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Gallagher v. Cleveland Browns Football Co.,

638 N.E.2D 1082, (OHIO CT. APP. 1994).

INTRODUCTION

Michael Gallagher, (“Gallagher”), a television station videographer, sued the Cleveland Browns Football Company, (“Cleveland Browns”), for negligence due to injuries received when two football players collided into him while he was videotaping a football game. The Cuyahoga County Court of Common Pleas denied the Cleveland Browns’ motion for judgment notwithstanding verdict and entered judgment on the jury verdict for videographer and insurer. The Cleveland Browns appealed and the Court of Appeals of Ohio, Cuyahoga County, reversed, holding that the doctrine of primary assumption of risk barred recovery.

FACTS

Michael Gallagher received severe injuries when he was part of a collision during the Cleveland Browns-Houston Oilers game at Cleveland Stadium on December 18, 1988. Gallagher was videotaping the game for an ABC affiliate station, WJET-TV in Erie, Pennsylvania. The players ran into Gallagher at the north end of the endzone as they were in the process of attempting to catch a pass. This part of the endzone has been coined the “Dawg Pound” because of its close proximity to the field.

Gallagher was familiar with Cleveland Stadium and was made aware of the rules of both the Cleveland Browns and the National Football League (NFL). The NFL required that a six-foot-wide solid white perimeter surround the field of play. Another six feet outside the border was marked off with a yellow hash line. This area is known as the media line. The NFL rules required that the media stay outside this yellow line. Moreover, the Cleveland Browns also specified that all media personnel must kneel when in the area between the thirty-yard line to the end zone on both ends of the field. Failure to comply with these rules could result in revocation of press passes.

At the north end of Cleveland Stadium is an area known as the “Dawg Pound”. This area is unique to NFL stadiums in that the space beyond the yellow hash line is limited and is on an incline, making it closer to the fans. It is not feasible for the media personnel to film from beyond the media line while kneeling, which is why the Cleveland Browns allow them to stand most of the time.

On this particular date, the field was cleared from snow that had fallen the night before but remained on the area beyond the white perimeter and obscured the yellow hash line at the “Dawg Pound” end of the field. The game made its way toward this end of the field as the first half was coming to a close. It was common practice for the media to move and jockey for a position to secure better coverage of the game. Gallagher postured himself in the “Dawg Pound” end zone and thought he was behind the yellow media line, even though later

inspection of photographs revealed he was not. Gallagher was told by one of the security personnel to kneel. During the next play, Gallagher was looking through his lens and taping. When two players made their way towards him, he attempted to quickly get up, but was unable to do so in time and was injured.

Gallagher brought suit seeking damages for negligence and Northbrook, Gallagher's insurer, sought indemnification for medical expenses paid. At the conclusion of the trial, the jury was instructed on negligence and they returned a verdict in favor of Gallagher for \$800,000 and in favor of Northbrook in the amount of \$106,000. The Cleveland Browns moved for a judgment notwithstanding the verdict which was denied. The defendant appealed.

LEGAL ANALYSIS

The main issue before the court was whether primary assumption of the risk was applicable therefore barring recovery. Primary assumption of the risk bars recovery by a plaintiff for injuries sustained during a sporting event when the plaintiff is a willing participant or a spectator.¹ Because primary assumption of risk assumes there is no cause of action, there is no issue for the jury. In other sports injury cases, when there has been a finding of "no duty" or a finding of substantially diminished duty, the courts have found that the injury is a foreseeable and customary part of the sport, therefore, defining the concept of implied assumption of risk and finding no liability.² A jury question does exist in implied assumption of risk cases because the implied assumption of risk and contributory negligence overlap for purposes of comparative fault where there is a duty of care owed. This merger or overlapping does not exist in primary assumption of risk cases because there is no duty of care.

The court had to first determine whether primary assumption of risk should apply to media personnel on the field of play in a football game. The court noted that this determination is best exemplified in baseball cases, such as *Cincinnati Base Ball Club v. Eno*. Specifically, that court stated that at baseball games it is common knowledge that there is an ordinary and known danger of being struck by flying baseballs or bats. Management satisfies its duty of care to spectators if it simply provides the opportunity to sit behind screens. However, the duty during the intermission of the game is different than the duty during the actual play of the game. During intermissions management has a duty to exercise ordinary care to render the premises reasonably safe.³ Accordingly, the appellate court stated that the application of primary assumption of risk to sports events requires that the danger involved is ordinary to the game, it is common knowledge that the danger exists, and the resulting injury occurs as a result of the danger during the course of the game.

The appellate court applied these factors to the present case and found that Gallagher was barred from recovery under primary assumption of risk. First, the

1. *Collier v. Northland Swim Club*, 518 N.E.2d 1226 (Ohio Ct. App. 1987).

2. *Hanson v. Kynast*, 526 N.E.2d 327 (Ohio Ct. App. 1987).

3. *Cincinnati Base Ball Club Co. v. Eno*, 147 N.E. 86 (Ohio 1925).

risk of a collision in football is ordinary to the game. The court observed that collisions with other players and spectators during the course of the game is within the nature of the sport. This ordinary risk is increased at the end zones and is further compounded by the decreased depth perception of a videographer. For this reason, the court rejected Gallagher's contention that the Cleveland Browns conduct was willful and wanton and created an unreasonable risk. The court stated that what constitutes an unreasonable risk under a sporting event should be delineated with the way the game is played. The collision between the players and Gallagher was not an unexpected occurrence. Furthermore, the Cleveland Browns did not enhance the risk ordinary to the game of football. The court found that the conduct of the Cleveland Browns was consistent with the customs of professional football and the regulations governing videographers at football games. Therefore, the collision was within the ordinary course of the game.

The appellate court further found that the second aspect of primary assumption of risk, namely that the risk of collision at football games was common knowledge, was met. This knowledge was especially common to videographers who are exposed to the rigors of professional football each week as they attempt to film the game. The court further noted that media people who are issued passes by football teams are allowed access to the sidelines with few restrictions. Where they stop and set up their cameras is a matter of choice. The choice to videotape inside the thirty yard line, where the kneeling rule is in effect and chances of collision are increased, is also a matter of choice. It is commonly known that running out of bounds and colliding with players and sideline spectators are events that are foreseeable to the game of football. Gallagher should have been aware of this possible risk which resulted in his injury.

Lastly, the court addressed Gallagher's argument that the kneeling rule was unnecessary to the sport and its enforcement diminished his chances of escaping a collision. The Cleveland Browns argued that enforcement of the rule was necessary to avoid obstruction of play for those spectators who are closest to the field of play. The court did not take heed to either arguments because inherent in Gallagher's position is that enforcement of the kneeling rule creates a duty and a breach if injury occurs. The finding of primary assumption of risk negates any duty towards Gallagher in relation to events that occur during the ordinary course of the game. Specifically, the court stated that the fact remained that there was no duty of care owed by the Cleveland Browns to the media to insure their safety when they place themselves in danger of known risks that may occur during the regular course of a football game.

CONCLUSION

Reversing the district court's denial of the Cleveland Brown's motion for judgment notwithstanding the verdict, the court determined that media personnel on the sidelines assume the risk inherent at football games and are owed no duty of care in relation to the playing of the game. Gallagher encountered a danger that is an ordinary part of a football game, namely collisions. Further, this risk is

common knowledge, especially to the media who work the sidelines every game day. Finally, the enforcement of the kneeling rule did not create a new duty because no duty is owed to the media for conduct that is a natural part of the game.

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