COACH DUTY TO REGARDING SELF-FURNISHED PROTECTIVE EQUIPMENT

PALMER
v.
MOUNT VERNON TOWNSHIP HIGH SCHOOL DISTRICT 201

269 Ill.App.3d 1056, 207 Ill.Dec. 550, 647 N.E.2d 1043 (1995)
Appellate Court of Illinois, Fifth District.
March 8, 1995.

In this case, plaintiff Donnell Palmer alleged that an **eye injury** had been caused by negligence on the part of defendant Mount Vernon Township High School District 201. At the time of the injury, Palmer was a **star player on the District's basketball team.** The facts of the case were as follows:

At trial, Donnell testified that he had s**een Kareem Abdul-Jabbar** of the Los Angeles Lakers, a professional basketball team, and **opponents** of Mt. Vernon's basketball team **wear goggles.** Also, Donnell was **hit on the cheekbone under his left eye by another player's elbow** during a tournament in December 1985, but he was not seriously injured. Donnell said that he had **concerns that he might sustain an eye injury.** Sometime in January 1986, Donnell was in the gym shooting baskets before that day's practice session. A **teammate, Eric** Robinson, came into the gym carrying a pair of **"Rec Specs" eye goggles.** Upon **Donnell's request, Eric allowed Donnell to try on the goggles.** Donnell continued to wear the goggles as he shot baskets for another 5 to 10 minutes before practice and before the rest of the team arrived. **Coach Lee Emery came into the gym and saw Donnell wearing the goggles. The coach told Donnell not to wear them because someone else might get hurt.** Donnell took off the goggles.

After the January 1986 practice session and before Donnell's injury, he **did not try to wear any kind of eye-protection equipment, assuming Coach Emery would not let him.** On February 4, 1986, during a practice session, **Donnell was hit in the left eye by another player's finger.** As a result of the injury, Donnell ultimately lost all vision in his left eye. Before the February 1986 injury, **no one from Mt. Vernon Township High School had warned Donnell that he should provide his own eye-protection equipment.**

On cross-examination, Donnell testified that **when he tried on the goggles in January 1986, he was experimenting because he had not worn any before that time.** When Coach Emery told Donnell to take off the goggles, **Donnell did not tell the coach why he wanted to wear them.** Donnell did not tell the coach, the school superintendent, or anyone else from the school district **that he felt he needed some type of eye protection when playing basketball.** Before February 4, 1986, **Donnell was aware of the possibility that he could get poked in the eye.** During his basketball career with Mt. Vernon Township High School, **Donnell had never seen another Mt. Vernon player wear any kind of eye-protection equipment during practice or games.**

Eric Robinson, whose eye goggles Donnell wore in January 1986, testified about the January

incident essentially the same as Donnell, except Eric thought that the whole team was present in the gym at the time the coach told Donnell not to wear the goggles and Donnell had worn the goggles for 20 to 30 minutes instead of only 5 to 10 minutes. He also thought that the coach told Donnell not to wear the goggles because they would be a distraction, rather than because they might hurt someone.

Coach Lee Emery was the varsity basketball coach during the 1985-1986 basketball season. Coach Emery testified that although he had tried hard to remember the incident in January 1986, when Donnell tried to wear eye goggles, he did not remember any such incident. His description of the events of February 4, 1986, otherwise concurred with Donnell's description. Coach Emery testified that **high school basketball in Illinois is governed by rules set forth by the Illinois High School Association.** One of the rules in effect during the 1985-1986 basketball season was that during games, the **referees were required to prohibit players from wearing equipment which, in the referees' judgment, was dangerous to any of the players.** When asked **if defendant had ever considered whether protective eye equipment ought to be furnished to any of its basketball players,** Coach Emery responded that he would not know. Finally, he testified that **although blinding injuries in basketball are unusual, players do get poked in the eye occasionally...**

Jim Woodward was also a basketball coach for defendant during the 1985-1986 basketball season. He **testified that none of the players requested eye- protection equipment in his presence that season. He did not know of any high school that provided eye-protection equipment for basketball players, but, occasionally, he had seen individual players from some of the teams wearing eye goggles.** He recalled the February 4, 1986, incident but did not recall Donnell ever wearing eye goggles during any practice session.

Coach Lee Emery testified again that he did not recall Donnell wearing eye goggles at any practice session, and he did not recall telling Donnell not to wear eye goggles. **He could not recall ever having a player request to wear eye goggles, but he would permit a player to wear them if the player feared an eye injury.** At defense counsel's request, Coach Emery tried on a pair of eye goggles that were exactly like the goggles Donnell wore in January 1986. Coach Emery **testified that he did not like the goggles because they did not fit properly, they restricted his peripheral vision, and he had a "blind spot" in his field of vision when wearing them.** In Coach Emery's opinion, peripheral vision is very important in basketball. He **also felt that the wearing of goggles would be more unsafe than not wearing them.** After the accident, he saw Donnell several times, but **Donnell never indicated that he was upset because the coach had prohibited him from wearing the goggles.**.. Coach Emery stated that he had never prohibited Donnell Palmer from wearing eye goggles.

Palmer **allged that his eye injury was caused by the District's negligent "failure to warn and failure to allow Donnell to use equipment to prevent serious injury."** In providing instructions to the jury, the trial court included the following instruction offered by Palmer:

The Plaintiff, Donald Palmer, claims that he was injured and sustained damage and that the defendant was negligent in one or more of the following respects:

A. That the defendant **school district did not furnish Donnell Palmer with protective eye equipment, when it knew or should have known that such act or omission endangered his safety.**

B. That the defendant school district **did not warn Donnell Palmer that he should furnish his own protective eye equipment, when it knew or should have known that such act or omission endangered his safety.**

C. That the defendant school district **did not allow Donnell Palmer to use protective eye equipment, when it knew or should have known that such act or omission endangered his safety."**

The jury returned a verdict for the District and the the trial judge granted judgment accordingly in favor of the District. Palmer appealed.

On appeal, Palmer argued that the trial court had erred when it refused to give the jury the following two instructions prepared by Palmer:

Where students are engaging in school activities, it is the duty of the school district to exercise ordinary care to warn the students that they should furnish their own equipment to prevent serious injuries.

Where students are engaging in school activities, it is the duty of the school district to exercise ordinary care to allow the students to use equipment to prevent serious injuries.

The trial court did, however, allow the jury to receive the following instruction offered by Palmer:

Where students are engaging in school activities, it is the duty of the school district to exercise ordinary care to furnish equipment to students to prevent serious injuries.

Palmer contended that the jury instructions rejected by the trial court described "lesser included" duties to "warn students and allow students to use equipment" which were "logical extensions of the duty to furnish students with equipment." As a result, Palmer asserted on appeal that the jury was instructed as to the District's duty on only one of three theories of liability against the District. Since "the jury must accept the judge's determination as to what is or is not a duty," Palmer argued that "the trial court effectively barred the jury from considering plaintiffs' other claims based on the duty to warn and the duty to allow use of protective eye equipment."

According to the appeals court, the **District "clearly had the duty to exercise ordinary care to furnish equipment to students to prevent serious injuries."**

[P]ublic policy considerations argue rather strongly against any interpretation which would relax a **school district's obligation to insure that equipment provided for students in connection with activities of this type is fit for the purpose.** To hold school districts to the duty of ordinary

care in such matters would not be unduly burdensome... **[A] school district has an affirmative duty, where students are engaging in school activities, whether they are extracurricular, or formally authorized as part of the school program, to furnish equipment to prevent serious injuries... If the equipment supplied by parents is not adequate for a particular activity, we believe that the District must provide alternative equipment which is adequate. The District may not evade its duty by attempting to shift responsibility for providing adequate equipment to the parents of the children in its charge...**

[P]ublic policy strongly favors imposing an obligation upon school districts to **insure that the equipment it provides is fit for the purpose intended and that a school district can be held liable for ordinary negligence in furnishing defective equipment to students (i.e., ill-fitting and inadequate football helmets for a football game)...** [O]ur supreme court has clearly stated that the duty of a school district is grounded in ordinary negligence and the duty to furnish adequate equipment.

On the other hand, the appeals court noted teachers and coaches, enjoy immunity where the alleged negligence arises out of "the teacher-student relationship in matters relating to the teacher's personal supervision and control of the conduct or physical movement of a student."

[T]eachers and other certified educational employees , such as coaches, **enjoy immunity from civil negligence suits absent wilful and** wanton misconduct. Sections 24-24 and 34-84a of the School Code (the Code) (**Ill**.Rev.Stat.1985, ch. 122, pars. 24-24, 34-84a (now 105 **IL**CS 5/24-24, 34-84a (West 1992))) provide this limited immunity in all matters relating to the discipline in and conduct of the schools and the school children (Ill.Rev.Stat.1985, ch. 122, par. 24-24 (now 105 **IL**CS 5/24-24 (West 1992))), because teachers and other certified educational employees stand in the relation of parents and guardians to the pupils. (Ill.Rev.Stat.1985, ch. 122, par. 24-24 (now 105 ILCS 5/24-24 (West 1992)).)

This relationship extends to all activities connected with the school program, including all athletic and extracurricular programs, and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians. (Ill.Rev.Stat.1985, ch. 122, par. 34-84a (now 105 ILCS 5/34-84a (West 1992)).) When a coach, as a certified educational employee, rather than a school district, is sued for furnishing defective equipment, the coach is entitled to immunity from ordinary negligence under the Code.

School districts, however, can be sued in their own capacity and held liable for ordinary negligence in furnishing defective equipment or for not furnishing necessary equipment. But school districts have vicarious immunity when the cause of action against the school district is predicated upon the ordinary negligence of a teacher.

As characterized by the appeals court, this particular situation presented "a furnishing case, not a supervision case." The **issue,** therefore, was not the District's "failure to supervise a sports activity, but rather **defendant's failure to furnish or allow to be furnished appropriate safety equipment for the conduct of the sports activity."**

Under the circumstances of this case, the appeals court found that the trial court's instructions to the jury were "inadequate" because Palmer's requested jury instructions, including those rejected by the trial court, "accurately explain the law and should have been given." Specifically, the appeals court found **the trial court had erred when incomplete jury instructions suggested "there is no duty" to "warn students and allow students to use equipment" within the applicable legal duty to furnish students with equipment.**

Jury instructions are intended to be a comprehensive and accurate statement of the law applicable to the case so as to guide the jury in making its determinations...

[Palmer] did not allege negligence arising out of the teacher-student relationship in matters relating to the teacher's personal supervision and control of the conduct or physical movement of a student, but instead alleged negligence in connection with what we consider to be the **separate function of furnishing equipment which was alleged to be inadequate, ill fitting and defective and which was known, or which in the exercise of ordinary care should have been known, to be liable to cause injury to the plaintiff.**

Accordingly, the appeals court concluded that the trial court's failure to give the jury instructions requested by Palmer "seriously prejudiced plaintiffs' right to a fair trial." The appeals court, therefore, reversed the judgment of the trial court in favor of the District and remanded (sent back) the case for a new trial.