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YOU AND THE LAW

Baseball and Assumption of Risk

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Lerman v. Little League Council of New York City INC., and West Side Little League, and Jeff Neuman Sup.Ct. N.Y.; NDEX NO. 150006/2014, 2018 N.Y. Misc. LEXIS 666; 2018 NY Slip Op 30342(U); 2/15/18

A New York state trial court has granted summary judgment to Little League Council of New York City and other defendants in a case in which they were sued by the parents of a 10-year-old child who was hit in the face while he was participating in a Little League baseball practice. The court's ruling was made pursuant to the assumption of risk.

Facts of the Case

On the date of the accident, April 9, 2010, the plaintiff, age 10, attended his first Little League baseball practice. His father had registered him to play baseball through West Side Little League (WSLL) and had signed a waiver in which he agreed that as his father he had reviewed and consented to the waiver by signing up his child to play Little League baseball with WSLL. The plaintiff had watched baseball on television and was generally familiar with the game, according to the court. He had also previously played catch with his father using a baseball mitt and with friends.

When the plaintiff arrived at his first baseball practice, the coach, Jeff Neuman, instructed the players to take various positions on the baseball field. The father spoke with Neuman and told him that his son had no prior experience and that he should be careful. Neuman told the plaintiff to take the shortstop position, while Neuman

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pitched balls to other players to hit into the field and allow the others to practice fielding the balls. The players were using an aluminum bat and standard Little League baseballs. There were two pitches before the accident. On the third pitch, the batter hit a line drive toward the plaintiff. He tried to catch the ball, and the ball struck him in the mouth, inflicting dental injuries.

Complaint

The plaintiffs argued to deny defendants' motion to dismiss based on assumption of risk.

The plaintiffs countered that the motion should be denied because a triable issue of fact exists as to whether defendants breached their duties owed to the plaintiff and whether defendants were negligent in their breach of reasonable care, supervision, control, training, instruction, direction, safety, and general coaching of the plaintiff. They further asserted that the child had never participated in any baseball activity on a baseball field before and that Neuman placed him at the "highly skilled" shortstop position, despite being warned by the boy's father that his son had never played baseball before. They also argued that the defendants failed to test his skill set before placing him on the field and also failed to teach and give him basic instructions on how to field a ball. They asserted that the child did not assume the risk, but rather that defendants created a dangerous condition that caused his injuries by their indifference as to his skill and experience level.

The defendants countered that the plaintiffs voluntarily assumed the inherent risks involved in playing baseball and that plaintiffs cannot properly assert a negligent supervision claim where the injury is due to an inherent and obvious risk associated with the game.

Court Analysis

In its analysis, the court noted that by engaging in a sport or recreational activity, a participant consents to those commonly appreciated risks that are inherent in and arise out of the nature of the sport generally and flow from such participation. Further, the court stated,

> In assessing whether a defendant has violated a duty of care within the genre of tort-sports activities and their inherent

> risks, the applicable standard should include whether the conditions caused by the defendants' negligence are unique and created a dangerous condition over and above the usual dangers that are inherent in the sport. (*Owen v. R.J.S. Safety Equip.,* 1992)

Moreover, the court stated, "If the risks of the activity are fully comprehended or perfectly obvious, plaintiff has consented to them and defendant has performed its duty" (*Turcotte v. Fell,* 1986). Finally, the court suggested that "related risks which are commonly encountered or 'inherent' in a sport, such as being struck by a ball or bat in baseball, are 'risks for which various participants are legally deemed to have accepted personal responsibility" (*Bukowski v. Clarkson Univ.,* 2012, quoting *Morgan*, 90 N.Y.2d at 484).

The court suggested,

> Logically, once a plaintiff has assumed a risk, recovery premised on injury attributable to the risk assumed is barred. Recovery may not, in such a circumstance, be had on a theory of negligent supervision. Negligent supervision remains a viable theory only insofar as the risk upon which the action is based has not been assumed. (*Roberts v. Boys & Girls Republic,* 2008)

Court's Ruling

Summarizing its position, the court wrote,

> The plaintiff engaged and participated in a baseball practice, and his parents consented to the risks inherent and associated with playing baseball. The plaintiff's parents made a voluntary choice to join WSLL and permit their son to play baseball. Common and obvious risks of the game include being struck and injured by baseballs. Prior to the accident, the plaintiff had a basic understanding of how the game was played and had briefly practiced throwing and catching a ball with his father using a baseball mitt. Thus, while the plaintiff participated in a baseball practice, he consented, through his parents, to the possibility of being struck and injured by a baseball. Neuman's decision to place the plaintiff in the

shortstop position is immaterial, as the risk of being struck by a batted baseball was present at any position on the field. Also, plaintiffs' theory of Neuman's negligent supervision fails because the risk of injury was assumed by his voluntary participation in the practice. (*Lerman v. Little League Council of New York City INC., and West Side Little League, and Jeff Neuman,* 2018)

Discussion

The organizers of youth baseball leagues, whether it be community recreation leagues, Babe Ruth, Carl Ripkin, Dixie Baseball, or Little League, must be highly conscious of safety when establishing rules and regulations governing the league. Further, it is important that all coaches have the proper training before being allowed to coach a team. Finally, the organizers must safeguard and protect the players by

- ensuring all coaches complete a coaching education program established by the national youth baseball body or the National Federation of State High School Associations (NFHS),
- providing all coaches risk management training,
- pretesting all players throughout an organized tryout,
- ranking all players by age and experience, and
- warning all players of the inherent dangers and risks in the sport of baseball.

References

Bukowski v. Clarkson Univ., 19 N.Y.3d 353, 356, 971 N.E.2d 849, 948 N.Y.S.2d 568 (2012).

Lerman v. Little League Council of New York City Inc., and West Side Little League, and Jeff Neuman, Sup.Ct. N.Y.; NDEX NO. 150006/2014, 2018 N.Y. Misc. LEXIS 666; 2018 NY Slip Op 30342(U) (2018).

Owen v. R.J.S. Safety Equip., 79 N.Y.2d 967, 970, 591 N.E.2d 1184, 582 N.Y.S.2d 998 (1992).

Roberts v. Boys & Girls Republic, Inc., 51 A.D.3d 246, 251, 850 N.Y.S.2d 38 (1st Dep't 2008).

Turcotte v. Fell, 68 N.Y.2d 432, 439, 502 N.E.2d 964, 510 N.Y.S.2d 49 (1986).