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YOU AND THE LAW

Sport Event Operators Must Deliver Promises to Avoid Gross Negligence

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Hass v. RhodyCo Productions, 26 Cal. App. 5th 11, 236 Cal. Rptr. 3d 682, 2018 Cal. App. LEXIS 710 (Aug. 13, 2018).

The case of *Hass v. RhodyCo Productions* (2018) stems from the 2011 Kaiser Permanente San Francisco Half Marathon. Peter Hass, a runner participating in the marathon, crossed the finish line and promptly collapsed. According to witnesses, the response rate by race officials was slow and confusing, and it took about 20 min for paramedics to arrive (Cote, 2011). Furthermore, after Hass collapsed, someone alerted the announcer at the finish line, who urgently requested medical assistance over the loudspeaker. Despite a number of calls for medical aid, runners and spectators began performing CPR before any staff arrived (Cote, 2011). The trial court initially ruled in favor of RhodyCo's summary judgment motion, deciding that the Hass family's wrongful death action was barred under theories of primary assumption of the risk *(Hass v. RhodyCo Productions*, 2018). On appeal, the court found that summary judgment was not justified as grounded on the primary assumption of risk. Further, the deficient medical aid would reveal a significant change from the standard of care for physical activity events. As a result, the court ruled that there was a triable issue of material fact regarding whether

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RhodyCo had been negligent or grossly negligent toward Hass's well-being.

Facts of the Case

RhodyCo conducted the event management and production services for the San Francisco Half Marathon from 2006 through 2011 (Cote, 2011). To obtain the required permits for street closures, RhodyCo was mandated to present an emergency medical services (EMS) plan to the City and County of San Francisco for consideration and consent by the City's emergency medical services agency (*Hass v. RhodyCo Productions*, 2018). According to the allegations in the Hass case, the EMS plan was approved, acknowledging that the Palmer College of Chiropractic-West (PCCW) and American Medical Response (AMR) would provide the necessary trained medical personnel. Furthermore, the EMS plan identified that PCCW trained medical staff would be in place at designated vital areas (i.e., start line, finish lines, postrace medical tent, and mobile units) located on the course. Additionally, the head clinician would be present at the postrace medical tent (*Hass v. RhodyCo*, 2018). AMR would supply an emergency medical technician to work with the PCCW medical team at the postrace medical tent as well as an Advanced Life Support ambulance to respond to medical emergencies. Finally, the EMS plan stipulated that one medical doctor, six or more emergency medical technicians, and one automatic external defibrillator (AED) would be located at the finish line (*Hass v. RhodyCo Productions*, 2018).

Almost immediately after crossing the finish line, Hass suffered a sudden cardiac arrest and collapsed (Egelko, 2018). Another marathon participant, a medical doctor, began to perform cardiopulmonary resuscitation (CPR) on Hass for 5 to 8 min, after which CPR was continued by an off-duty paramedic who possessed advanced CPR training (Egelko, 2018). Another individual carried the AED from the postrace tent, which was located somewhere between 100 and 200 yd away from the finish line. Unfortunately, when the AED was applied, no discernible shockable heart rhythm was detected in Hass (Egelko, 2018).

The Hass family filed wrongful death action, asserting that RhodyCo was (1) negligent in organizing and planning the event; (2) negligent in hiring, retaining, and supervising the medical team;

and (3) negligent in managing, training, and monitoring the emergency and medical resources (*Hass v. RhodyCo Productions*, 2018). Specifically, the Hass family stressed that chiropractors were used instead of medical doctors and that chiropractic students were used in the place of emergency medical technicians. Additionally, the Hass family alleged that ambulance personnel were not present at the finish line and that the AEDs and ambulances were inadequate (*Hass v. RhodyCo Productions*, 2018). RhodyCo answered by denying the allegations and asserting several affirmative defenses, including primary assumption of the risk and express contractual assumption of the risk and release of liability (*Hass v. RhodyCo Productions*, 2018).

RhodyCo claimed summary judgment because Hass had signed a release when he registered for the half marathon (*Hass v. RhodyCo Productions*, 2018). Furthermore, the release contained a waiver of liability and assumption of the risk agreement that was binding on Hass's relatives (*Hass v. RhodyCo Productions*, 2018). Finally, RhodyCo maintained that sudden cardiac arrest is an inherent risk of long-distance running. As a result, RhodyCo stated that the action alleged by the Hass family was barred under the primary assumption of risk doctrine. The Hass family then filed a motion for new trial, arguing that new evidence with respect to the allegations of gross negligence occurred when the head of the agency stated in the deposition testimony that chiropractic students were substituted for emergency medical technicians at the finish line and that a chiropractic doctor replaced a medical doctor as race supervisor (*Hass v. RhodyCo Productions*, 2018). There are multiple issues to this case including ordinary negligence, gross negligence, and assumption of risk.

Ordinary Negligence

Ordinary negligence may be defined as "the omission to do something which a reasonable many, guided by those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do" (Harper & James, 1956, p. 928). Furthermore, the *Hass* court considered ordinary negligence as a "failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm" (p. 32). For it to be proved that a sports provider caused the injury or death, four

elements need to be satisfied: duty, breach, causation, and damages (Dobbs, 2000; Miller & Schoepfer, 2018). The first element, duty, indicates that the sports provider has a duty of reasonable care to make sure the competitors are safe (*Nalwa v. Cedar Fair, L.P.*, 2012). The second element, breach, explains that the sports provider violated its duty during the event (Miller & Schoepfer, 2018). The court in *Knight v. Jewett* (1992) summarized breach of duty as "those instances in which the defendant does owe a duty of care to the plaintiff, but the plaintiff knowingly encounters a risk of injury caused by the defendant's breach of that duty" (p. 304). The third element, causation, is satisfied if the plaintiff proves the sports provider was "the actual and proximate cause" of the injury or death (Burnstein, 1994). In the *Hass* case, the plaintiffs alleged that the proximate cause was the lack of trained medical personnel at the event. The fourth element, damages, is satisfied if the sports provider's conduct caused injury to the competitor (Burnstein, 1994; Dobbs, 2000). Thus, while the event manager of physical competitions has no duty to decrease risks inherent to the sport, they do have a duty to make sure that any exposure of risks to the participants is not increased (*Knight v. Jewett*, 1992). The question was whether the organizer of the half marathon acted in a grossly negligent manner by providing emergency services without appropriately qualified medical personnel, thereby increasing the risk of harm to Hass to the point of gross negligence (*Hass v. RhodyCo Productions*, 2018).

Gross Negligence

The court in *Nalwa v. Cedar Fair, L.P.* (2012) stated, "Although persons generally owe a duty of due care not to cause an unreasonable risk of harm to others some activities—and, specifically, many sports—are inherently dangerous" (p. 41). As noted, the *Hass* court supported the family members' assertions that RhodyCo committed gross negligence. Most injured parties blame the sports providers for not making the event safe (Easter et al., 2003). The main argument against the sports providers is that they breach their duty by being grossly negligent or reckless (Easter et al., 2003). The court in *Gore v. Board of Medical Quality Assurance* (1980) stated, "Gross negligence falls short of a reckless disregard of consequences, and differs from ordinary negligence only in degree, and not in kind" (p. 19).

For the range of particular negligent acts, the standard of reasonable conduct must be in proportion to the foreseeable risk (*Gore v. Board of Medical Quality Assurance*, 1980). Additionally, the plaintiff has the "burden to prove that the sports provider was grossly negligent by increasing the risk that caused the plaintiff's injury" (*City of Santa Barbara v. Superior Court*, 2007, p. 780). As the danger becomes more significant, the actor is required to exercise caution commensurate with it (*Knight v. Jewett,* 1992). By hiring a chiropractor instead of a medical doctor to supervise the EMS, RhodyCo committed gross negligence, the court concluded (*Hass v. RhodyCo Productions*, 2018).

Assumption of Risk

The doctrine of primary assumption of risk is based on the need to avoid discouraging involvement of physical activities by enforcing a duty to remove the inherent risks of harm in those activities (*Nalwa v. Cedar Fair, L.P.,* 2012). The primary assumption of risk concept functions on the idea that placing a duty on such activities would significantly change the foundational elements of the physical activity (*Nalwa v. Cedar Fair, L.P.*, 2012). For example, football without blocking and tackling would not be considered the sport of football as Americans know it. By permitting voluntary participants in physically active endeavors to litigate other participants or sponsors for failing to remove the activity's inherent risks would jeopardize the continuation of the activity (*City of Santa Barbara v. Superior Court*, 2007). The primary assumption of risk doctrine does not "release the event managers from any obligations to protect the safety of their customers" *(Knight v. Jewett*, 1992, p. 317). As a general rule, where an operator can take a measure that would increase safety and minimize the risks of the activity without also altering the nature of the activity, the operator is required to do so (*Grotheer* v. *Escape Adventures, Inc.*, 2017, p. 1300).

After analyzing the release of liability, the court ruled that Hass assumed all risks connected with the race, thereby releasing RhodyCo from all liability. This ruling barred the Hass family from asserting a wrongful death claim for ordinary negligence. Citing to *Coates v. Newhall Land & Farming, Inc.* (1987), the *Hass* court stated that when a participant expressly agrees to waive any negligence on the part of the defendant, the participant assumes all risk in a waiver.

However, should the participants not fully comprehend the potential risks, then they cannot expressly assume the risk of being injured (Easter et al., 2003). The Hass family agreed that cardiac arrest is an inherent risk of long-distance running and that RhodyCo did nothing to increase this risk. This action barred any claim from any subsequent wrongful death action based upon ordinary negligence, but not based upon gross negligence. Conversely, the court held that emergency medical care was a risk extrinsic to running and could be provided by a race organizer without altering the fundamental nature of running. Thus, because emergency medical assistance was not an inherent risk, the court ruled that RhodyCo may have committed gross negligence by failing to provide appropriately trained medical personnel at the event (Egelko, 2018).

The laws behind sports injuries protect the sports providers because the inherent risks cannot be eliminated (*Diodato v. Islamorada Asset Mgmt., Inc.*, 2014). Under certain circumstances, the assumption of risk defense may apply to protect the sports provider (*Diodato v. Islamorada Asset Mgmt., Inc.*, 2014). However, in the *Hass* case, the court ruled that gross negligence could be alleged because appropriately credentialed medical personnel were not provided during the activity as promised. As a result, the primary assumption of risk doctrine could not be employed as a defense because providing proper medical personnel, which was promised in the original agreement, would not alter the nature of the activity.

Conclusion

The *Hass* case is significant for organizations that conduct physical activities such as half marathons, marathons, 5K walks, and triathlons. First, although an assumption of risk release is written in a fashion that expressly waives liability so that the participant assumes all risk of injury, gross negligence may still exist. In the *Hass* case, RhodyCo promised to provide trained medical personnel at the finish line, including a medical doctor and six emergency medical technicians, along with an ambulance and an AED for heart problems. Yet none of these stipulations were enacted at the event. As a result, the Hass family showed that RhodyCo failed to provide adequately qualified medical assistance at the finish line and thus acted with gross negligence due to radical deviation from the ordinary standard of care. Although there is always a likelihood of

participant injury due to inherent risks, organizations that conduct physical activities must be sure to fulfill their promises in providing professional medical assistance to avoid being grossly negligent.

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