

HANDICAPPED ATHLETE FATALLY INJURED ENROUTE TO GYM

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In the case of *Foster v. Houston General Insurance Company*, La.App., 407 So.2d 759 (1982), plaintiff Helen Foster brought a wrongful death action after her mentally retarded son was killed while under the supervision of two teachers, defendants Inez Grant and Lloyd Gray. The facts of the case were as follows:

On December 2, 1977 Robert Foster, age 17, was a student at the Morehouse Educational Development Center (MEDC), a school for the mentally retarded... Foster had been admitted to MEDC in 1968 upon the basis of tests which indicated he was an educable mentally retarded youngster... [Tests in 1975 indicated that Foster had] an IQ of 52 and a mental age of seven years four months.

In 1977 Foster was chosen a member of MEDC's Special Olympics [i.e. athletic competition organized exclusively for the handicapped] basketball team. This was a school sanctioned activity, with practice sessions held during the regular physical education class period. Grant, the only physical education teacher at MEDC, was in charge of and responsible for the training of the team in its preparation for regional competition... Grant was assisted by Gray, a mathematics teacher... at MEDC.

MEDC did not have a gymnasium. Although the junior high school with which it shared a campus did have such a facility, it was in constant use during regular school hours and was not available to the MEDC physical education classes. Consequently, Foster's basketball team usually practiced outdoors on MEDC's dirt court. However, because she felt it desirable for the team to experience playing indoors on a wood floor, Grant arranged for the boys to practice on December 2, 1977 in a gymnasium located in Dotson Park, a municipal facility located about three blocks from the MEDC campus...

Grant and Gray planned to take the basketball team from MEDC to Dotson Park sometime during the lunch hour. Because of the relatively short distance [three blocks] they decided to walk rather than seek bus transportation from the school board... Neither Grant nor Gray had ever taken the basketball team to Dotson Park along this route. In fact, it was established that the MEDC teachers and students had only used the Dotson Park facilities once before, and that was for a picnic the year prior to the date in question.

Between 12:30 and 12:45 P.M., Gary gathered the team of 10 or 11 boys in a back building at MEDC and sent word to Grant, who was teaching a class in the front building, that they were ready to go to Dotson Park. Grant instructed them to wait for her to finish the class in progress. During this time Gray discussed with the youngsters safety precautions, particularly directed at street crossing. Since Grant still had not joined them, Gray moved the group to the vicinity of her classroom. He said that the

LAW REVIEW DECEMBER 1988

students were becoming increasingly "fidgety". Therefore, Grant was advised that Gray would take the team to Dotson Park alone. Grant assented and stated that she would follow in her automobile.

Gray departed with the team along the planned route... [F]ive or six of the boys broke away from the group and started running ahead, paid no heed to the admonitions of Gray, and crossed West Madison Street on the way to the park. Gray then rejoined the remaining group of five students which included Foster, led them up to West Madison Street, and lined up the youngsters parallel to the street to wait for an opportune moment to cross.

At that time traffic in the eastbound lane faced a red light at the West Madison - Haggerty Street intersection and was backed up past the place where Gray and his contingent were standing. Confronted with this situation, Foster suddenly dashed out into the street, ran between two stationary vehicles in the eastbound lane, got into the westbound lane and looked to his right, saw a car coming in that lane and stopped suddenly, at which time his feet slid out from under him. The youngster was run over by an oncoming automobile, suffering serious injuries from which he died three days later.

The trial court judge found that "Grant was negligent because of her failure to provide other transportation, her failure to supervise, her negligent choice of route to the park and her failure to adequately instruct the students." In addition, the trial judge found that "Gray was negligent by virtue of his failure to provide alternate transportation, his failure to wait for Grant before undertaking the trip, his failure to adequately instruct or supervise his students, and his failure to maintain control over the students." The trial judge, therefore, entered judgment for plaintiff Foster against defendants Grant and Gray. Grant and Gray appealed.

The issue before the appeals court was "the nature of the duty owed by Grant and Gray to Foster with respect to this trip from the MEDC campus to Dotson Park." Based upon evaluations of Foster in 1968 and 1975, the appeals court found Foster had the following "limitations and handicaps" at the time of the accident:

[O]n the date in question Foster was a 17 year old with a mental age of about 7 or 8 years, possessing poor auditory ability and a short attention span, who experienced difficulty in following simple instructions, and who had limited experience in coping with heavy vehicular traffic.

This individual was being taken with some ten other youngsters with varying degrees of mental retardation along a three block route which required the crossing of a heavily traveled thoroughfare, with all of the usual attendant hazards.

Under such circumstances, the appeals court found Grant and Gray owed the following legal duty of care to Foster.

Because of the special relationship existing between them and their students, teachers on

LAW REVIEW DECEMBER 1988

campus are under a general duty to conduct their classes so as not to expose their students to unreasonable risk of injury. That duty becomes more onerous when the student body is composed of mentally retarded youngsters...

It is recognized that on campus care of mentally retarded students does not require continuous supervision. However, once the decision was made in this case to take the Special Olympics team off campus on a walking trip across a heavily traveled thoroughfare, the personnel responsible for the team had a duty to maintain closer supervision over the youngsters than if they remained on campus...

First, Grant and Gray's duty was to have an adequate number of supervisory personnel accompany the team to assure that the youngsters were kept under control and protected from hazards that might be encountered going to and coming from the park. Further, the accompanying personnel were under a duty to maintain close supervision over the students at all times, particularly when they were in the vicinity of moving vehicles. Second, the defendant teachers [Grant and Gray] had the duty to choose the safest walking route from the MEDC campus to Dotson Park - i.e., the route along which the students would be exposed to the fewest traffic hazards.

Having defined the applicable legal duty of care under the circumstances of this case, the appeals court considered whether Grant and Gray should have "foreseen the likelihood that an adolescent with a mental age of 7 or 8 years might act impulsively as did Foster." As defined by the appeals court, foreseeability is "what is likely enough in the setting of modern life that a reasonably thoughtful man would take account of it guiding practical conduct." Given the facts of this case, the appeals court found that "the likelihood of a youngster in this category yielding to an impulse by running across the street in the path of an oncoming vehicle should have been anticipated or foreseen."

Grant and Gray had under their care a group of youngsters who were understandably excited about an excursion off-campus to practice basketball. The extended wait for Grant simply heightened the nervous tension. In this situation there would have been difficulty in controlling a group of normal adolescents, much less one composed of those whose physical energies matched their chronological ages but who have the self-control and judgment of much younger children. Foster had poor auditory reception and a short attention span. As a result, the effectiveness of any oral safety instructions given to him prior to embarking on the trip would have been limited.

Given the foreseeable risk of injury, the appeals court concluded that Grant and Gray had breached the legal duty of care owed to Foster under the circumstances of this case.

First, the group was not accompanied by a sufficient number of supervisory personnel. This was evidenced by the precipitating event in this tragic drama - Gray's loss of control of the group... and the headlong dash of several students on across West Madison Street in disregard of their "safety instructions" and Gray's shouts. The mere presence of an adequate number of qualified supervisory personnel could have prevented the initial breakup of the team, particularly if the supervisors had been placed

LAW REVIEW DECEMBER 1988

in strategic positions among the students. Next, in the crucial approach to West Madison Street, accompaniment by a sufficient number of supervisory personnel would have enabled continued control of the youngsters. At least one teacher would have been available to stand in the street and halt traffic and the other or others could have guided the students across the thoroughfare.

Grant, who was in charge of the planned practice session, permitted Gray to take the children on the walking trip alone. This constituted a breach of her duty. Gray embarked upon the trip without needed additional supervisory personnel and lost control of the group, thereby breaching his duty...

To summarize, the defendant teachers [Grant and Gray] owed Foster a legal duty, the nature of which was determined by their relation to him, his mental retardation and the hazards to which he would be exposed on the walking trip. This duty was designed to protect Foster from his own impulsive acts and, specifically, the risk that he might do precisely what he did in this case run into the street in front of a car. Last, the defendant teachers breached their duty by failing to act reasonably under the circumstances - failing to provide an adequate number of supervisory personnel, and failing to select the safest route for the walk.

Grant and Gray had argued that Foster's contributory negligence barred any wrongful death claim. Specifically, Grant and Gray contended that Foster's "sudden dash into the street in violation of Gray's instructions" caused his death. Further, Grant and Gray maintained that "nothing less than continuous supervision, including personal restraint, could have prevented Foster's precipitous act." The appeals court rejected this argument.

As explained, this is the type of risk which the duty imposed upon defendant teachers was designed to protect against. Experience teaches that the mere presence of adequate adult supervisory personnel tends to curb the recognized proclivity of immature children to act impulsively and to protect them against their own folly. It would be illogical to then bar Foster's action because her mentally retarded son engaged in conduct which his teachers were under a duty to guard against. For this reason the defense of contributory negligence and/or assumption of risk is without merit.

The appeals court, therefore, affirmed the judgment of the trial court totalling \$50,000 in favor of plaintiff Foster.