them, and he accepted that risk.

In *Knight v. Jewett* (1992), the plaintiff brought action for negligence and assault and battery after she was injured by the defendant during a friendly game of touch football. Early into the game, the defendant ran into the plaintiff during a play, and the plaintiff requested that the defendant not play so rough, which he acknowledged. However, on the next play the defendant collided with the plaintiff, knocking her down and stepping on her hand. The injury to the plaintiff's hand ultimately resulted in the amputation of her little finger.

In discussing the defense of the assumption of the risk, as well as recklessness, the Supreme Court of California, in affirming the trial court's granting of summary judgment, held that "a participant in an active sport breaches a legal duty of care to other participants – i.e., engages in conduct that may properly subject him or her to financial liability – only if the participant intentionally injures another player or engages in conduct that is so reckless as to be totally outside the range of the ordinary activity in the sport." Furthermore, the Court held that the determination of whether assumption of risk bars recovery depends upon whether a particular defendant owed a duty to the injured plaintiff, not on whether the plaintiff acted reasonably

in encountering a known risk. Ultimately, the Court ruled that although the defendant may have been reckless, he did not breach any legal duty and, thus, assumption of risk barred recovery.

The Supreme Court of Connecticut addressed the relevant public policy considerations in barring recovery for negligence causes of action in *Jaworski v. Kiernan* (1997). In *Jaworski*, the plaintiff was injured by the defendant during a co-ed soccer game when the defendant slide-tackled the plaintiff, which was against league rules. The Connecticut Supreme Court explained that public policy requires a balance in promoting vigorous athletic competition on the one hand and protecting those who participate on the other. In finding the proper balance, the Court concluded this balance is best achieved in an athletic contest to maintain an action against a co-participant only for reckless or intentional conduct and not for merely negligent conduct. Furthermore, the Court was influenced by the public policy concern of the possible flood of litigation that might result from adopting simple negligence as the standard of care to be utilized in athletic contests. The Court feared that with the number of athletic events that occurred in Connecticut every year, there existed a potential for a surge of lawsuits if it became known that simple negligence, based on an inadvertent contest rule, would suffice as a ground for recovery for an athletic injury.

Also, in the case of *Stringer v. Minnesota Vikings* (2004), the estate of Stringer brought a wrongful death action against the head trainer, assistant trainer, and medical services coordinator as co-employees of football organization, following the player's death from heat stroke. On appeal from a motion for summary judgment, the Court of Appeals of Minnesota held that the head trainer was entitled to co-employee immunity under workers' compensation law. Although the Court held that the assistant trainer and medical services coordinator were not entitled to the co-employee immunity, the Court found that the actions of the assistant trainer and medical coordinator did not constitute gross negligence.

In *Avila v. Citrus Community College District* (2006), a community college baseball player, Avila, brought a negligence cause of action against the college, the opposing team's college, and others after he was hit in the head with a pitch during the game. The Supreme Court of California held that the governmental statute for injuries

stemming from hazardous recreational activity did not apply to immunize the opposing college and that the opposing college had a duty not to increase harm inherent to the sport. However, the Court ultimately ruled that the opposing college breached no duty to the player and no recovery was made.

The Indiana Supreme Court in 2011 has given a new approach on how to address sport's injury cases in Indiana. After a decade of wandering rationales and outcomes, the Indiana Supreme Court in *Pfenning v. Lineman* (2011) has finally addressed the issue and, in so doing, has completely changed the analysis of sports injury cases in Indiana. First, *Pfenning* has removed "primary assumption of risk" from the equation, shifting the focus from the risks assumed by the injured plaintiff, to the reasonableness of the defendant's conduct. This eliminates all discussion concerning legal duty and puts the focus on whether the defendant committed any acts of negligence through their participation in the sporting activity. While *Pfenning* does not vacate any of the prior holdings in the companion cases, it does expressly reject those cases' analysis of the issues. *Pfenning* sets out a new method for analysis of sporting event injuries: "We hold that, in negligence claims against a participant in a sports activity, if the conduct of such participant is within the range of ordinary behavior of participants in the sport, the conduct is reasonable as a matter of law and does not constitute a breach of duty"(p. 397).

In 2020, the Indiana appellate court issued a ruling regarding personal injury claims resulting from participation in sports activity (*Civilo Cruz v. New Centaur, LLC, Centaur Acquisition, LLC d/b/a Indiana Grand Racing & Casino, Michael E. Lauer, Michael E. Lauer Racing Stables, Inc., Penny Lauer, and Marcelle Martin's*, 2020). The case involved a horse jockey who was injured while training a horse at a racetrack. The jockey was injured when another horse, which had thrown off its rider, barreled into the jockey's horse, and the jockey was tossed to the ground. The jockey sued the racetrack and the horse's owner for damages on the basis of negligence and premises liability. However, the Court found in favor of the defendants, and the jockey was prevented from recovering damages for his injuries. The Court's opinion could have far-reaching implications for individuals injured while participating in sporting activities.

In reviewing the plaintiff's claims, the Court first reviewed Indiana sports-injury law and mentioned a few important precedents. First, there is the rule of assumption of duty, which states that an actor who provides safety measures as a service to another and is aware the services will reduce a risk of harm to that individual owes a duty of care to that individual. A defendant violates that duty of care and may be held liable for resulting injury if (1) they are negligent in providing that service and it results in an increased risk of harm or (2) the individual receiving the services relies on the actor in assuming the risk of injury involved. Next, the Court discussed the concept that a sports participant cannot be held liable for causing injury to another while engaging in conduct ordinary to the sport unless they acted recklessly or with intent to cause the injury. This rule is rooted in public policy and designed to prevent discouragement of athletic participation due to vexatious litigation.

In applying these principles to the case in its opinion, the Court first pointed out that the plaintiff did not make any allegations that the racetrack owner's negligence in the employment of certain safety measures it had in place increased the risk of harm to the plaintiff. Furthermore, the plaintiff did not present any evidence showing that he relied on the racetrack's safety measures properly when deciding to engage in the activity. In effect, the Court found that the plaintiff assumed the risk of injury associated with participation in the activity. Therefore, the court ruled against the plaintiff in regard to his claims against the racetrack owner.

With regard to the owner of the horse that caused the injury, the court rejected the plaintiff's claim that the owner should be held liable, on the basis of the conduct of the rider they hired to train the horse that day. The plaintiff conceded that the other rider could not be held liable for the plaintiff's injuries on the basis of the rule that sports participants are not liable for injuries negligently caused while engaged in conduct ordinary to the sport. The Court held that since the rider who caused the plaintiff's injury could not be held liable, there was no liability to transfer to the horse's owner. Therefore, the horse's owner also escaped liability.

Over the past 40 years, the courts have slowly developed a new method for the analysis of sporting event injuries. They no longer rely on "primary assumption of risk" but on the reasonableness of

the defendant's conduct. This eliminates all discussion concerning legal duty. Instead, courts have adopted the view that summary judgment is appropriate in cases in which a sports participant is acting within the range of ordinary behavior and whatever injury occurs is not because of unreasonable conduct. The next decade of sport injury litigation should be interesting.

References

Avila v. Citrus Community College District, 131 P.3d 383 (California 2006). https://scocal.stanford.edu/opinion/avila-v-citrus-community-college-dist-33615 on 11/13/2022.

Civilo Cruz v. New Centaur, LLC, Centaur Acquisition, LLC d/b/a Indiana Grand Racing & Casino, Michael E. Lauer, Michael E. Lauer Racing Stables, Inc., Penny Lauer, and Marcelle Martin, Docket Number 19A-CT-2003 (June 26, 2020). https://law.justia.com/cases/Indiana/court-of-appeals/2020/19A-CT-2003

Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516, (10th Cir. 1979), cert. denied, S.Ct. 275). https://www.lexisnexis.com/community/casebrief/p/casebrief-hackbart-v-cincinnati-bengals-inc

Jaworski v. Kiernan, 696 A.2d 332 (Conn. 1997). https://case-law.vlex.com/vid/696-2d-332-conn-633440973

Knight v. Jewett, 834 P.2d 696 (California 1992). https://www.lexisnexis.com/community/casebrief/p/casebrief-knight-v-jewett

Pfenning v. Lineman, 947 N.E.2d 392 (Ind. 2011). https://law.justia.com/cases/indinana/supreme-court/2021/27s02-1006-cv-331-2.html

Stringer v. Minnesota Vikings, 686 N.W.2d 545 (Minn. Ct. App. 2004). https://casetext.com/

Thompson v. McNeill, 559 N.E.2d 705 (Ohio 1990). https://casetext.com/

Tomjanovich v. California Sports, Inc., No. H-78-243, 1979 U.S. Dist. LEXIS 9282 (S.D. Texas Oct. 10, 1979). https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2749&context=dlj

Turcotte v. Fell, 502 N.E.2d 964 (N.Y. Ct. App. 1986).