

YOU AND THE LAW

Negligent Supervision in Sport

Tippecanoe School Corporation v. Reynolds & Reynolds

Court of Appeals of Indiana Case No. 21A-CT-1482

187 N.E. 3d 213 (2022)

Thomas H. Sawyer and Tonya L. Sawyer

Introduction

According to the court record, Isabella Reynolds (Plaintiff), a cheerleader, was injured when she struck the gymnasium's hardwood floor while the high-school cheerleading team was practicing a routine. The plaintiff brought a negligence action against the county school corporation, alleging that the corporation carelessly and negligently failed to inspect and discover a dangerous/hazardous condition and/or activity (*Tippecanoe School Corporation v. Reynolds & Reynolds, 2022*).

Complaint

The Court documents indicate Plaintiff fell while performing a cheerleading routine for William Henry Harrison High School (Harrison High School) in early 2019. As a result of the fall, the Plaintiff suffered extensive injuries to her face and mouth. Harrison High School is part of the Tippecanoe School Corporation. In the

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fall of 2019, Plaintiff filed a negligence claim against Tippecanoe School Corporation, “claiming that the corporation carelessly and negligently failed to (a) inspect and discover a dangerous/hazardous condition and/or activity that existed, (b) warn the Plaintiff of the dangerous condition and/or activity that existed, (c) provide proper supervision, and (d) correct the dangerous condition and/or activity hazard that existed”(Id. at 214).

Background

Plaintiff was a “flyer” on the Harrison High School junior varsity cheerleading squad at the time of her accident. A flyer is considered a cheerleader lift or a cheerleader being thrown into the air during a cheerleading routine. “The trial record further indicates Reynolds, who had been a flyer since seventh grade, knew the skills required of the position and understood that being accidentally dropped by her fellow cheerleaders was one of the risks associated with being a flyer in the sport of cheerleading” (Id. at 216).

The trial record shows that in January 2019, Harrison High School’s head varsity cheerleading coach, Roberta Patton, asked Plaintiff to cheer with the varsity squad at an upcoming basketball game because the normal flyer was unavailable (Id.). Reynolds replied that she would “love to” and attended the varsity practice the night before the game (Id. at 217). During practice the night before the game, the Plaintiff performed the routine several times while using protective mats to cover the floor. “Protective mats are utilized to practice and learn new skills, but once a routine is game-ready, the mats are not used for warm-ups or games. Plaintiff had also performed the routine multiple times prior to her practice with the varsity team and completed the routine at the varsity’s practice flawlessly and perfectly several times. As a result, Patton determined that the squad, including Plaintiff, was game ready” (Id. at 218).

The court record describes that a specific part of the routine requires Reynolds to be hoisted in the air and lowered back to the ground. When the team was completing its run-through of the routine, Reynolds’ teammates failed to lower her to the ground, and she was dropped onto the gymnasium’s bare hardwood floor. “As a result of the fall, Reynolds broke most of her teeth and her jaw. She required emergency surgery and extensive follow-up and rehabilitation” (Id. at 220).

Two cheerleading coaches from other teams explained that they would have conducted the warm-up differently. Plaintiffs' teammates made mistakes, and Patton made coaching errors regarding technique, the use of additional safety mechanisms, and the extent to which she supervised Reynolds specifically.

However, neither coach indicated that the type of routine performed was out of the ordinary for the sport of cheerleading. Although the extent of the injury was not expected, falls and head injuries are a common concern. Patton indicated that head injuries due to falls are always a fear in cheerleading and said that in the previous year, multiple cheerleaders suffered concussions due to falling during either a practice or game. Further, Reynolds testified that the biggest danger associated with being a flyer is "concussions mostly because people drop other girls" (Id. at 220).

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The Pfenning Rule

According to the Pfenning Rule, "to prevail on a claim of negligence a plaintiff must show: (1) the defendant owed a duty to the plaintiff, (2) the defendant breached that duty, and (3) the defendant's breach proximately caused a compensable injury" (*Matter of C.G.*, 157 N.E.3d 543, 546, Ind. Ct. App. 2020). Under the doctrine of respondeat superior, an employer is liable for a coach's negligent acts where those acts occurred within the scope of employment (Id.). Here, they agreed in their dismissal stipulation that Patton acted in the course and scope of her employment as head varsity cheerleading coach at the time of the Plaintiffs' injury (*Tippecanoe*, 2022).

Whether a defendant breached a duty is typically a question of fact for the jury. However, in *Pfenning v. Lineman*, 947 N.E.2d 392 (Ind. 2011), the Indiana Supreme Court established a limited new rule regarding negligence claims "arising from ordinary sports activity" (Id. at 403). "As a matter of law, when a sports participant injures someone while engaging in conduct ordinary in the sport—and without intent or recklessness—the participant does not breach

a duty” (Id. at 404). “Under *Pfenning* ordinary conduct in the sport turns on the sport generally—not the specific activity” (Id. at 405).

In this case, the issue is whether Patton’s cheerleading routine, which Patton had the Plaintiff and her teammates perform, was ordinary for the sport of cheerleading. Whether negligent supervision is a separate cause of action capable of escaping a *Pfenning* analysis is also an issue.

Holding

The Court of Appeals held that: “a cheer routine that led to the cheerleader’s injuries was ordinary in the sport of cheerleading, and thus corporation did not breach a duty of care, and negligent supervision is not a separate cause of action capable of eluding rule that a sports participant who injures someone while engaged in conduct ordinary in the sport, and without intent or recklessness, does not breach a duty of care. Reversed and remanded” (*Tippecanoe*, 2024).

Risk Management Discussion

Most courts view supervision as an important and essential legal duty for coaches and sports administrators. However, many times, this duty is given the least amount of attention by the sports professional. It is important to document what one does to supervise programs, personnel, participants, spectators, and others. The supervisor must be able to document and show concern for the program(s) and people and have a reasonable supervision plan; the courts will look more favorably upon the supervisor as one who cares for the well-being and safety of the program(s) and the people involved.

Supervision is a learned skill. Negligent supervision is also learned through a lack of proper education, no education, or “bad” role models. Supervisors must be trained to supervise properly. The novice supervisor must be assigned to a veteran to work with and oversee them for a few weeks or months. The organization or program must have a developed written procedure for the supervision of all personnel. There must be an in-service education guideline and a supervisory plan. As the guidelines and plan are developed, the following aspects must be considered:

- What should the supervisor look for,

- What should the supervisor listen for,
- Where should the supervisor stand,
- How should the supervisor move around,
- What should the supervisor do if a problem arises,
- Identify all potential dangerous/harmful activities,
- How close should the supervisor be to the activity,
- Understand the warning signs of impending trouble during an activity,
- Establish a “stop signal” that can be used when the supervisor must immediately suspend activity,
- Develop a detailed job description including qualifications (e.g., education, certification(s), experience, and references), and
- Provide ongoing education and training for supervisors to meet industry standards and certifications within the sport and activity.

References

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