

SPORTS LEAGUES HELD LIABLE FOR VOLUNTEER'S ATTACK ON COACH

As illustrated by the case described herein, *Hills v. Bridgeview Little League Association*, sports leagues may owe a legal duty to supervise and control violent behavior on the part of volunteer coaches once a serious physical altercation becomes foreseeable, or has already begun. In this particular instance, the sports leagues and their representatives did nothing to stop a violent beating after it began and continued to escalate. As a result, the court found the sports leagues were negligent for failing to stop the attack by either restraining the coach, or calling the police.

DUTY TO CONTROL VOLUNTEER COACH?

In the case of *Hills v. Bridgeview Little League Association*, No. 1-98-0620 (Ill.App. Dist.1, 1999), plaintiffs, John Hills, brought an action against defendants, Bridgeview Little League Association (Bridgeview) and Justice Willow Springs Little League (Justice) after he was beaten during a little league tournament that Justice had organized. The facts of the case were as follows:

John Hills and his team were members of the Lemont Little League. By invitation, they participated in a tournament that Justice organized, paying an entrance fee and providing a surety bond to Justice. Justice owned the field on which the teams played.

On July 30, 1990, Hills' team played one of Bridgeview's teams. Hills was the first base coach for his team. On Bridgeview's team, Ted Loy, the volunteer manager since 1989, had chosen his brother George Loy, Sr. and George Loy, Jr. as his coaches. Ted Loy was the official Bridgeview representative at the Justice tournament on July 30, 1990 because none of the Bridgeview board members were there. Bridgeview never had any evidence that Ted Loy had fought with anyone during any little league games.

During the first inning, the umpire called a conference because one of the Bridgeview coaches disagreed with the umpire's calls. Starting in the third inning, George Loy, Sr. verbally threatened Hills while Hills was coaching at first base. At one point, he came out of the dugout and stood about five feet from Hills, called him a "mother f----," and said that he was "going to kick his ass." George Loy, Sr. said, "this is for what happened earlier during the first inning." Hills was not worried about Loy because the Bridgeview manager and the Justice umpires were on the field.

According to Rebecca Deverdier, Loy's behavior worsened during the last several innings. In the sixth inning, Loy ran within three feet of Hills' back, flailing his fist and arms. At that point, Patricia Hills asked Michael Putrow, her nephew, to go to first base

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to see what was happening. Putrow saw Loy acting in a more volatile manner and running within three feet of Hills. Ted Loy was in the dugout the whole time and never did anything to restrain George Loy, Sr.

At the end of the sixth inning, Loy attacked Hills from behind when Hills bent over. Loy beat and kicked Hills. Ted and George Loy, Jr. did nothing to restrain George Loy, Sr. Patricia Hills ran to the first base area and screamed for help. Neither the first base umpire nor the home plate umpire helped John Hills. The Justice announcer did not make any announcements regarding the attack, and did not help Hills. In addition, none of the Loys did anything to restrain each other throughout the attack. In fact, Ted Loy came out of the dugout and kicked John Hills about 10-15 times. George Loy, Jr. then joined the attack.

The attack stopped for about one minute when Lemont's third base coach, George Keeler, separated George Loy, Sr. from Hills. George Loy, Sr. broke away from Keeler and hit Hills again with his fists, breaking Hills' nose. Scott Van Wagner, an umpire, picked up George Loy, Sr. and carried him to the dugout.

The fighting stopped again for about one minute. George Loy, Jr., who was 16 years-old, broke the lull. He beat Hills with a baseball bat for about 10-15 minutes. Patricia Hills ran to the concession stand to ask for help. Someone called the police, who arrived within five minutes.

Hills alleged that defendants Bridgeview and Justice “acted negligently in failing to supervise and control three individuals' unconscionable behavior.”

The jury found in plaintiffs' favor, awarding John Hills \$632,710. In addition, the jury apportioned fault equally to Bridgeview and Justice. The trial court entered judgment accordingly. Bridgeview and Justice appealed. (Hills also sued the Loys for intentional torts, but they were not parties to this appeal.) On appeal, Bridgeview and Justice both contended that the jury's verdict was “against the manifest weight of the evidence.”

### PREVENT VOLUNTEER'S INTENTIONAL HARM?

On appeal, Bridgeview argued that “the attack was not reasonably foreseeable because there was no evidence that it knew or should have known that the Loys had propensities for violence.” Moreover, Bridgeview claimed it “did not have the opportunity or the knowledge necessary to exercise control over the Loys” because “none of its board members were present at the game.”

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In response, Hills claimed that Bridgeview "had a duty to exercise due care and control over the individuals it allowed to be coaches of the little league team." Furthermore, Hills contended that Bridgeview was "negligent by failing to supervise and control their managers and coaches, and by [the] failure of the managers and coaches to supervise and control each other." In so doing, Hills alleged that "Bridgeview was responsible and liable for the acts of the Loys, its agents."

Under the circumstances of this case, the appeals court found the Loys were the volunteer agents of defendant Bridgeview.

At trial, Bridgeview admitted that Ted Loy, as a manager, was its agent, and that Ted Loy officially represented Bridgeview at the game because there were no Bridgeview board members present. In addition, George Loy, Sr. and George Loy, Jr., were Bridgeview's agents. Ted Loy, acting with Bridgeview's authority, selected them as the team's coaches. The Loys' volunteer status does not affect their status as Bridgeview's agents and servants...

One who volunteers services without an agreement for an expectation of reward may be a servant of the one accepting such services... [F]or there to be a master/servant relationship between an organization and a volunteer, the organization must consent to receive the volunteer's services as a master, and must control or have the right to control the servant.

Having determined a "master and servant" relationship existed between defendant Bridgeview and their volunteer agents, the Loys, the appeals court found Bridgeview owed the following legal duty of care to Hills:

[A] master has a duty to exercise reasonable care to control his servant while acting outside the scope of his employment to prevent him from intentionally harming others. The master has such a duty if the servant is on the master's premises, or is on property the servant is privileged to enter only as his servant.... In addition, the master must know or have reason to know that he is able to control the servant, and knows or should know of the necessity and opportunity for using such control. Restatement (Second) of Torts § 317 (1965).

Applying these principles to the facts of the case, the appeals court found "Ted Loy, as Bridgeview's sole representative, breached the duty to John Hills." Specifically, the appeals court determined that "John Hills' injuries from the continued beating were reasonably foreseeable to Ted Loy, once the

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beatings began and two one-minute lulls followed.”

The magnitude of the burden to Ted Loy of guarding against the beating was low. His brother initiated the beating. Ted Loy could have attempted to verbally or physically restrain his brother, or he could have called the police. The consequences of placing such a burden on defendant would not have been onerous.

Ted Loy did nothing to stop the attack once it began. Instead, he joined in the attack himself, kicking John Hills 10-15 times. Finally, the record reflects that Bridgeview's breach of its duty proximately caused John Hills' injuries. Plaintiffs established with more than reasonable certainty at trial that because Ted Loy failed to control the other Loys, John Hills suffered injuries from their beating of him.

As a result, the appeals court determined that there was sufficient evidence to support the jury's verdict against Bridgeview.

### FORESEEABLE CRIMINAL ATTACK?

The appeals court then considered whether sufficient evidence existed to support the jury's verdict against Justice. On appeal, Justice argued that it had “no duty to protect John Hills from the attack.”

As a general rule of law, however, the appeals court acknowledged that “one has no duty to control the conduct of another to prevent him from causing harm to a third party.” In so doing, the court recognized the following exception under Restatement (Second) of Torts §§ 316-319 “when the defendant and the wrongdoer have a ‘special relationship’.”

In addition, in general a land owner has no duty to protect others from criminal acts by third persons. An exception is when the defendant and the injured person have a "special relationship" such as... business invitor and invitee.

If there is a special relationship, the landowner must have superior knowledge of the danger in order for a duty to exist. Moreover, in deciding whether a duty exists in a particular case, a court will consider the foreseeability of the plaintiff's injury, the likelihood of the occurrence, the magnitude of the burden of guarding against it, and the consequences of placing that burden on the defendant. Foreseeability determinations are based on the facts and circumstances of each case, and the act must have been reasonably foreseeable.

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The issues of breach of the duty and proximate cause of the injury are questions of fact for the jury. In order to show proximate cause, the plaintiff must, with reasonable certainty, establish that the defendant's alleged acts or omissions caused the plaintiff's injury.

In determining whether Justice owed a legal duty to protect John Hills from the attack, the issue was, therefore, whether Hills was a business invitee of Justice. As defined by the appeals court, “[a] person is a business invitee on the land of another if”:

(1) the person enters by express or implied invitation, and (2) the entry is connected with either the owner's business or with an activity conducted by the owner on the land, and (3) the owner receives a benefit.

Applying these principles to the facts of the case, the appeals court found “the evidence showed that Justice had a business invitor/invitee relationship with John Hills”:

Justice owned the baseball field where the tournament was played, and it invited Hills' team to play. Hills paid a fee to participate, and also provided Justice with a surety bond. A Justice board member testified that the purpose of the tournament was to make money, and that if an invitee did not pay the required fee, it would not be allowed to participate.

Having found a business invitee relationship between Hills and Justice, the appeals court found that Justice would owe a legal duty to Hills when “[a] criminal act by a third person is reasonably foreseeable.” As described by the appeals court, a criminal act by a third party would be foreseeable “when the circumstances are such as to put a reasonably prudent person on notice of the probability of an attack or when a serious physical altercation has already begun.”

In this particular instance, the appeals court found “it was reasonably foreseeable for Justice that the attacks, after they began and two one-minute breaks occurred, would continue”:

Witnesses testified that the beatings, which were severe, continued for up to 15 minutes. In addition, there were two one-minute breaks in the attack. The first one occurred when a Bridgeview coach restrained George Loy, Sr., who broke free from the coach and continued beating Hills. The second one happened when Scott Van Wagner, a Justice umpire, picked up George Loy, Sr., and carried him to the dugout. The evidence showed that Justice's representatives - a game announcer (a Justice board member) and two umpires - had an unobstructed view of the entire attack. Although Van Wagner

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restrained George Loy, Sr., Justice did nothing else to stop the continued attack upon John Hills and therefore did not exercise reasonable care to protect Hills from the danger.

Moreover, the appeals court found “the evidence supported the jury's finding that Justice had superior knowledge of the danger”:

Once the fight began, the game announcer, who was in an elevated booth, and the umpires on the field had unobstructed views of the beating. John Hills was on the ground, being beaten and kicked. He did not have the same ability to view the events as Justice because he was distracted...

[I]t is reasonable to expect harm to visitors from known or obvious dangers where the land owner has reason to expect that the invitee's attention may be distracted so that he will fail to protect himself against the danger. Comment (f), Restatement (Second) of Torts § 343(a) (1965).

Given Justice's knowledge of the danger, the appeals court concluded that “Justice breached its duty of care, and that its breach was a proximate cause of John Hills' injuries”:

Aside from Van Wagner's contradicted testimony that he restrained George Loy, Sr., there was no evidence that Justice did anything to stop the attack. Moreover, the evidence supported the trial court's conclusion that the burden on Justice to protect John Hills was minimal. The game announcer, who was in an elevated booth, or one of the umpires could have simply called the police once the attack began. Justice's failure to act reasonably allowed the beatings to continue and therefore was a proximate cause of John Hills' injuries.

The appeals court, therefore, affirmed the judgment of the trial court in favor of plaintiff Hills against defendants Bridgeview and Justice.