

YOU AND THE LAW

Coaches Beware of Participating With Players in Practice

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Zachary B. Elias v. Kenneth Davis and
Sterling Edwards; Ct. App. Mo., West. Dist.
Div. Four; 2017 Mo. App. LEXIS 758; 8/8/17

A Missouri court of appeals reversed a trial court and restored a plaintiff's claim that a head football coach and an assistant coach were liable for assault and battery when the assistant coach donned football pads and participated in a practice in which he injured the plaintiff. In the same ruling, however, the court affirmed the finding that dismissed the claim of negligence against the two defendants.

Facts of the Case

The incident in question involved Zachary B. Elias (plaintiff), who on October 19, 2010, was a 16-year-old high school student at Winnetonka High School in the North Kansas City School District and played varsity football for the school. Kenneth Edwards (defendant) was the head coach, and Sterling Davis (defendant) was a position coach. On that day, coaches Edwards and Davis decided to wear a full football uniform with helmet and padding to engage in full-contact scrimmage with the teenaged members of the team. Davis had never scrimmaged with the team in full football pads and helmet before that day. On one of the scrimmage plays, Elias was positioned as a middle linebacker, and Davis was positioned as a running back. During the play, Davis received the handoff from the quarterback and ran through the defensive line and into the zone

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where Elias was the next line of defense to attempt to tackle Davis. In Elias's attempt to tackle Davis and the ensuing bodily collision between adult and child, Elias's ankle was broken.

Complaint

Elias brought negligence and assault and battery claims against Edwards and Davis. The coaches filed a motion for summary judgment. They argued that Elias's negligence claim was barred for two separate reasons—official immunity and assumption of risk—and that his assault and battery claim was barred because Elias consented to the contact with Davis. The trial court granted summary judgment for Edwards and Davis on Elias's claims. Elias appealed.

Court's Analysis of the Case

Addressing the negligence claim first, and the defendants' argument that they are shielded by official immunity, the court noted that the doctrine "is intended to provide protection for individual government actors who, despite limited resources and imperfect information, must exercise judgment in the performance of their duties" (*Southers v. City of Farmington*, 263 S.W.3d 603, 611). "Its goal is also to permit public employees to make judgments affecting public safety and welfare without concerns about possible personal liability" (*Southers v. City of Farmington*, 263 S.W.3d 603, 611). "Whether an act can be characterized as discretionary depends on the degree of reason and judgment required" (*Southers*, 263 S.W.3d at 610).

In their motion for summary judgment, Edwards and Davis argued that official immunity barred Elias's negligence claim because they were performing a discretionary act in conducting the football practice. Instead of producing some form of evidence to the trial court and establishing that the conduct of the football coaches was in direct contradiction to a school district rule, a statute, a regulation, a departmental policy, or even a direct order from a superior at Winnetonka High School, Elias argued that official immunity should not apply in this case, because the coaches were no longer acting within their employment capacity when Davis suited up and scrimmaged with the team, according to the court.

The court deemed this argument was "misplaced."

"Here, it simply cannot be said that Davis's physical participation in the scrimmage during practice was outside the course of

his official duties as a football coach, and Davis's argument ignores case precedent on the topic of official immunity," wrote the court. "A scrimmage is a common tool used by a coach for the team to perform together on the field in simulated game situations and to develop game strategy. Under the limited facts in the summary judgment record, no evidence suggested that either coach was acting with any motive other than to teach and to prepare the football team during the football practice when Davis participated in the scrimmage."

The court continued, "Though it may indeed be a good idea for the school district to have a rule dictating the method and manner in which an adult high school football coach may physically participate with teenaged players in a high school football practice, the record before us does not contain such a rule. Though it may indeed be a good idea for the high school principal or athletic director to have a departmental rule or to have provided direct guidance to school coaches about the method and manner in which an adult high school football coach may physically participate with teenaged players in a high school football practice, the record before us does not contain such a departmental policy or direct advice from these football coaches' superiors at Winnetonka High School. Though it may indeed have been a good idea for the Missouri State High School Athletics Association (MSHSAA) to have a regulation relating to authorized physical participation of a high school football coach with the players in a practice environment at MSHSAA institutions, the record before us does not reference such a MSHSAA regulation."

Court's Ruling

The court continued, "Consequently, we are left with a record in which Davis's scrimmaging with the team must be evaluated as part of the coaches' decision on how to conduct football practice that day. A coach's duty to conduct and supervise a football practice requires the exercise of discretion rather than the performance of routine tasks. See *Woods*, 471 S.W.3d at 393, 395 (determining how to conduct a wrestling practice is left to the discretion of the coach). It requires the coach to use his judgment. Though the wisdom of the judgment exercised by these coaches may be reasonably debatable, the record before us does not demonstrate a rule, regulation, policy, or direct order of a superior that was violated in exercising that judgment. Thus, Edwards and Davis were performing a discretion-

ary act when they supervised and conducted the football practice in the manner in which they did in the practice in question. Their exercise of discretion was, therefore, protected by the doctrine official immunity as it relates to Elias's negligence claim. Accordingly, the trial court did not err in entering summary judgment in favor of them on Elias's negligence claim, and Elias's claims on appeal relating to the negligence claim are denied."

Turning to the appeal on the assault and battery argument, Elias argued that he neither consented nor assumed the risk of injury. The appeals court agreed with the plaintiff. "By participating in high school football, Elias voluntarily consented to the risks," wrote the court. "Those risks included physical contact and collisions with other players. The limited facts presented in the summary judgment record, however, go beyond the circumstances of physical contact in the course of playing organized high school football. Davis was an adult in full pads and helmet scrimmaging with teenaged members of the high school football team, which he had never done before that day. The record is devoid of any evidence of Davis's skill level or football experience. And as a coach, he was in a position of authority, which could have affected how Elias reacted before or during the play. For example, where an adult football coach barks a command to the teenagers on his team that they will participate in trying to tackle the adult, Coach Davis, it may be reasonably debatable whether a teenaged child such as Elias had 'consented' to such activity. It cannot be said, therefore, that the physical contact with his coach was a reasonably foreseeable consequence of participating in high school football. Reasonable persons could disagree on whether sixteen-year-old Elias voluntarily consented to the collision with Davis. At the very least, whether Elias consented to, or assumed the risk of, the contact with Davis is a proper determination for the jury."

Risk Management Implications

This is a perfect example of "mismatching." The adult football coaches who have experience and skill well beyond the 16-year-old student athlete should have never been allowed to participate against their high school football players. The student athletes did not assume a risk of playing against more experienced adults. They participated because the coach (an authority figure) said they would participate.

The athletic director and school district should have had established the following to avoid such incidents:

- The school district should have a rule dictating the method and manner in which an adult high school coach may physically participate with teenaged players in a high school practice.
- The high school athletic director should have a departmental rule against coaches participating with players during practice and should provide direct guidance to school coaches about the method and manner in which an adult high school coach may physically participate with teenaged players in a high school practice.
- The Missouri State High School Athletics Association (MSHSAA) should have a regulation relating to authorized physical participation of a high school coach with the players in a practice environment at MSHSAA institutions.