

CARDIAC 911 CALL, NO CPR, NO LIABILITY

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In the case of *L.A. Fitness International, LLC. v. Mayer*, 980 So.2d 550 (Fla.App. 4/23/2008), the daughter and representative for the estate of Alessio Tringali, Juliana Mayer (Mayer), brought a wrongful death action after her father suffered cardiac arrest and died while using a stepping machine at L.A. Fitness in Oakland Park, Florida. In her complaint, Mayer claimed defendant "L.A. Fitness breached its duty to use reasonable care for the safety of the deceased, including the duty to render aid during a medical emergency." In so doing, Mayer alleged L.A. Fitness had negligently "failed to administer cardiopulmonary resuscitation (CPR) to him" and "failed to have an automatic external defibrillator (AED) on its premises and to use it on the deceased."

The jury returned a verdict finding Tringali's death was caused by the negligence of L.A. Fitness (85 percent) as well as the deceased (15 percent). The jury assessed total damages at \$729,000 and the trial court entered a final judgment against L.A. Fitness based on the jury's allocation of fault at 85%, i.e., \$619,650. L.A. Fitness appealed the judgment. On appeal, L.A. Fitness contended that it had "satisfied its duty to render assistance to the deceased as a matter of law when it promptly summoned professional medical assistance for him."

FACTS OF THE CASE

Robert Strayer, an L.A. Fitness sales representative, testified that he was sitting at his desk at the Oakland Park L.A. Fitness around 9 p.m. on April 3, 2003 when he heard someone call for help. Strayer got up from his desk, told the receptionist to call 911, and ran to the back of the gym. Strayer observed Alessio Tringali lying on his back surrounded by L.A. Fitness patrons.

According to Strayer, Tringali was bleeding from a cut on his head and shaking from small convulsions; his face was red, and yellow foam was coming from his mouth. Strayer, who was certified in CPR, believed Tringali was having a seizure or a stroke.

Strayer knelt down beside Tringali to assess his condition. Strayer first touched Tringali to determine if he was responsive. He then checked his left wrist and felt a faint pulse, which to him indicated a heartbeat. He also noted the red color of Tringali's face and concluded that Tringali had an oxygen supply. He did not, however, put his face next to Tringali to feel if he was breathing.

Because Strayer believed Tringali had fallen off a nearby stepping machine and may have sustained a concussion to his head or hurt his neck or back, he did not perform a "chin tilt" to open his airway, which is one of the first steps in CPR. Based on his observations and belief that Tringali was having a seizure or stroke, Strayer decided not to attempt CPR and possibly make matters worse. He testified that Tringali had just begun to turn blue when the paramedics arrived. He estimated that paramedics arrived within three to four minutes of the first cry for help.

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Peter Bailey, the general manager of L.A. Fitness, was also at the facility that evening. He testified that he was sitting in the same area as Strayer and, when he heard a call for help, pointed to the front desk and instructed the receptionist to call 911. He told Strayer to stay with Tringali while he ran to the front of the facility to make sure the 911 call was placed. Bailey talked to the 911 operator, who asked him whether Tringali was breathing. He responded that he did not know and ran back to the scene to ask Strayer. Strayer told him that Tringali was, indeed, breathing. Bailey relayed this information to the 911 operator. Bailey estimated that four to six minutes elapsed between the time he heard the call for help and the paramedics arrived.

Three members of the facility provided testimony regarding their observations of the scene. George Basantes, a gym patron, testified that he saw Tringali fall from the stair climber and land on his back. He described Tringali as "gasping" for air. He said that the deceased turned blue within five minutes of collapsing. According to Basantes, no one administered CPR or attempted to get Tringali's vital signs. Instead, bystanders just encouraged him to breathe. Basantes testified on cross-examination that the L.A. Fitness employees merely sat and stared at the deceased. He estimated that ten to twelve minutes passed between the time Tringali collapsed and the paramedics arrived.

Connie Wagaman, an EMT for the City of Oakland Park Fire Rescue, testified that she responded to L.A. Fitness with two other EMT's. Wagaman testified that Fire Rescue received a call from Fitness at 9:18 p.m., and that they arrived at Fitness at 9:21 p.m. Wagaman observed Tringali lying on his back with his head in someone's lap. Tringali was not breathing and did not have a pulse. EMS attached a valve mask with oxygen, performed CPR, and used a defibrillator to treat Tringali. Wagaman testified that EMS used CPR protocol to treat Tringali. Wagaman stated that EMS shocked the defendant at 9:21 p.m. and then again at 9:24 p.m. but were unable to re-establish a pulse.

PLAINTIFF'S EXPERTS

Dr. Steven Van Camp, a cardiologist with a special interest in the hazards of exercise, was plaintiff's medical expert. Dr. Van Camp testified that the deceased's cause of death was hypertrophic cardiomyopathy. In Dr. Van Camp's opinion, Tringali's condition was treatable with defibrillation; however, if defibrillation was not possible, CPR could have been "used to increase the likelihood the [later] defibrillation would be successful and to preserve brain function." Dr. Van Camp explained that "CPR does not correct ventricular fibrillation by itself, but what it does, it prolongs the time for which effective defibrillation can be . . . administered." Dr. Van Camp testified that although EMS responded very quickly, the shocks administered were not effective because CPR had not been timely and effectively administered.

In Dr. Van Camp's opinion, if CPR had been administered before paramedics arrived, even in the absence of defibrillation by L.A. Fitness employees, there is a seventy-five percent or greater chance that Tringali would have been successfully resuscitated. Moreover, Tringali likely would have survived for twenty or twenty-five more years.

Anthony Abbott, Ph.D., testified that Strayer was negligent by failing to follow CPR protocol and perform CPR on Tringali. Abbott, an exercise physiologist and president of Fitness Institute

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International, testified about the health club industry's standards of care in April 2003 and their recommendations for cardiac safety at such facilities. Abbott testified that L.A. Fitness violated the industry's standards of care by failing to have a written emergency plan and to employ qualified personnel for handling emergencies.

Abbott testified further that the standards promulgated by the industry's authorities, including the International Health and Racquet Sports Club Association (IHRSCA) and the American College of Sports Medicine, are directed at responding to cardiopulmonary emergencies because "when people exercise there's a radically increased chance of having a cardiovascular incident because of the increased stress that comes with exercise." Abbott testified that Fitness' plan was inadequate; an emergency plan "is designed to assign various roles to individuals and how they carry those roles out."

In addition to a written emergency plan, in 2003, IHRSCA required facilities to have qualified persons on duty. In Abbott's opinion, L.A. Fitness did not have a CPR-qualified person on duty when Tringali was injured. Abbott testified that Strayer was certified, but not qualified in CPR and did not follow appropriate CPR protocol. Abbott explained the CPR procedure as follows:

First, the responder must determine if the individual is responsive. If the individual does not respond, regardless of the reason, the responder must activate the emergency medical service system or call 911. Then, if the individual is not breathing, the responder must administer CPR. Abbott noted that even though an individual has a heartbeat, his heart will stop if he is not breathing. After the responder determines that CPR is necessary, he must perform a chin lift to open the airway. The responder then puts his ear over the individual's mouth and nose to feel for air, and looks at the individual's chest for movement.

Abbott noted that Strayer did not perform a chin lift; nor did he assume an appropriate position to note any chest movement. The responder must then ventilate the individual. After ventilating, the responder should determine whether the individual's heart is beating by looking for movement of the body and checking for a pulse at the carotid artery in the neck. Abbott noted that Strayer checked Tringali's pulse at his wrist, instead of his neck. If there is no pulse, the responder must then perform chest compressions. As the other medical experts testified, Abbott explained that CPR is important because it prolongs the time during which effective defibrillation can be performed.

Abbot testified that, in addition to failing to have a written emergency plan or qualified responders, L.A. Fitness fell below the industry's standards of care by failing to have an Automated External Defibrillator (AED) on its premises in April 2003. Abbott admitted that AEDs were not required by law in 2003 and that L.A. Fitness employees were not required by law to perform CPR or to have a written emergency plan.

Abbot further testified that L.A. Fitness fell below the pertinent standards by failing to screen individuals prior to their commencing exercise and by failing to employ a medical liaison. Abbott admitted on cross-examination that he could not quantify the number of similar facilities that screened members. He further admitted that none of the deceased's doctors had detected his

heart condition; however, Abbott believed that screening would have detected the risk factors that would have prompted the deceased to seek further medical evaluation.

CPR DUTY?

As characterized by the appeals court, this case raised "a question concerning the duty a health club or gym owes to a patron who is injured while exercising on its premises." On appeal, L.A. Fitness maintained that 'the trial court erred in not directing a verdict as a matter of law in its favor because it did not breach its duty of reasonable care to Alessio Tringali.' As noted by the appeals court, plaintiff and defendant both recognized that 'a special relationship' existed between L.A. Fitness and its members, and that, as with any business owner, L.A. Fitness had a duty to use reasonable care in rendering aid to Tringali when he became ill or injured." On the other hand, the appeals court found the parties disagreed as to "the nature and extent of the duty owed the deceased and whether L.A. Fitness breached that duty" under the circumstances of this particular case.

According to the appeals court, "if a legal duty exists," it was "well settled" that "a defendant must exercise reasonable care under the circumstances" to avoid negligence liability. Further, the appeals court acknowledged that the jury generally decides "whether a defendant exercised reasonable care under a given set of facts." Accordingly, on appeal, plaintiff Mayer argued the trial court should have affirmed the judgment in her favor because the jury had "agreed with her expert's testimony that L.A. Fitness's employee, Strayer, was negligent in failing to follow protocol for CPR assessment and in failing to administer CPR to Tringali."

While the jury generally decides which facts to believe in a particular case, the appeals court noted, however, that the court must determine which law is applicable to such facts, in particular whether a legal "duty of care" exists under the facts of a given case. In this particular instance, the appeals court found no evidence on the record of "any statutory or case law in Florida that clearly delineates the duties owed by a health club or gym to patrons facing a medical emergency." As a result, in the absence of any precedent or law on point, the appeals court would determine whether a legal "duty of care" existed under the circumstances of this case. In so doing, the appeals court would determine "the duty of care owed the deceased under the facts presented in this case."

In the opinion of the appeals court, the principle espoused in the Restatement of Torts (Second) § 314A adequately expressed the applicable legal duty of care in this particular case. Specifically, "a proprietor is under an ordinary duty of care to render aid to an invitee after he knows or has reason to know the invitee is ill or injured." In so doing, the appeals court cited the following limitation on the scope and applicability of "ordinary duty of care to render aid" expressed in "comment (f) to the Restatement (Second) of Torts §. 314A":

The defendant is not required to take any action until he knows or has reason to know that the plaintiff is endangered, or is ill or injured. He is not required to take any action beyond that which is reasonable under the circumstances.

In the case of an ill or injured person, he will seldom be required to do more than give such first aid as he reasonably can, and take reasonable steps to turn the sick man over to a physician, or to those who will look after him and see that medical assistance is obtained. He is not required to give any aid to one who is in the hands of apparently competent persons who have taken charge of him, or whose friends are present and apparently in a position to give him all necessary assistance.

On appeal, L.A. Fitness contended that it had met the applicable legal standard of care because "Strayer and Bailey immediately advised their staff to call 911 when they heard a call for help and then quickly ran over to Tringali to check his condition":

Strayer felt his wrist, noted his breathing patterns and heartbeat, saw the head cut, noted his position on his back, observed his facial color, and decided not to attempt CPR, as he believed it was unnecessary and could worsen his condition. He stayed with Tringali and continued to monitor his condition until the paramedics arrived within a few minutes after they were called.

Accordingly, L.A. Fitness maintained that this "undisputed evidence" showed that it had "fulfilled its common law duty to render aid and secure medical assistance for Tringali."

According to the appeals court, "[a] business proprietor cannot 'ignore' an injured or incapacitated patron and must 'take some minimal steps to safeguard' him." More significantly, however, the appeals court found that such "minimal steps to safeguard" do not "create a duty to perform medical rescue procedures" on an injured or incapacitated patron. On the contrary, the appeals court found "Courts in other jurisdictions which have examined the issue of a business owner's duty to injured patrons have generally held that a business owner satisfies its legal duty to come to the aid of a patron experiencing a medical emergency by summoning medical assistance within a reasonable time." In so doing, the appeals court noted that courts have generally "declined to extend the duty of reasonable care to include providing medical care or medical rescue services." Similarly, the appeals court found "no precedent for imposing the duty Mayer proposes here":

None of the authorities cited by Mayer support imposing a duty upon health clubs or gyms to have CPR-trained employees on site at all times for medical emergencies and to require such employees (who generally lack medical training) to perform CPR on injured patrons when such a procedure may be warranted.

At trial, Mayer presented expert testimony about health club industry standards and recommendations regarding CPR. Although the custom and practice of an industry can help define a standard of care a party must exercise after it has undertaken a duty, industry standards do not give rise to an independent legal duty.

Further, assuming the Restatement's obligation to "render aid" included providing some type of "first aid" to business invitees," the appeals concluded that "such obligation does not encompass

the duty to perform skilled treatment, such as CPR." Rather, the appeals court found such first aid, if any, would require "no more assistance than that which can be provided by an untrained person." As described by the appeals court, the following "American Red Cross and the American Heart Association's Guidelines for First Aid (Guidelines)" provided a clear picture of what interventions" might be included under "common understanding" of the term "first aid":

calling for help; positioning a victim; administering medications to an acute asthma or anaphylactic reaction sufferer; ensuring that a seizure victim has an open airway; controlling a victim's bleeding by applying pressure; irrigating and applying antibiotic ointment to wounds and abrasions; cooling thermal burns, covering blisters; assessing victims of electrocution; manually stabilizing the head of a blunt trauma victim so the head, neck and spine do not move and are kept in line; applying cold packs to soft-tissue injuries such as sprains and muscle contusions; rinsing an avulsed tooth with water and placing it in milk for transport to the dentist; snugly bandaging an elapid snakebite, immobilizing the bitten extremity and immediately getting medical help; warming a victim of hypothermia; removing a drowning victim from the water; calling the poison control center, safely removing chemicals, and irrigating a chemical burn site with water.

Pursuant to this definition, the appeals court concluded that 'Cardiopulmonary resuscitation (CPR), which requires training, is more than mere first aid':

Although the procedure for CPR is relatively simple and widely known as a major technique for saving lives, it nonetheless requires training and re-certification.

Unlike first responders, for whom performing CPR is routine, non-medical employees certified in CPR remain laymen and should have discretion in deciding when to utilize the procedure. Courts have similarly found that the Heimlich maneuver is a rescue technique that is not included in a business owner's duty to render aid to patrons facing medical emergencies.

DEFIBRILLATORS?

On appeal, Mayer had also asserted that "L.A. Fitness's duty of reasonable care required it to have an automatic external defibrillator (AED) on its premises and to use it on the deceased." According to the appeals court, there was "no common law or statutory duty that a business have an AED on its premises." On the contrary, the appeals court found that "the Florida legislature has adopted the 'Cardiac Arrest Survival Act' § 768.1325, Fla. Stat., which does not require that an AED be placed in any building or location or that an acquirer of an AED have persons trained in the use of AEDs available on the premises." Similarly, the appeals court noted that courts in "other jurisdictions have uniformly found that health clubs and other business establishments have no common law duty to have an AED on the premises." As a result, the appeals court held that "L.A. Fitness did not breach its duty to the deceased by failing to have an AED on its premises."

CONCLUSION

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Accordingly, under the circumstances in this case, the appeals court found "L.A. Fitness, through its employees, fulfilled its duty of reasonable care in rendering aid to the deceased by summoning paramedics within a reasonable time." Further, the court found that "L.A. Fitness did not have a legal duty to have CPR-qualified employees on site at all times, and their employees were under no legal duty to administer CPR to the deceased." Similarly, the court held that "L.A. Fitness had no legal duty to have a defibrillator on the premises for emergency use on the deceased."

Having found "as a matter of law that L.A. Fitness took reasonable action to secure first aid for the deceased and did not breach any duty of reasonable care to him," the appeals court reversed the jury verdict and judgment in favor of plaintiff Mayer and ordered the trial court to enter judgment in favor of defendant L.A. Fitness.

On January 5, 2009, the Florida state supreme court denied Mayer's petition to review the decision of the appeals court.

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