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**SEVENTH CIRCUIT MISSES JUMPER:
FAILS TO PROTECT DISABLED STUDENT ATHLETES
*KNAPP V. NORTHWESTERN UNIVERSITY***

Dana A. Rice

INTRODUCTION

This case note is about a talented basketball player who was excluded from participating in an intercollegiate sport because of a disability. The issue is whether Northwestern University violated the Rehabilitation Act when it excluded Nicholas Knapp from its basketball team. The Seventh Circuit held in favor of Northwestern. I will argue that the *Knapp v. Northwestern University* decision was incorrectly decided. Participation in an intercollegiate sport constitutes a major life activity for a student-athlete, and exclusion from that sport substantially limits the athlete's ability to learn. Moreover, disabled student-athletes should be allowed to assume the risk of participating in athletics when the likelihood of serious physical injury is uncertain.

II. BACKGROUND

Nicholas Knapp is an extraordinary basketball player from the State of Illinois. [EN 1] Knapp's basketball abilities earned him an athletic scholarship from Northwestern University. [EN 2] Shortly after accepting Northwestern's scholarship offer, Knapp developed a serious heart condition known as “idiopathic ventricular fibrillation.” [EN 3] As a result of his heart condition, Knapp suffered sudden cardiac death during a pick-up game of basketball. [EN 4] Following the use of electric shock treatment, which brought Knapp back to life, doctors implanted a cardioverter-defibrillator in Knapp's abdomen. [EN 5] If Knapp's heart fails again, doctors believe the device should restart it. [EN 6] Despite his basketball abilities, stable health condition, and desire to participate, Nicholas Knapp never played basketball as a Northwestern Wildcat. [EN 7]

Prior to his freshman season, Northwestern University team doctors declared Knapp ineligible to play basketball. [EN 8] Aside from the professional opinions of two team doctors, Northwestern based its decision on recommendations from two national medical conferences known as the Bethesda Conferences. [EN 9] At the Bethesda Conferences, various cardiologists and sports medicine physicians concluded that athletes with heart conditions like Knapp could not participate in “any moderate or high intensity competitive sports” because participation with structural heart disease is “contraindicated.” [EN 10] After weighing the benefits of Knapp's participation against the probability of his death, Northwestern's athletic director prohibited Knapp from participating with the team. [EN 11]

In response to Northwestern's decision, Knapp filed suit in federal district court alleging that Northwestern's actions violated the Rehabilitation Act of 1973. [EN 12] Knapp claimed that by preventing him from participating with the team because of his disability, Northwestern was substantially limiting his ability to participate in a major life activity. [EN 13] Knapp testified in an affidavit that competitive basketball instills in him “confidence, dedication, leadership, teamwork, discipline, perseverance, patience, the ability to set priorities, the ability to compete, goal-setting and the ability to take coaching, direction and criticism.” [EN 14] Based on Knapp's testimony and the plain language of the Rehabilitation Act, the district court held in favor of

Knapp, and issued an injunction forcing Northwestern to allow Knapp to participate on the basketball team. Northwestern appealed.

The Seventh Circuit Court of Appeals reversed the holding of the district court and lifted the injunction placed upon Northwestern University. [EN 15] The Seventh Circuit concluded that participation in an intercollegiate sport is not a major life activity within the meaning of the Rehabilitation Act. [EN 16] The Court reasoned that when determining whether an intercollegiate sport constitutes a major life activity, the focus must not be on the subjective opinions of the individual seeking protection under the Act. [EN 17] Instead, deciding whether an intercollegiate sport constitutes a major life activity depends on the objective opinions of everyday college students. [EN 18] The Court concluded that because the average college student would not consider participation in intercollegiate basketball a major life activity necessary for learning, intercollegiate sports do not constitute major life activities within the meaning of the Rehabilitation Act. [EN 19] To the extent intercollegiate sports could constitute a major life activity for a student-athlete, the Seventh Circuit held that Northwestern's decision to exclude Knapp did not “substantially limit” Knapp's ability to learn because Knapp continued receiving his scholarship and had access to all of the University's academic facilities. [EN 20]

To be thorough, the Seventh Circuit also concluded that Knapp was not “otherwise qualified” to participate in intercollegiate basketball. To state a valid claim under the Rehabilitation Act, the party seeking protection must be “otherwise qualified” to participate in the program from which he or she is being excluded. [EN 21] The Seventh Circuit concluded that even if Northwestern's decision to exclude Knapp substantially limited Knapp's ability to participate in a major life activity, Knapp was not otherwise qualified to participate because of his serious heart condition. [EN 22] The court held that great deference must be afforded team physicians and their universities in protecting their student-athletes from incurring serious physical injury. [EN 23] The Court reasoned:

In cases such as ours, where Northwestern has examined both Knapp and his medical records, has considered his medical history and the relation between his prior sudden cardiac death and the possibility of future occurrences, has considered the severity of the potential injury, and has rationally and reasonably reviewed consensus medical opinions or recommendations in the pertinent field—regardless whether conflicting medical opinions exist—the university has the right to determine that an individual is not otherwise qualified to play without violating the Rehabilitation Act. [EN 24]

The Seventh Circuit concluded that Northwestern University did not violate the Rehabilitation Act by excluding Knapp from participating on the school's basketball team.

III. ANALYSIS

In *Knapp*, the Seventh Circuit circumvented the subjective opinion of one athlete for the judgments of team physicians and Circuit Justices. In doing so, the Court ignored the purpose of the Rehabilitation Act: “to permit handicapped individuals to live life as fully as they are able, without paternalistic authorities deciding that certain activities are too risky for them.” [EN 25] The court lost sight of this purpose and incorrectly ruled that (1) participation in an intercollegiate sport does not constitute a major life activity, (2) Northwestern's decision to

exclude Knapp did not substantially limit Knapp's ability to learn, and (3) Knapp was not “otherwise qualified” within the meaning of the Rehabilitation Act to play basketball.

A. Intercollegiate Basketball is a Major Life Activity for Knapp

In *Knapp*, the Seventh Circuit held that intercollegiate sport is not a major life activity within the meaning of the Rehabilitation Act. The court reasoned that when determining whether an intercollegiate sport constitutes a major life activity, the focus must not be on the subjective opinions of the individual seeking protection under the Act. [EN 26] Instead, deciding whether an intercollegiate sport constitutes a major life activity depends on the objective opinions of average college students. [EN 27] The Court concluded that because the average college student would not consider participation in intercollegiate basketball a major life activity necessary for learning, an intercollegiate sport does not constitute a major life activity within the meaning of the Rehabilitation Act. [EN 28] Accordingly, if intercollegiate basketball does not constitute a major life activity, Knapp is not disabled under the terms of the Rehabilitation Act and lacks standing to sue Northwestern University. [EN 29]

The Seventh Circuit erred in failing to appreciate the important role that sports play in a student-athlete's life. Intercollegiate athletics are “an important part of a university's primary mission of helping an individual maximize [his or her] learning and career potential.” [EN 30] For many student-athletes, life lessons are best learned on the court rather than the classroom. In the case of Nicolas Knapp, participation in basketball instills in him ‘confidence, dedication, leadership, teamwork, discipline, perseverance, patience, the ability to set priorities, the ability to compete, goal-setting and the ability to take coaching, direction and criticism.’ [EN 31] For Knapp, the benefits inherent in playing basketball cannot be duplicated. The Seventh Circuit's opinion devalues this important fact by ruling that intercollegiate athletics does not constitute a major life activity.

Even if intercollegiate athletics did constitute a major life activity within the meaning of the Rehabilitation Act, the Seventh Circuit ruled that Northwestern's decision did not “substantially limit” Knapp from learning. [EN 32] To claim protection under the Rehabilitation Act, Knapp must prove that Northwestern's decision substantially limits his ability to learn generally. [EN 33] The Seventh Circuit concluded that Knapp did not satisfy this burden. The court argued that because Knapp continued receiving his scholarship, Northwestern provided him “access to all academic and - except for intercollegiate basketball - all nonacademic services and activities available to other Northwestern students.” [EN 34] According to the Court, this unfettered access frustrates Knapp's ability to play basketball but does not “substantially limit his education.” [EN 35]

Knapp is an intelligent student-athlete. He graduated as valedictorian of his high school class. [EN 36] The Seventh Circuit makes a strong presumption that Knapp's success in and out of the classroom will not be substantially limited by Northwestern's decision to exclude him from the basketball team. However, strong presumptions can cause inaccurate decisions. A reasonable explanation for Knapp's classroom success in high school is his participation on the basketball team. Student athletes gain a strong sense of accomplishment and gratification from their participation in interscholastic and intercollegiate sports. Participation in sports motivates athletes succeed in the classroom, if not for grades, then at least for eligibility. Limiting Knapp's ability to participate on Northwestern's basketball team could have a devastating impact on Knapp's success in the classroom and could substantially limit his education.

There are obvious concerns with subjectively defining major life activities. The major concern is that doing so might lead to an abuse of the Rehabilitation Act. Opponents of the subjective view might argue that allowing individuals to subjectively define what constitutes a major life activity will effectively swallow-up the distinction between major life activities and those that are not. These concerns are justifiable. There exists no bright line rule to weed-out potential abuses of the Act. But, Knapp's case presents no such problems. For Knapp, participation in intercollegiate basketball is a major life activity, exclusion from which would place a substantial limitation on his ability to learn.

B. Knapp is "otherwise qualified" to play intercollegiate basketball

The Seventh Circuit held that Knapp was not “otherwise qualified” within the meaning of the Rehabilitation Act to participate on Northwestern's Basketball team. [EN 37] To successfully invoke protection under the Rehabilitation Act, Knapp must prove that he “is able to meet all of [the] program's requirements in spite of his handicap.” [EN 38] “A significant risk of potential physical injury can disqualify a person from a position if the risk cannot be eliminated.” [EN 39] In other words, if Northwestern can prove that there is a reasonable probability that Knapp might incur substantial harm if allowed to participate, that alone is enough to exclude him from playing on the team. [EN 40] A difficult problem arises, however, when there exists conflicting medical opinions about the likelihood of future injury. [EN 41] The important question in such a case is who should make the assessment of whether the disabled athlete is otherwise qualified? [EN 42]

One author suggests three alternatives to resolving this issue: (1) let courts decide based on the conflicting medical testimony whether or not there exists a substantial risk of physical injury; (2) let the athlete assume the risk of participation; or (3) give deference to the team physicians if their decisions are reasonable. [EN 43] The obvious problem with the first alternative is that it gives courts sole discretion to weigh the conflicting medical opinions and render a decision based on whose opinions are more persuasive. Critics fear that courts might substitute their judgment on medical issues for those of the team's physician. [EN 44] The opposite is also true: judges could substitute their judgments for those of the athlete's physicians. Either way, allowing courts to decide whether the disabled athlete is “otherwise qualified” places “less skilled” judges in the position of making medical decisions. [EN 45]

The team physician model is equally troublesome. [EN 46] The model affords team physicians considerable discretion in deciding whether to exclude an athlete based on a medical disability. To survive scrutiny under this model the school's decision to exclude the athlete need only be “based on reasoned and medically sound judgments.” [EN 47] In other words, “exclusion is permissible only if the court finds the team physician has a reasonable medical basis for determining that athletic competition creates a significant risk of substantial harm to a physically impaired athlete.” [EN 48] The Seventh Circuit utilized this model to exclude Knapp from participating at Northwestern. The problem with this model is that the reasonableness bar is too easy to overcome. A university determined to keep an athlete from participating in a sports program could easily erect any legitimate medical concerns sufficient to clear the reasonableness standard. In the end, if a school wants to exclude an athlete from a sports program because of a disability it need only think up some excuse that will pass the reasonableness requirement.

The athlete informed consent model is the most appropriate solution to determine whether Knapp is eligible to participate on Northwestern's basketball team. The model makes the informed opinions of the athlete the primary focus. The model embodies the purpose of the Rehabilitation Act; it allows disabled athletes to make informed decisions about the activities they participate in.

In his senior year at Peoria's Woodruff High School, Knapp suffered sudden cardiac death during a pick-up basketball game. [EN 49] Conflicting medical opinions concluded that there was between 1 in 34 and 1 in 100 chance that Knapp would die if he continued playing basketball. [EN 50] Despite the inherent risk of suffering serious injury or death, Knapp elected to continue his basketball career at Northwestern University. Knapp, with the help of his parents, made an informed decision to assume the risk of participation because to him, playing basketball was worth the risk. [EN 51]

In *Wright v. Columbia Univ.*, a federal district court ordered Columbia University to allow the plaintiff the opportunity to participate in the school's football program despite the plaintiff's blindness in one eye. [EN 52] Columbia University denied the plaintiff the opportunity to participate based on recommendations from the school's surgeon and legal counsel. [EN 53] The plaintiff challenged his exclusion from the program citing a violation of the Rehabilitation Act. In support of his position, the plaintiff offered testimony from "a highly qualified ophthalmologist that no substantial risk of serious eye injury related to football exists." [EN 54] Moreover, the plaintiff testified that he appreciated and accepted the "inherent risks incident to playing football with impaired vision." [EN 55] As such, the plaintiff argued that Columbia's decision to exclude him from the football team violated the Rehabilitation Act by excluding an "otherwise qualified" individual from a federally funded program because of a disability.

The district court held that Columbia's decision to exclude the plaintiff violated the Rehabilitation Act. The court refused to give the University's paternalistic excuses credence. Columbia University denied the plaintiff the opportunity to participate based on an "understandable belief that plaintiff should avoid contact sports which might render him sightless." [EN 56] The plaintiff, however, appreciated and accepted the inherent risks. According to the district court, the Rehabilitation Act protects persons who make such a determination from "paternalistic authorities deciding that certain activities are too risky for handicapped persons." [EN 57]

Similar to Wright, Knapp assumed the risk that continued participation in basketball may result in serious bodily harm or death. And like Wright, Knapp is an "intelligent, motivated young man who is capable of making this decision which affects his health and well-being." [EN 58] The Seventh Circuit failed to respect Knapp's subjective opinion that basketball was worth the risk of serious bodily harm or death. Moreover, the Seventh Circuit ignored the purpose of the Rehabilitation Act, which is to prevent "in loco parentis" powers from determining what a handicapped person can and cannot do. Rather than protect the rights of handicapped persons who want nothing more than to be treated fairly in light of their respective disabilities, the Seventh Circuit hid behind the subjective opinions of Northwestern physicians and university officials in deciding that Northwestern's exclusion of Knapp from the university basketball team was justified.

There exist potential risks of extending the assumption of risk doctrine to the Rehabilitation Act. For example, allowing a person with a serious disability to participate in a strenuous activity such as basketball or football could expose a university to liability in the event

the athlete is injured. No doubt Northwestern University and Columbia University were aware of this risk when they excluded Knapp and Wright respectively from participating in school sponsored athletic programs. Nevertheless, liability can be, and often is waived. If Northwestern were to allow Knapp to participate on the basketball team, Knapp and his family should be precluded from suing Northwestern in the event he is seriously injured or dies. In other words, if Knapp is willing to waive the right to hold Northwestern liable for future injuries, Northwestern should be required to allow Knapp to participate.

IV. CONCLUSION

Nicholas Knapp wanted to play intercollegiate basketball as a Northwestern Wildcat. He possessed the requisite skills and passion to succeed at the college level. He wanted an opportunity to participate, an opportunity Congress intended to provide him when it enacted the Rehabilitation Act. Rather than respect Knapp's wishes, the Seventh Circuit held in favor of Northwestern. The *Knapp* decision represents the Seventh Circuit's failure to protect a disabled student-athlete from the paternalistic decision of one University.

[EN 1] *Knapp v. Northwestern Univ.*, 101 F.3d 473, 476 rev'd by 938 F. Supp. 508 (N.D. Ill. 1996).

[EN 2] *Id.*

[EN 3] Matthew J. Mitten, *Symposium: Disability Issues in Sport: Enhanced Risk of Harm to One's Self as a Justification for Exclusion from Athletics*, 8 MARQ. SPORTS L.J. 189, 201 (1998).

[EN 4] *Knapp*, 101 F.3d at 476.

[EN 5] *Id.* A cardioverter-defibrillator “detects heart arrhythmia and delivers a shock to convert the abnormal heart rhythm back to normal.”

[EN 6] *Id.*

[EN 7] *Id.* at 477.

[EN 8] *Id.* at 476-77.

[EN 9] *Id.* at 477.

[EN 10] *Id.* (citing *The 26th Bethesda Conference*, 24 J. OF THE AM. C. OF CARDIOLOGY, 845, 897 (1994)).

[EN 11] *Id.*

[EN 12] *See Knapp*, 938 F. Supp. 508; *see also* 29 U.S.C.S. § 794 (2002) (The Rehabilitation Act of 1973 prohibits colleges or universities from excluding otherwise qualified individuals from programs or activities because of a disability. The Rehabilitation Act states: “No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits or, or be subjected to discrimination under an program or activity receiving Federal financial assistance.”).

[EN 13] *Id.*

[EN 14] *Id.* at 510.

[EN 15] *Knapp*, 101 F.3d 473.

[EN 16] *Id.* at 480.

[EN 17] *Id.* The Seventh Circuit acknowledged “that intercollegiate sports can be an important part of the college learning experience for both athletes and many cheering student- - especially at a Big Ten school...But not every student thinks so.”

[EN 18] *Id.*

[EN 19] *Id.* at 480-81.

[EN 20] *Id.* at 481-82.

[EN 21] *Id.* at 482-83; *see* 29 U.S.C.S. § 794 (2002).

[EN 22] *Knapp*, 101 F.3d at 482.

[EN 23] *Id.* at 484.

[EN 24] *Id.*

[EN 25] *Poole v. South Plainfield Bd. of Educ.*, 490 F. Supp. 948, 953-54 (D.N.J. 1980).

[EN 26] *Knapp*, 101 F.3d at 480.

[EN 27] *Id.*

[EN 28] *Id.* at 480-81.

[EN 29] To show that he is disabled under the terms of the Act, Knapp must prove that he (i) has a physical ... impairment which substantially limits one or more of [his] major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.
Id. at 478.

[EN 30] *Mitten*, *supra* note 3, at 206.

[EN 31] *Knapp*, 988 F. Supp. at 510.

[EN 32] *Knapp*, 101 F.3d at 481.

[EN 33] *Id.* (citing *Byrne v. Bd. of Educ., School of West Allis-West Milwaukee*, 979 F.2d 560, 565 (7th Cir. 1992) (determining whether exclusion from a program constitutes a substantial limitation of a major life activity of learning depends on whether “the impairment...limits [learning] generally.”)).

[EN 34] *Id.*

[EN 35] *Id.* at 482.

[EN 36] *Id.* at 476.

[EN 37] *Id.* at 482.

[EN 38] *Id.*

[EN 39] *Id.*

[EN 40] *Id.* at 483.

[EN 41] Mitten, *supra* note 3, at 208.

[EN 42] *Id.*

[EN 43] *Id.*

[EN 44] *Id.* at 212.

[EN 45] We do not believe that, in cases where medical experts disagree in their assessment of the extent of a real risk of serious harm or death, Congress intended that the courts-neutral arbiters but generally *less skilled* in medicine than the experts involved-should make the final medical decision. *Knapp*, 101 F.3d at 487 (emphasis added).

[EN 46] Mitten, *supra* note 3, at 215-17.

[EN 47] *Id.* at 215.

[EN 48] *Id.*

[EN 49] *Knapp*, 101 F.3d at 476.

[EN 50] *Id.* at 483.

[EN 51] *Id.* at 476.

[EN 52] *Wright v. Columbia Univ.*, 520 F. Supp. 789 (E.D. Pa. 1981).

[EN 53] *Id.* at 792.

[EN 54] *Id.* at 793.

[EN 55] *Id.*

[EN 56] *Id.* at 794.

[EN 57] *Id.* (citing *Poole*, 490 F. Supp. at 954.)

[EN 58] *Wright*, 520 F. Supp. at 794. (describing *Wright* in the same way the Seventh Circuit describes *Knapp* in *Knapp*).