

PARTICIPANT ASSUMES RISK OF INJURY INTEGRAL TO SPORT
AMERICAN POWERLIFTING ASSOCIATION v. COTILLO

Court of Appeals of Maryland
October 16, 2007

[Note: Attached opinion of the court has been edited and citations omitted.]

This matter arises from a civil action filed in the Circuit Court for Calvert County by the respondent, Christopher Cotillo, against the petitioners, collectively, William Duncan, the American Powerlifting Association ("the APA"), and the Board of Education of Calvert County ("the Board"), for injuries Cotillo sustained while participating in a powerlifting competition. Cotillo asserted various negligence claims, and both sides filed motions for summary judgment.

The Circuit Court granted the petitioners' motions for summary judgment on the grounds that Cotillo assumed the risk of his injuries. On appeal, the Court of Special Appeals affirmed the judgment of the Circuit Court in part and reversed in part, holding that summary judgment was proper as to all claims except the claim that the spotters were negligently trained.

The petitioners ask this Court to decide whether the Circuit Court erred in finding that Cotillo's claim, that the spotters were negligently instructed, was barred by assumption of the risk, in light of the trial court's additional determination that Cotillo assumed the risk of injury during a lift, and that Cotillo assumed the risk that the spotters would fail to protect him in the event of a failed lift.

We shall hold that there is no genuine issue of material fact that Cotillo assumed the usual and foreseeable risks of the sport when he voluntarily entered a powerlifting competition, and therefore summary judgment was appropriate. There is no genuine dispute that the immediate cause of Cotillo's injury was his attempt to qualify by bench pressing 530 pounds. As a result, whether any of the petitioners were negligent in failing to prevent Cotillo's injury is of no consequence. Furthermore, any dispute of fact as to whether the spotters were negligent is immaterial because their mere negligence is insufficient to support a finding of enhanced risk.

FACTS

On November 8, 2003, Cotillo, a powerlifter with ten years of experience, was injured during the 2003 Southern Maryland Open Bench Press & Deadlift Meet ("the Meet"), when he attempted to lift 530 pounds. The Meet was sanctioned by the APA, and held at Patuxent High School, which operates under the jurisdiction of the Board. It was organized by Mr. Duncan, the faculty sponsor of Patuxent High School's weightlifting club, and Scott Taylor, APA president.

Spotters are present during weightlifting competitions, just as they often are in practice, to assist a participant in the event of a failed lift. Generally, one spotter is positioned on each end of the lift bar, and each spotter keeps his hands within inches of the bar so that, if the participant is having difficulty with the bar or is in danger of dropping the bar, the spotters can act quickly to

take the bar from the participant. If a spotter touches the bar for any reason, that lift is disqualified.

Before the Meet, the lifters were informed that they could use their own spotters. Members of Cotillo's gym participated in the Meet and were available, on his request, to serve as spotters for his lifts. Cotillo did not exercise this option, electing instead to use the spotters provided by the organizers of the Meet.

Mr. Duncan recruited Chris Smith and Chris Blair, Patuxent High School students, to act as spotters during the Meet. At the time of the Meet, Mr. Smith was fifteen years old, approximately five feet and eight to ten inches tall, and 180 pounds. Mr. Blair, at the time of the Meet, was fourteen years old, approximately six feet tall, and weighed 260 pounds. Both spotters had some weightlifting experience.

On the morning of the Meet, Mr. Duncan spoke with the spotters and told them that, while they should keep their hands close to the bar, they could not touch the bar because it would disqualify the lift. Mr. Taylor further instructed the spotters that if the lifter were to hesitate, without making any downward motion with the bar, they should wait for the referee's instruction to grab the bar. If the lifter were to hesitate and the bar were to come down, Mr. Taylor instructed the spotters that they should not wait for the referee's instruction, but instead grab the bar.

Cotillo's first two lifts in the Meet, using the spotters, were uneventful. The spotters were positioned on either side of the bar, and Mr. Duncan was positioned in the middle.

On his third lift, Cotillo was attempting to lift 530 pounds. Cotillo brought the bar down without any trouble. As he began to lift it, he had some difficulty, at which point Mr. Blair testified that he began to move his own hands closer to the bar. The judge instructed the spotters to grab the bar, but as the spotters closed in, the bar came down, striking Cotillo in the jaw. The entirety of these events happened within a matter of seconds. As a result of the incident, Cotillo suffered a shattered jaw, a laceration, and damage to several teeth, requiring treatment.

On January 15, 2004, Cotillo filed a complaint in the Circuit Court for Calvert County. In his amended complaint, Cotillo asserted various claims of negligence against Mr. Duncan, the APA, and the Board. Each of the parties filed motions for summary judgment and on February 3, 2006, the court denied Cotillo's motion and granted the petitioners' motions, on the grounds that Cotillo assumed the risk of his injuries.

Cotillo filed an appeal with the Court of Special Appeals, which affirmed in part and reversed in part. The Court of Special Appeals held that summary judgment was properly entered on all claims except the negligence claim grounded in allegations of improper preparatory instruction of the spotters. The intermediate appellate court reasoned that because Cotillo did not know the spotters were improperly trained, and because their improper training presented an enhanced risk not normally incident to the sport, Cotillo could not have assumed the risk.

The APA and the Board filed petitions for writ of certiorari [i.e. request for review] in this Court, which we granted.

DISCUSSION

The petitioners argue that the Court of Special Appeals erred by holding that Cotillo could not have assumed the risk that the spotters would be negligently trained.

They contend that the doctrine of assumption of the risk operates independently from the law of negligence, and therefore it is irrelevant whether they may have been negligent in training the spotters. The petitioners reason that holding otherwise would create a problem of circular logic, enabling plaintiffs to escape an assumption of the risk defense by claiming that they could not have anticipated the defendants' negligence.

The respondent argues that the petitioners were negligent in training the spotters, and that their negligent training presented an enhanced risk to Cotillo that he could not have assumed. The respondent contends that he could not have assumed the particular risk that the spotters would be negligently trained because assumption of the risk requires that Cotillo have particular knowledge of the risks he assumes, and he had no prior knowledge of the training the spotters received before he encountered the risk.

Further, the respondent contends that the alleged negligent training of the spotters enhanced the risk to Cotillo, and that this increased risk was not a risk inherent in the sport. Because the respondent believes that this increased risk creates a dispute as to whether Cotillo knowingly and voluntarily confronted a particular risk, he argues that summary judgment was inappropriate.

ASSUMPTION OF RISK

Assumption of the risk is a doctrine whereby a plaintiff who intentionally and voluntarily exposes himself to a known risk, effectively, consents to relieve the defendant of liability for those risks to which the plaintiff exposes himself. Assumption of the risk is a defense that completely bars any recovery by the plaintiff. The doctrine negates the issue of a defendant's negligence by virtue of a plaintiff's previous abandonment of his or her right to maintain an action if an accident occurs.

In Maryland, there are three requirements that the defendant must prove to establish the defense of assumption of the risk: (1) the plaintiff had knowledge of the risk of danger; (2) the plaintiff appreciated that risk; and (3) the plaintiff voluntarily confronted the risk of danger.

In determining whether a plaintiff had the requisite knowledge, an objective standard is applied. Although the determination as to whether a plaintiff has assumed a risk will often be a question for the jury, where it is clear that any person of normal intelligence in his position must have understood the danger, the issue must be decided by the court.

The question of whether the plaintiff had the requisite knowledge and appreciation of the risk in order to assume the risk is determined by an objective standard. By this standard, a plaintiff will not be heard to say that he did not comprehend a risk which must have been obvious to him.

In this case, Cotillo knew and appreciated the risk of danger, and voluntarily confronted that risk. At the time of his injury, Cotillo had been powerlifting for approximately 10 years. Prior to the Meet, he had successfully competed in several competitions at the local, national and international level, while setting several records in the process. Cotillo had also signed documents at past competitions containing waivers, which indicated the risks of participating in powerlifting, including the risk of equipment malfunction. These facts show that Cotillo was aware of the risk of injury by participating in a powerlifting competition.

Not only did Cotillo have direct knowledge of the inherent risks of powerlifting, but it is clear to any person of normal intelligence that one of the risks inherent in powerlifting is that the bar may fall and injure the participant. That this is clear to any person of normal intelligence is evidenced by the fact that the nature of the sport is to attempt to lift great amounts of weight above the lifter's body. If the participant were to fail to lift the weight, the obvious conclusion is that gravity would cause the bar to come down on the person beneath it. The apparent necessity of spotters in the sport only reinforces the inescapable conclusion that there is a risk that the bar might fall and injure the participant.

Although a sporting event participant does not consent to all possible injuries, he consents to the "foreseeable dangers" that are "an integral part of the sport as it is typically played." Such risks, that are inherent to a particular sport, are all foreseeable consequences of participating in that sport, and as they are obvious to a person of normal intelligence, voluntary participants in those sports assume those inherent risks.

Due to the nature of sports injuries, a participant also assumes the risk that other participants may be negligent. Voluntary participants in sports activities assume the inherent and foreseeable dangers of the activity and cannot recover for injury unless it can be established that the other participant either intentionally caused injury or engaged in conduct so reckless as to be totally outside the range of ordinary activity involved in the sport.

In the case *sub judice* [i.e., before the court], Cotillo assumed the risk that the spotters may have negligently failed to catch the bar because he knew that type of injury was foreseeable, he appreciated that risk, and he voluntarily accepted that risk by participating in the powerlifting competition. Therefore, we agree that the Court of Special Appeals was correct when it concluded that Cotillo did assume the risk of injury when he participated in a powerlifting competition.

CAUSATION

Cotillo argues that even if he did assume the risks inherent to the sport, he did not assume the enhanced risk that arose as a result of the alleged negligent training of the spotters. This analysis is misguided because it focuses on the wrong risk. In order to properly determine which risk is relevant or material to the assumption of the risk analysis, we must look to the immediate cause of the injury.

Viewing the evidence in the light most favorable to the non-moving party, in this case Cotillo, we can assume, *arguendo*, [i.e. merely for the sake of argument, but not necessarily agree] that

the spotters were negligently trained. Even granted that assumption, there is no genuine dispute that the immediate cause of Cotillo's injuries was his own failure to lift the weight successfully. The relevant question, therefore, is whether Cotillo assumed the risk of injury when he tried to lift a 530 pound weight. We hold, as a matter of law, that he did.

The defense of assumption of the risk operates independently of the conduct of another person. The very nature of an assumption of the risk defense is that by virtue of the plaintiff's voluntary actions, any duty the defendant owed the plaintiff to act reasonably for the plaintiff's safety is superseded by the plaintiff's willingness to take a chance.

That the petitioners may have been negligent in failing to prevent an injury is irrelevant where Cotillo suffered the very type of injury that any person of normal intelligence would expect might result from Cotillo's actions. The relevant inquiry, therefore, is not whether Cotillo could have anticipated that the spotters would be negligently trained, but whether he could anticipate the risk that the lift bar would fall and injure him. We hold as a matter of law that he did.

ENHANCED RISK

Cotillo's reliance on the theory that the alleged negligent training of the spotters enhanced the risk is similarly misplaced. Of course, a plaintiff only assumes those risks that are inherent in the activity in which he is engaged. Specifically, every risk is not necessarily assumed by one who works in a dangerous place or at a dangerous occupation. He assumes only those risks which might reasonably be expected to exist, and, if by some action of the defendant, an unusual danger arises, that is not so assumed.

In the case *sub judice*, Cotillo argues that the instructions given to the spotters prior to the Meet presented an enhanced risk of injury, and since Cotillo did not know about those instructions, he could not have assumed the enhanced risk that the instructions posed. We reject that position, because mere allegations of negligence, without more, even if genuinely in dispute, are not of consequence to the assumption of the risk analysis.

Even assuming that the petitioners were negligent in training the spotters, the theory of enhanced risk contemplates reckless or intentional conduct; therefore, any disputes of fact regarding the petitioners' negligence are immaterial to this analysis.

We also find persuasive the reasoning of courts in other jurisdictions, which have also held that, in the context of sports-related injuries, the enhanced risk doctrine contemplates intentional or reckless conduct. Generally the enhanced risk doctrine in sports injury cases involves fact patterns where a co-participant engages in reckless conduct causing injury to another participant.

While Cotillo appears to argue in his brief that the present case fits within this line of cases, by implying that there may have been intentional or reckless behavior by the petitioners, he offered no evidence to support that implication. Moreover, we find no support for any allegations of intentional or reckless behavior in this record. Furthermore, mere allegations which do not show facts in detail and with precision are insufficient to prevent the entry of summary judgment.

As such, we conclude that any alleged improper training of the spotters did not pose an enhanced risk to Cotillo, because the risk of injury was one that was obvious and foreseeable, and not an unusual danger. On the contrary, to be injured by the weight and the lift bar is a risk of injury resulting from the type of physical contact that is an integral part of the sport as it is typically played. Because there was no intentional or reckless conduct, there was no enhanced risk. Therefore, there is no genuine dispute of material fact that Cotillo assumed the risk of injury from the lift bar when he participated in a powerlifting competition.

CONCLUSION

By voluntarily participating in a powerlifting competition, Cotillo assumed the risks that are the usual and foreseeable consequences of participation in weightlifting. The petitioners' alleged negligence in failing to prevent the injury is not material because Cotillo assumed the foreseeable risk of injury from a failed lift.

Furthermore, any factual dispute as to whether the spotters were negligent is of no consequence because mere allegations of negligence, rather than allegations of reckless or intentional conduct, are insufficient to find that the spotters enhanced the risk of Cotillo's injuries.

Therefore, we hold that the Court of Special Appeals was correct in its holding that Cotillo assumed the risk of his injuries when he voluntarily participated in a powerlifting competition. The Court of Special Appeals erred, however, in holding that Cotillo did not assume the risk that the spotters would be negligently trained or instructed.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO AFFIRM THE JUDGMENT OF THE CIRCUIT COURT.