

Negligence in Sport

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Donald R. Swank v. Valley Christian School,

Supreme Court of Washington
January 19, 2017, Argued July 6,
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Introduction

Parents of a football player filed a lawsuit against Valley Christian School for common law negligence, medical negligence, and violations of the Zackery Lystedt law, which is a law that was implemented in Washington to protect athletes who have sustained a concussion from further injuring themselves. The lawsuit was filed because their son, Drew Swank, died two days after a football game in which he had been medically cleared to play in after receiving a head injury the week prior. The Swanks filed the lawsuit claiming that the football coach and doctor were negligent in allowing Drew to play, knowing that he had suffered a head injury and was still showing concussion-like symptoms.

Claim

The issues in this case were first brought on by Dr. Burns, who cleared Drew for play without doing an official evaluation of him. Another issue in this case is that a concussion protocol law was put in place, the Zackery Lystedt law, and it was not followed correctly. Drew should have gone through a return-to-play protocol before being allowed to participate in a game. Also, the fact that Drew's performance in the game after his concussion was so clearly abnormal, and he was reported to be moving very sluggishly, Coach Puryear should have removed him from play. Not only did Coach Puryear not remove him from the game, but it seems he could have possibly made the condition worse when he reportedly grabbed Drew's facemask and shook it while yelling at him for his poor performance. A coach should not have been permitted to do that, and a school administrator or official should have stepped in.

Findings in This Case

1. The Zackery Lystedt law states that a youth athlete is required to be removed from play immediately when the youth athlete is suspected of sustaining a concussion or head injury. The court could not find evidence to support the claim that the school or the coach acted negligently in not removing Drew from play.
2. Coach Puryear was a volunteer coach for Valley Christian School. Therefore, unless the coach's actions were to be found grossly negligent or reckless, he would be under protection of the volunteer immunity statute. This statute states that a volunteer coach for a school sports team can be immune from a liability for an injury to a student athlete even if the team is the product of a joint venture between the school and the coach. So even though Coach Puryear was one of the sole financial providers for this program, he still fell under the immunity law.
3. The claim of battery against Coach Puryear, for jerking Drew's face mask during the game, was barred by the two-year statute of limitations for battery.
4. The trial court also lacked personal jurisdiction over Dr. Burns because he was a practicing doctor in Idaho, and that is where the initial evaluations of Drew took place. Dr. Burns did not perform any duties regarding Drew Swank in the state of Washington, so the court did not have any authority to pursue that claim.

Verdict of the Court

The court reversed in part and affirmed in part. The court held that the Lystedt law includes an implied cause of action because the plaintiff was in a protected class, the legislature intended to provide recovery for

statutory violations, and the legislative purpose is consistent with finding an implied cause of action. The court reversed the summary judgment on this point, and the claims that Valley Christian School and Coach Puryear violated the Lystedt law are reinstated for future proceedings. The court reversed the grant summary of judgment as to whether his actions were reckless or negligent. As a result of those findings, the court reinstated the common law negligence claims against Coach Puryear. The court affirmed the grant summary for judgment for the claims against Dr. Burns because of the lack of jurisdiction.

Definition of Terms

1. Battery: any unlawful beating, or other wrongful physical violence or constraint, inflicted on a human being without consent.
2. Gross negligence: not a total absence of care, but care substantially or appreciably less than the quantum of care inhering in ordinary negligence.
3. Negligence: an act or omission that a person of ordinary prudence would do or fail to do under like circumstances or conditions. A defendant's duty is to exercise ordinary care.
4. Reckless misconduct: requires a conscious choice of a course of action either with knowledge of the serious danger to others involved in it or with knowledge of facts that would disclose the danger to any reasonable person. A person is reckless or acts recklessly when the person knows of and disregards a substantial risk that a wrongful act may occur.

Risk Management Tips

Concussion protocol should be well gone over with every employee associated with athletics, especially in sports that

have a high amount of collisions. All players and coaches should be aware of the concussion protocol and should be given information on the way to observe and detect it. Once coaches are aware of this protocol and are found to not be following it, they should be held accountable no matter their job title, whether they be a paid or volunteer coach. School administration and athletic administration need to be more prudent when dealing with concussion training to ensure that their athletes are being cared for appropriately. The following are a few tips regarding the concussion protocol.

1. Coaches should actively monitor any athlete who has had a head injury especially during the athlete's initial return to play.
2. If the athlete shows any signs of lingering head injuries, or the athlete's style of play starts to decline, they should be pulled from play and examined by a medical professional before being cleared.
3. The athlete should have a physical examination with a medical professional before initially being able to return after receiving a head injury and should have a signed doctor's note.
4. Any coach or athletic official should have knowledge of concussion symptoms, and if they observe any sign of these symptoms, they should be obligated to remove the athlete and have them seen by a medical professional.

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