While Sympathetic To Injured Athlete, Judge Sides With District And Coach

A federal judge from Pennsylvania has granted a school district's motion to dismiss a lawsuit brought by the parents of a student athlete, who had claimed that the district and one of its employees did not do enough to prevent their son from suffering multiple concussions and the debilitated effects that ensued.

In so ruling, the court determined that the parents failed to provide sufficient evidence in support of their claim that the school district and employee/coach violated their son's Constitutional rights as well as protections afforded by the "state-created danger" theory of liability. In addition, it found that the employee/ coach was entitled to qualified immunity.

The son in the case participated in the school's football program beginning in July 2008.

On Nov. 1, 2011, the athlete was participating in football practice at the high school when he was hit by a teammate running full speed toward him. After the hit, he reported feelings of numbness and/or disorientation to the coaching staff, and his behavior became erratic. Immediately after the incident, the coaches told the player to continue practicing, according to the complaint. They also allegedly failed to perform a medical evaluation, concussion test or to send him to the athletic trainer.

Later on, during the same football practice, the football player was hit again, causing him to be confused, dazed and unable to continue practice. He was taken to the school's athletic trainer but could not provide complete information to the AT regarding the two hits he sustained, according to the complaint.

The court noted that at the time of the incident, the district was using a series of policies and procedures outlined in its 2011-2012 Athletic Handbook to inform the coaches and parents about the district's policies, procedures, rules and regulations, and general guidelines relating to its athletic program. The handbook outlines several policies requiring, inter alia, the exclusion of any player from play who has suffered injury or illness until that player is pronounced physically fit by a physician. The handbook also details the duties and responsibilities of various employees in the athletic program, including the head coach, who is required to inform the athletic trainer of any injuries that occur during practices or games. Additionally, the handbook contains a separate section dedicated to the proper handling of injured players. The procedures outlined in this section prohibit injured athletes from returning to practice or competition without first being cleared by the athletic trainer. The handbook does not include any policies or guidelines that specifically address concussions or other head injuries. The district also adopted OAA Orthopaedic Specialists' concussion policies, though deposition testimony shows that it is unclear if these policies were written out at the time of the athlete's incident. It is undisputed that one year after his incident, however, the district had a written concussion policy in place.

Specifically, the plaintiffs claimed that the athlete's rights were violated as a result of the employee/coach's "exercise of authority in telling [the athlete] to continue participating in football practice after sustaining a hit and exhibiting signs of a concussion." They also claimed that "[the athlete's] rights were violated as a result of the district's practice of failing to medically clear student athletes, failing to enforce and enact proper concussion policies, and failing to train the coaches on a safety protocol for head injuries." On Feb. 1, 2016, the defendants moved for summary judgment, arguing that there is insufficient evidence in the record to establish a state-created danger claim against the employee/ coach and a municipal liability claim against the district. The defendants also argued that even if there were sufficient evidence to establish a state-created danger claim, the employee/coach would be entitled to qualified immunity.

In its analysis, the court relied heavily on case law: "A government official's conduct violates clearly established law when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right. Hinterberger v. Iroquois Sch. Dist., 548 F. App'x 50, 52 (3d Cir. 2013) (citing Ashcroft v. al-Kidd, 563 U.S. 731, 131 S. Ct. 2074, 2083, 179 L. Ed. 2d 1149 (2011)). In determining whether a right has been clearly established, the court must define the right with the appropriate level of specificity. Sharp v. Johnson, 669 F.3d 144, 159 (3d Cir. 2012).

“The viability of a state-created danger claim is well-settled. Hinterberger, 548 F. App'x at 52. However, no published opinion of the Third Circuit has found that a state-created danger arises when coaches fail to take certain precautions in athletic practice or in any analogous situation. Id. at 53. In Hinterberger v. Iroquois School District, a cheerleader suffered a severe closed head injury after attempting the ‘twist down cradle,’ a new stunt introduced by her coach at practice in a room without adequate matting. In analyzing whether the coach was entitled to qualified immunity, the Third Circuit explained that although district court opinions ‘may be relevant to the determination of when a right was clearly established for qualified immunity analysis,’ they ‘do not establish the law of the circuit, and are not even binding on other district courts within the district.’ Id. Noting that the district court below relied on district court opinions to find that a right was clearly established, the Third Circuit reversed, and concluded that those cases alone did not place the defendant coach on notice that her actions amounted to a constitutional violation. Id. at 53-54. The Third Circuit emphasized that cases from other courts of appeals also did not support the plaintiff's claim that her alleged constitutional right was clearly established, and cited to various cases that disagreed as to the applicability of the state-created danger doctrine in the context of schools. Id. at 54 (citing cases). See, e.g., Priester v. Lowndes Cty., 354 F.3d 414, 422 (5th Cir. 2004) (noting that the Fifth Circuit had not adopted a theory of state-created danger and otherwise found no liability for injury sustained to a student during football practice). Fully recognizing the tragic nature of the plaintiff's injury and ‘the fact that more might have been done to prevent it,’ the Third Circuit concluded that the alleged constitutional right was not clearly established at the time of her accident. Hinterberger, 548 F. App'x at 54. The critical portion of the Third Circuit's analysis in reversing the district court and concluding that the defendant coach was entitled to qualified immunity from suit is directly applicable here:

‘The plaintiff does not cite, and we have not found, any precedential circuit court decisions finding a state-created danger in the context of a school athletic practice. We thus conclude that the plaintiff's alleged right was not clearly established at the time of her accident.’” Id.

The court administering the instant opinion found the analysis in Hinterberger “instructive.” Further to that point, “because [the athlete’s] alleged right was not clearly established at the time of his injury, [the employee/coach] is entitled to qualified immunity.”

Turning to the school district, the court noted that the district “cannot be held vicariously liable for the Constitutional violations committed” by its employees. Monell v. N.Y. City Dep't of Soc. Servs., 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). “Rather, for liability to attach, the plaintiffs must show that the violation of their rights was caused by a policy, custom, or practice of the municipality. … Here, the plaintiffs assert that the district is liable based both on municipal policies and customs that caused [the athlete’s] injuries.”

The court found no such policy or custom. “The evidence shows that shortly after [the athlete’s] injuries in November 2011, the defendants began discussing how to address concussions and what protocols should be put in place.”

Additionally, the court noted that the plaintiffs “have also failed to establish causation because even if the School District did have a concussion policy or protocol in place, it likely would not have had any effect on

School District did have a concussion policy or protocol in place, it likely would not have had any effect on the situation because the plaintiffs have pointed to no evidence that [employee/coach] actually believed that [the athlete] was suffering from concussive symptoms. Accordingly, the plaintiffs have failed to adduce sufficient evidence for their municipal liability claim."

While holding for the defendants, the court was sympathetic to the football player and his parents.

"Unfortunately, the tragic story of [the athlete's] injury is not an anomaly," the court wrote. "In 2008, Ryne Dougherty, a high-school linebacker, sustained a concussion during football practice. Michael S. Schmidt, School Set to Discuss Concussion Guidelines, N.Y. Times, Oct. 22, 2008, at B17. After a normal CT scan and sitting out for the required period, he returned to the field, only to collapse and suffer a brain hemorrhage, resulting in his death. Examples of other young football players who have suffered serious injury after sustaining a concussion include Zackery Lystedt, a middle-school student who, in 2006, suffered permanent brain damage after sustaining a concussion and an additional hit in the same game, and Zachary Frith, a highschool freshman who, in 2005, also suffered permanent brain damage after sustaining a concussion during a football game and then staying in the game. I do not take these stories lightly. However, as a matter of law, I cannot side-step the well-established doctrines of qualified immunity and municipal liability. Although it can be said that the district and [the employee/coach] could have acted differently and done more to prevent [the athlete's] head injuries, I cannot say that their conduct rises to the level of constitutional violations that make them liable in a court of law."

RELATED RESOURCES

- NATA Position Statement: Management of Sport Concussion
- Inter-Association Consensus Statement on Best Practices for Sports Medicine Management for Secondary Schools and Colleges
- Concussion Care Requires Communication
- Concussion Handout
- Parents and the New Concussion Paradigm
- Concussion: Differentiating from concern and paranoia
- Concussion Baseline Testing: Preexisting Factors, Symptoms, and Neurocognitive Performance
- Cervical Injury Assessments for Concussion Evaluation: A Review
- Concussion-Like Symptoms in Child and Youth Athletes at Baseline: What Is "Typical"?
- Epidemiologic Measures for Quantifying the Incidence of Concussion in National Collegiate Athletic Association Sports
- "Playing Through It": Delayed Reporting and Removal From Athletic Activity After Concussion Predicts Prolonged Recovery
- High Baseline Postconcussion Symptom Scores and Concussion Outcomes in Athletes
- Examining Academic Support After Concussion for the Adolescent Student-Athlete: Perspectives of the Athletic Trainer
- Age Differences in Recovery After Sport-Related Concussion: A Comparison of High School and Collegiate Athletes