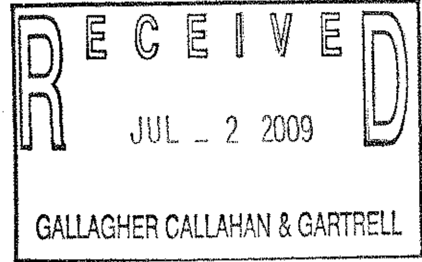
THE STATE OF NEW HAMPSHIRE
Belknap Superior Court

64 Court Street
Laconia, NH 03246
603 524-3570

NOTICE OF DECISION



CHARLES P BAUER ESQ
GALLAGHER CALLAHAN & GATRELL P C
PO BOX 1415
CONCORD NH 03302-1415

09-C-0002 Kier Barbour v. Kenneth L. Renaud & SAU #59, et al

Enclosed please find a copy of the Court's Order dated 7/01/2009 relative to:

Court Order

07/01/2009

Dana Zucker
Clerk of Court

cc: ALLEN LUCAS,ESQ
STEPHEN J. SCHULTHESS, ESQ.

STATE OF NEW HAMPSHIRE

BELKNAP COUNTY SUPERIOR COURT

KIER BARBOUR

v.

WINNISQUAM REGIONAL SCHOOL DISTRICT, SAU 59, ET AL

Docket No.: 09-C-002

ORDER

Defendant Kenneth Renaud moves to dismiss Counts I through IV of Plaintiff's writ alleging various causes of action against him as Plaintiff's wrestling coach. The facts of this case were set forth in the Court's order of April 7, 2009 and will not be repeated here.

Counts I and II allege negligence and negligent supervision on the part of Coach Renaud which led to Plaintiff's injuries. Defendant moves to dismiss arguing that he cannot be liable as a matter of law because plaintiff's injuries resulted from risks inherent to the sport of wrestling.

"Participating in a sport gives rise to 'commonly appreciated risks which are inherent in and arise out of the nature of the sport generally and flow from such participation.'" Allen v Dover Co-Recreational Softball League, 148 N.H. 407, 417 (2002)(citation omitted). A participant or organizer of a sport cannot be liable for injuries that result from normal risks incident to the sport. Id. A participant or organizer may be liable, however, if he acted in an unreasonable manner that created or increased the risk that flows from participation in the sport. Id.

The appropriate standard of care to be applied in sports cases is determined by: (1) the nature of the sport; (2) the type of contest; (3) the age, physical characteristics and skills of the participants; (4) the type of equipment involved; and (5) the rules, customs and practices of the sport, including the type of contact and the level of contact generally accepted. Werne v Executive Women's Golf Association, 158 N.H. 373, 377 (2009). Considering these factors, the Court concludes that Plaintiff's knee injury resulted from risks inherent to high school wrestling for which Defendant cannot be held liable.

Wrestling by its nature is a very physical sport. The goal of a wrestling match is to force the opponent to the mat, pin him in a certain position, and hold him there for the specified count. Nothing indicates that Coach Renaud did anything to increase the danger "outside the range of the ordinary activity involved in the sport" of high school wrestling. Allen at 417. Plaintiff was fifteen years old, a sophomore, at the time of his injury and was matched against opponents of similar age, weight, and experience. Plaintiff does not allege that he was not wearing protective equipment appropriate to the sport or that the facilities were unsafe. Nor does he argue that knee injuries are not a risk of wrestling. Indeed, Plaintiff's mother signed an acknowledgment prior to her son's participation in the wrestling program of the risks associated with the sport and the injuries, including to the knees, that could result, as well as a consent to his participation in the program. Rather, Plaintiff argues that at the time of his injury he was unsupervised allowing his opponent "to perform a wrestling move reserved for more advanced wrestlers." Plaintiff's Objection to Motion to Dismiss

at 4. He alleges that in this way Coach Renaud breached his "duty to provide a safe environment in which he could participate in and learn the sport of wrestling." Id. To expect a high school coach to watch all of his student athletes at all times in their practices and games is simply not reasonable. Moreover, that a relatively inexperienced wrestler would try a more advanced move upon his opponent is within the ordinary activity expected of the sport. See Allen at 419 (A fielder in softball game cannot be held liable for injuries resulting from errant throw since this is common risk inherent to softball games.)

For the above reasons, Defendant's Motion to Dismiss Counts I and II is GRANTED.

Defendant also moves to dismiss Count III arguing that Plaintiff's allegations—that Coach Renaud laughed at him after his injury and caused the wrestling team to disassociate themselves from him which caused him unspecified severe emotional distress—do not rise to the level necessary to state a cause of action for intentional infliction of emotional distress.

In its order of April 7, 2009, the Court dismissed Count VII of Plaintiff's complaint alleging intentional infliction of emotional distress against the high school because the conduct which the high school allegedly took—intentionally noting excessive absences on the plaintiff's record—was not outrageous or intolerable as a matter of law and, alternatively, because he had not stated facts sufficient to show that he suffered severe emotional damage resulting from that conduct.

Using the same analysis as applied to Count VII, the court similarly finds as a matter of law that the allegations about Coach Renaud's conduct and the general claim that Plaintiff suffered severe emotional distress as a result, do not rise to the level of stating a cause of action for the tort of intentional infliction of emotional distress. Accordingly, the Motion to Dismiss Count III is GRANTED.

Count IV alleges negligent infliction of emotional distress. The Court previously dismissed Counts VII, XI and XIV alleging negligent infliction of emotional distress against the Winnisquam defendants because Plaintiff had not alleged that he suffered any physical symptoms as a result of the alleged emotional distress, a necessary element of the tort. The same analysis and end result apply to the claim of negligent infliction of emotional distress against Coach Renaud because Plaintiff makes no allegation of physical symptoms resulting from the emotional distress. Accordingly, the Motion to Dismiss Count IV is GRANTED.

The Winnisquam defendants move to dismiss the only remaining causes of action in this case, Counts V, IX, and XII as they are all based on respondeat superior for the alleged negligence of Coach Renaud. Because all counts against Coach Renaud have now been dismissed, Defendants' Motion to Dismiss Counts V, IX, and XII is GRANTED.

SO ORDERED.

7/1/09
Date

Kathleen A. McGuire