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Coaches' Liability for Athletes' Injuries and Deaths

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COACHES' LIABILITY FOR ATHLETES' INJURIES AND DEATHS

Thomas R. Hurst and James N. Knight***

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I. INTRODUCTION

In the brutally hot summer of 2001, three prominent athletes lost their lives on playing fields across the country. Football players Korey Stringer of the Minnesota Vikings,¹ Rashidi Wheeler of Northwestern University,² and Eraste Autin of the University of Florida³ collapsed and died in summer practices. These practices are an annual rite that has preceded each football season since the sport was conceived approximately ninety years ago. While these deaths are tragic, they are certainly not uncommon. Since 1995, eighteen high school and collegiate football players have died while participating in practices or games.⁴ In America's litigious society, these deaths raise important questions regarding a coach's responsibility to the team and his players. Specifically, should a coach be held personally liable when his athlete is injured or dies while participating in an athletic event?

Throughout the history of American athletics, the coach has filled a special role for the individual athlete and the team. A coach is responsible for organizing, directing, and motivating athletes to perform at their maximum potential. Names like Vince Lombardi, Yogi Berra, Pat Riley, and even Steve Spurrier and Bobby Bowden evoke images of greatness. Winning coaches at the collegiate and professional levels are richly compensated for their efforts to produce champions. For example, Korey Stringer's coach, Dennis Green, earns approximately three million dollars a year as the head coach of the Minnesota Vikings;⁵ Eraste Autin's coach, Steve Spurrier, earned over two million dollars a year as head football coach of the University of Florida.⁶

Winning coaches often achieve results through techniques that could legally be considered 'wanton' or 'grossly negligent' in any other context. Bear Bryant, widely considered one of the greatest college football coaches of all time, conducted such a brutal training camp in his first

1. Don Pierson, *Death of an NFL Player*, CHI. TRIB., Aug. 2, 2001, at 1.

2. *Asthma Is Cited as Cause of Death for Northwestern Player*, ST. LOUIS POST-DISPATCH, Aug. 5, 2001, at D12.

3. Joe Schad, *Wake Up Call with 2 Deaths in the Off Season, the State's College Football Coaches See Changes Ahead*, ORLANDO SENTINEL, July 30, 2001, at C1. Florida State University's football program also suffered the death of a player, Devaughn Darling, in a February conditioning drill. *Id.*

4. *Football Casualty List*, NEWSDAY, Aug. 2, 2001, at A85.

5. John Harper, *Giants Load Up on Fassel Fuel, Retain Coach for 4 Years, \$10.7M*, N.Y. DAILY NEWS, Feb. 28, 2001, at 58.

6. Norman Arey, *Football Coaches' Salaries*, ATLANTA J. & CONST., Dec. 1, 2000, at 1. Bobby Bowden, who coached the late Devaughn Darling, makes a million and a half dollars a year coaching the Seminoles of Florida State University. *Id.*

coaching season that seventy-six of one hundred and eleven players quit.⁷ When one player collapsed from dehydration, Bryant kicked him and ordered the other players to drag him off the field.⁸ There was no emergency response team present, so the student trainer drove the player to the hospital in his own car.⁹ Vince Lombardi, a two-time Super Bowl champion coach, ran his Green Bay Packers through 'ungodly' conditioning workouts.¹⁰ One player lost eighteen pounds in the first two days of training camp, and eventually collapsed of heatstroke.¹¹

On its face, the behavior of such coaches seems barbaric and outrageous, but society seems to condone or ignore it because it forges football champions. In a strictly legal sense, where does society draw the line between forging champions and committing a tort? When does a coach's behavior constitute a tort and what standard should be applied? This article analyzes the liability of a coach for an athlete's injury or death while participating in an athletic event.¹² In particular, the article describes the theory of negligence as applied to an athletic coach, as well as other theories of liability and legal defenses a coach may employ. The article concludes by applying these theories to the circumstances surrounding the deaths of Stringer, Wheeler, and Autin.

II. A COACH'S LIABILITY FOR THE DEATH OF A PROFESSIONAL ATHLETE

As a general matter, injuries suffered by professional athletes on the playing or practice field are no different from a legal point of view than those suffered by other employees, such as an auto worker in a plant. Injury or death suffered by an employee is usually subject to the workers' compensation law of the state where the employee is employed. In the case of Korey Stringer, Minnesota workers' compensation law governs liability issues regarding his death.¹³ Under Minnesota law, as in most ju-

7. Chris Dufresne, *Cruel Paradox of Camps*, L.A. TIMES, Aug. 9, 2001, § 4, at 1.

8. *Id.*

9. *Id.*

10. *Id.*

11. Dufresne, *supra* note 7. The experience at Lombardi's camp was described as "throbbing, aching, piercing, dizzy, screaming, vomiting, fear-inducing and fear-conquering pain." *Id.* at 2. Miraculously, nobody died in the Lombardi or Bryant training camps.

12. This article analyzes coaches' liability in all sports, but football provides some of the most notable examples, given the recent rash of activity-related deaths and the violent nature of the game itself.

13. James Walsh, *State Law Minimizes Chance of Litigation*, MINNEAPOLIS STAR-TRIB., Aug. 3, 2001, at 12C. However, states differ widely on their approach to the coverage of professional athletes under workers' compensation schemes. For example, professional athletes are specifically excluded from coverage under the Florida Workers' Compensation Act. FLA. STAT. ANN. § 440.02(17)(c)(3) (West 2001). For an important discussion of the various approaches taken by differ-

risdictions, employers and co-workers are shielded from liability for an employee's death or injury except where 'gross negligence' or 'intentional harm' can be proved.¹⁴ This is likely to be difficult to establish in Stringer's case, because training in extreme heat is a common practice in professional football, and because Stringer's reaction to it was extremely unusual.¹⁵

Without a showing of gross negligence or intentional harm, Stringer's widow will recover only what is provided for under Minnesota's workers' compensation statute.¹⁶ Under the workers' compensation statute, a surviving spouse with a child in Minnesota receives more than sixty-six percent of the employee's pay, but the amount is capped.¹⁷ The state also pays \$15,000 toward burial costs.¹⁸

Even if Stringer's widow were to sue the coach and the team, the CBA would require that disputes between player and team be submitted to arbitration. Case law has upheld the arbitration clause even in matters regarding wrongful death or career-ending injuries. In *Ellis v. Rocky Mountain Empire Sports*¹⁹ the plaintiff was a professional football player who suffered a career-ending knee injury in a practice session.²⁰ The plaintiff sued his team, the head coach, and the team physician, alleging that they had negligently and intentionally allowed him to participate in a dangerous contact drill.²¹ The trial court granted the defendants' summary judgment motions, holding that the plaintiff's claims were barred, first because the plaintiff failed to comply with the mandatory arbitration clause of his standard player's contract, and second because the claims were barred under

ent states on this issue, and an argument that contractual and statutory limitations on the professional athlete's ability to collect workers' compensation benefits are "inherently unfair and grounded in meritless arguments," see Stephen Cormac Carlin & Christopher M. Fairman, *Squeeze Play: Workers' Compensation and the Professional Athlete*, 12 U. MIAMI ENT. & SPORTS L. REV. 95 (Fall 1994/Spring 1995).

14. *Id.* Workers' compensation schemes generally provide exclusive remedies to injured employees, but are often drafted or interpreted not to bar a tort action against an employer or a co-employee for intentional acts that cause injury. For the many permutations of this general proposition, see generally ARTHUR LARSON, WORKMEN'S COMPENSATION LAW § 103 (2001).

15. Walsh, *supra* note 13.

16. *Id.*

17. *Id.* Stringer's widow will receive \$750 a week for the next thirty years from the workers' compensation fund. *Id.* She will also receive the benefits of Stringer's life insurance, annuities, and 401(k) plan, as well as his entire salary for his last season, which was contracted for under the National Football League's (NFL's) Collective Bargaining Agreement ("CBA"). *Id.*

18. *Id.*

19. 602 P.2d 895 (Colo. Ct. App. 1979).

20. *Id.* at 896.

21. *Id.*

the Colorado Workmen's Compensation Act.²² The issues on appeal were whether the arbitration clause of the player's agreement was enforceable against the plaintiff and whether the trial court had properly interpreted the workers' compensation statute.²³

The court rejected the plaintiff's claim that the arbitration clause was unconscionable, noting the law's preference for arbitration when it is provided for in collective bargaining agreements,²⁴ and discussing the fact that there was no "serious disparity of bargaining power" between the players' association and the League's member clubs during the bargaining over the standard player contract.²⁵ The plaintiff was "bound by his union's decision."²⁶ The appeals court thus affirmed the lower court's judgment regarding the enforceability of the arbitration clause.²⁷

Next the court analyzed the plaintiff's claims regarding the state's workers' compensation act.²⁸ In assessing the Colorado statute, the court concluded that the act's scope included both the intentional torts of co-employees and the negligence of the employer.²⁹ The appellate court affirmed the judgment of the lower court, holding that the plaintiff's exclusive remedy was provided for under the Workmen's Compensation Act.³⁰

The rationale of the *Ellis* case also extends to professional baseball. In *Bayless v. Philadelphia National League Club*,³¹ the plaintiff, a professional baseball player, sued his team for allegedly providing negligent medical care.³² The court noted that under the relevant state workers'

22. *Id.*

23. *Ellis*, 602 P.2d at 896.

24. *Id.* at 897 (citing *United Steel Workers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960)).

25. *Id.* at 897.

26. *Id.* For a discussion of disability benefits provided to NFL players, see *Courson v. Bert Bell NFL Player Retirement Plan*, 214 F.3d 136 (3d Cir. 2000).

27. *Ellis*, 602 P.2d at 897.

28. *Id.* at 897-98.

29. *Id.* at 898. The intentional tort alleged was intentional infliction of emotional distress and outrageous conduct. *Id.* In Colorado the workers' compensation statute provides for exclusive remedies against employers complying with its provisions; all other common-law and statutory actions for deaths and injuries arising out of the course of employment were abolished. *Id.*, citing *Packaging Corp. of America v. Roberts*, 455 P.2d 652, 654 (Colo. 1969); see also the current statute, COLO. REV. STAT. § 8-41-102 (2002). As to intentional acts committed by employees, respondeat superior liability (whether covered under the workers' compensation act or not) will attach if such acts occur during the "course of employment"; if they have "no real connection" with the employer's business and are "purely personal," the employer is not liable (but the tortfeasor employees may be). *Packaging Corp. of America*, 455 P.2d at 655, citing *T. SHEARMAN & A. REDFIELD, LAW OF NEGLIGENCE* § 158 (1941, Supp. 1969).

30. *Id.*

31. 472 F. Supp. 625 (E.D. Pa. 1979).

32. *Id.* at 627.

compensation act, "an employee's common law right to damages for injuries suffered in the course of his employment . . . is completely surrendered in exchange for the exclusive statutory right of the employee to compensation for all such injuries."³³ The court dismissed the plaintiff's action, holding that his exclusive remedy was to be had under the state workers' compensation act.³⁴ Courts have also noted that where there is an intentional-injury exception to the exclusive remedy of state workers' compensation, it is 'very narrow.'³⁵ Thus, it appears that except for a limited range of intentional torts, a coach's liability for the injury or death of a player is precluded by state workers' compensation laws, where applicable, and arbitration clauses under collective bargaining agreements.³⁶

III. LIABILITY OF COLLEGIATE AND HIGH SCHOOL COACHES

A. Negligence-Based Liability

While professional coaches in major organized sports are shielded by collective bargaining agreements and workers' compensation statutes, coaches at the high school and college levels do not enjoy the same level of protection. Most suits against these coaches for sports related injuries are predicated upon the theory of negligence.³⁷ As in all cases, the plaintiff must prove (1) that the defendant owed a duty to conform to a standard of conduct established by law for the protection of the plaintiff, (2) that the defendant breached that duty; (3) that the defendant's breach was the legal cause of the plaintiff's injury; and (4) that the plaintiff suffered compensable injury.³⁸ Generally, coaches have a duty to exercise reasonable

33. *Id.* at 628.

34. *Id.* at 631. In the absence of statutory or contractual limitations, courts in general "correctly presume" that professional athletes are protected by workers' compensation programs. Cormac & Fairman, *supra* note 13, at 104-05. See, e.g., Brinkman v. Buffalo Bills Football Club, 433 F. Supp. 699 (W.D.N.Y. 1977) (professional football player's sole remedy for negligent medical treatment was under the workers' compensation statute). As to the interpretation of "intentional tort" in the workers' compensation context, see LARSON, *supra* note 14.

35. DePiano v. Montreal Baseball Club, Ltd., 663 F. Supp. 116, 117 (W.D. Pa. 1987).

36. *But see* In re Anaheim Angels Baseball Club, Inc., 993 S.W.2d 875 (Tex. Ct. App. 1999) (club's failure to provide competent medical care to minor league player was not subject to arbitration under the parties' contract); Hendy v. San Diego Chargers Football Co., 925 F.2d 1470 (9th Cir. 1991) (state law tort claims for negligent hiring of team physician, and for misrepresenting player's fitness to play, arose solely under state law and independently of the collective bargaining agreement, and thus were not subject to arbitration).

37. Jack E. Karns, *Negligence and Secondary School Sports Injuries in North Dakota: Who Bears the Legal Liability?* 62 N.D.L. REV. 455, 460 (1986).

38. RESTATEMENT (SECOND) OF TORTS § 281 (1965); see also PROSSER AND KEETON ON THE LAW OF TORTS § 30 at 164-65 (5th ed. 1984).

care to prevent foreseeable risks of harm to others.³⁹ Prevailing case law has imposed numerous duties on coaches, including the duty of supervision, proper training, providing adequate medical care, and the warning of latent dangers.⁴⁰

1. Difficulty in Establishing the Applicable Standard of Care

As these principles are fleshed out by state courts around the country, the holdings suggest that the determination of a coach's duty in a given circumstance requires a fact-intensive analysis. In fact, the coach's standard of care owed to the athlete is often the most difficult element for the plaintiff to establish. The Nebraska Supreme Court recently addressed the issue of the standard of care that a coach owes a player in *Cerny v. Cedar Bluffs Junior/Senior Public School*.⁴¹ In *Cerny*, the plaintiff, a high school football player, suffered successive head injuries in a game and in practice the following week.⁴² The plaintiff sued his school and his coach, claiming that they had negligently permitted him to keep playing despite evidence of the two closed-head injuries.⁴³ The lower court held that the school district and coaches were not liable and the plaintiff appealed.⁴⁴ The issue before the Nebraska Supreme Court was the proper standard of care that the coaches and school owed the plaintiff regarding his head injuries and continued participation on the team.⁴⁵

The court noted that the analysis of negligence in a sports setting is highly dependent on the particular facts and circumstances.⁴⁶ The court found that the plaintiff's coaches had Nebraska teaching certificates with coaching endorsements, which required training in first aid instruction and familiarization with the symptoms of closed-head injuries.⁴⁷ Accordingly, the coaches owed the plaintiff the standard of care of "the reasonably pru-

39. McCaskey and Biedzynski, *A Guide to the Legal Liability of Coaches for a Sports Participant's Injuries*, 6 SETON HALL J. SPORT L. 7, 14 (1996).

40. *Id.* at 15. Other duties include preventing injured athletes from competing, ensuring the proper use of safe equipment, and matching athletes of similar competitive levels. *Id.* See also *Leahy v. School Board of Hernando County*, 450 So.2d 883, 885 (Fla. Dist. Ct. App. 1984) (citing Allan E. Korpela, Annotation, *Tort Liability of Public Schools and Institutions of Higher Learning for Accidents Occurring During School Athletic Events*, 35 A.L.R. 3d 725, 734 (1971) for the same proposition).

41. 628 N.W.2d 697 (Neb. 2001).

42. *Id.* at 700.

43. *Id.* at 700-01.

44. *Id.* at 700.

45. *Cerny*, 628 N.W.2d at 703.

46. *Id.* at 704. "[N]egligence and the duty to use care do not exist in the abstract, but must be measured against a particular set of facts and circumstances." *Id.*

47. *Id.* at 705-06.

dent person holding a Nebraska teaching certificate with a coaching endorsement."⁴⁸ The court found that the lower court had applied an improper standard of care based on regional requirements, instead of the requirements of the state.⁴⁹ Because the lower court applied the improper standard, the court reversed and remanded the case for a determination under the correct standard.⁵⁰

2. The Coach's Duty to Protect Players From Foreseeable Risks

Even if the plaintiff can demonstrate the standard of care to be followed by the defendant coach, he may still have difficulty proving the other elements of negligence. In *Prejean v. East Baton Rouge Parish School Board*,⁵¹ plaintiff was the mother of an elementary school basketball player, Harvey, who suffered a severe injury when a fellow player fell on him after being accidentally bumped by a coach during a drill.⁵² The coach, a twenty-seven-year-old male, had participated in a scrimmage with his elementary school-aged players.⁵³ As Harvey, one other player, and the coach all ran for a loose ball during the drill, the coach bumped into the other player, who fell on Harvey's leg, fracturing it.⁵⁴ The plaintiff sued the school and the volunteer coaches.⁵⁵ The trial court found that by participating in the scrimmage and by attempting to recover the loose ball in the way he had, the coach had breached his duty to protect Harvey from foreseeable harm.⁵⁶

The appellate court reversed.⁵⁷ The court held that the coach's participation in the scrimmage, and his attempt to recover the loose ball, had not created a risk of injury greater than that generally presented in playing basketball, and Harvey's injury, the result of an "unfortunate accident," was thus not foreseeable as a result of the coach's conduct in practicing with the team or in attempting to retrieve the ball.⁵⁸ Therefore the coach

48. *Id.* at 706.

49. *Cerny*, 628 N.W.2d at 706. The district court stated that it would not hold a coach to the level of diagnostic capability of a medical care provider, but rather to that of a coach untrained in medical affairs, which the district court said would be applicable to "communities similar to" the town where this case arose. *Id.* at 705.

50. *Id.*

51. 729 So. 2d 686 (La. Ct. App. 1999).

52. *Id.*

53. *Id.* at 687.

54. *Id.*

55. *Prejean*, 729 So. 2d at 686.

56. *Id.* at 689.

57. *Id.*

58. *Id.*

had not breached his duty "to supervise his players in a reasonable manner and to protect the players from foreseeable harm."⁵⁹

3. Although Difficult, a Coach's Negligence May Be Established

Although it is a formidable burden to establish the elements of negligence, it is not impossible. Courts have found coaches negligent for failing to properly supervise and instruct athletes, as in *Moose v. Massachusetts Institute of Technology*,⁶⁰ and for failing to provide proper medical care to an injured player, as in *Mogabgab v. Orleans Parish School Board*.⁶¹ In *Moose*, the plaintiff was a pole vaulter on his college track and field team.⁶² Under the supervision of his two coaches, the plaintiff suffered a fractured skull after executing a pole vault maneuver in practice.⁶³ He sued the coaches and school, claiming that the coaches negligently supervised his pole vault and provided him faulty equipment.⁶⁴ He obtained a jury award and the defendants appealed the verdicts.⁶⁵ On appeal, one issue was the foreseeability of the plaintiff's injury.⁶⁶

The appeals court affirmed the lower court's judgments, holding that the evidence before the jury was sufficient for it to find that the risk of injury to the plaintiff was reasonably foreseeable by the defendants.⁶⁷ First, the coaches were aware that numerous vaulters had bounced off of the landing pit because it was too short.⁶⁸ Additionally, the coaches failed to place additional padding around the pit on the day of the accident, although this safety measure was available and they had done so in the past.⁶⁹ Furthermore, the supervising coach had the plaintiff perform with a training pole, which was too light to support his weight.⁷⁰ Then, after at least one vault, the coach saw that the plaintiff's overpenetration on landing indicated that he should either "use a heavier pole, raise his grip, or shorten his approach run," but the coach did not warn the plaintiff to make

59. *Prejean*, 729 So. 2d at 689.

60. 683 N.E.2d 706 (Mass. App. Ct. 1997).

61. 239 So.2d 456 (La. Ct. App. 1970).

62. *Moose*, 683 N.E.2d at 709.

63. *Id.* at 709-10.

64. *Id.* at 708.

65. *Id.*

66. *Moose*, 683 N.E.2d at 710.

67. *Id.* at 710-11.

68. *Id.* at 709. The landing pit met the NCAA-mandated minimum, but was shorter than the recommended length. *Id.* A budgeting crisis at the school had prevented the coaches from being able to buy new equipment. *Id.*

69. *Id.*

70. *Moose*, 68 N.E.2d at 709.

any of these adjustments before the fateful vault.⁷¹ On these facts, the court found that the plaintiff's risk of injury was reasonably foreseeable, and affirmed the lower court's denial of defendants' post-trial motions, upholding the jury verdicts finding the coaches liable for the plaintiff's injuries.⁷² *Moose* demonstrates that college coaches, to be sure of meeting the standard of care to their athletes, must provide them with proper equipment and appropriately supervise them.⁷³ Further, a coach's awareness of a potential risk may help to establish that the harm from that particular risk was foreseeable.

Mogabgab is similar to the circumstances surrounding the deaths of the Rashidi Wheeler at Northwestern University and Eraste Autin at the University Florida. In *Mogabgab*, the parents of a high school football player who died of heat stroke suffered during a practice brought a wrongful death action against the school board and the coaches for having delayed medical treatment.⁷⁴ The lower court dismissed the suit, apparently because it was not satisfied that the delay in treatment caused Robert's death.⁷⁵ On the plaintiffs' appeal, the appellate court reversed the dismissal as to the school board and the coaches.⁷⁶

In its ruling, the appeals court recited the coaches' failure to summon medical aid for an unreasonable amount of time after the student, Robert Mogabgab, staggered and became faint at practice.⁷⁷ At 5:20 p.m. Robert collapsed during "wind sprints," and teammates helped him onto the school bus, which took him back to the school, arriving there at about 5:40 p.m.⁷⁸ Robert vomited several times and showed other serious symptoms of heat exhaustion, and the coaches vainly tried several methods of treatment before finally calling Robert's mother at around 6:30 p.m.⁷⁹ The mother called a doctor, who arrived at the school at around 7:15 p.m., and

71. *Id.* at 710.

72. *Id.* at 711, 713.

73. The coach's duty, while substantial, is not absolute. *See, e.g.,* Herring v. Bossier Parish Sch. Bd., 632 So. 2d 920 (La. Ct. App. 1994) (finding that a baseball coach satisfied his supervisory duties by implementing proper procedures and routines for the conduct of practice). *See generally* McCaskey and Biedzynski, *supra* note 42, at 23 (discussing the limits of a coach's supervisory obligation).

74. *Mogabgab*, 239 So. 2d at 457.

75. *Id.* at 460.

76. *Id.* at 461.

77. *Id.* at 458-59.

78. *Mogabgab*, 239 So. 2d at 458-59.

79. *Id.* at 459. Witnesses stated that the player had vomited several times, his skin was clammy and bluish-gray, and he was unresponsive. One coach attempted to revive the player with an ammonia capsule. The head coach remained in his office for almost the entire period that the player was stricken in the cafeteria. *Id.*

had Robert taken to the hospital.⁸⁰ Thus Robert did not receive proper treatment for heat stroke until a doctor sent him to a hospital, about two hours after he collapsed at practice; he died at the hospital some hours later.⁸¹

As to the causation issue that had led to the lower court's dismissal of the complaint, the appellate court then recited the expert medical evidence, which showed that heat damage to the body is progressive, and that at some point in the process it becomes irreversible, so that the sooner treatment is given, the greater the patient's chances of survival are.⁸² Thus, it was plain to the court that the coaches had been negligent in delaying medical aid, and further, the plaintiffs had carried their burden of showing causation, since they had shown it was more likely than not that Robert would have survived if he had been given "reasonably prompt" medical treatment.⁸³ The court reversed the judgment as to the school board and coaches, and awarded damages to the parents.⁸⁴

Prejean, *Moose* and *Mogabgab* provide the outlines of a general rule regarding coaches' liability: Coaches must be aware of preventable risks to their athletes and they must take measures to properly supervise and care for their players. As suggested previously, plaintiffs shoulder a formidable burden in establishing a coach's negligence in relation to these duties. *Prejean* indicates that the coach's duty to players is not absolute. *Moose* and *Mogabgab* are examples of coaches' serious inattention, ignorance, and indifference to a player's well-being. It appears that a showing short of such serious misconduct will probably not sustain a plaintiff's suit for a coach's negligence.

B. Possible Defenses to an Injured Player's Negligence Claim

The preceding sections of this article have addressed the plaintiff's efforts to establish a prima facie case of negligence. In addition to the obstacles described therein, a plaintiff must also overcome several powerful defenses that a coach may employ. Assumption of risk and qualified immunity are two of the most prominent defenses.

80. *Id.* at 459-60.

81. *Id.* at 458-59.

82. *Id.*

83. *Id.* at 460-61. It was not necessary for the plaintiffs to prove to a certainty that Robert would have lived if he had seen a doctor sooner; causation, said the court, like other facts in a civil case, requires only proof by a preponderance of evidence. *Id.* at 460.

84. *Id.* at 461.

1. Assumption of Risk

The Restatement of Torts defines the doctrine of assumption of risk: "A plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm."⁸⁵ Assumption of risk can be express, as where the plaintiff gives her express consent to relieve the defendant of an obligation to exercise care for her protection, and agrees to take her chances as to injury from a known or possible risk.⁸⁶ Assumption of risk can also be implied, as where the plaintiff voluntarily enters into some relation with the defendant which he knows to involve the risk, and is therefore regarded as tacitly or impliedly agreeing to relieve the defendant of responsibility, and to take her own chances.⁸⁷

The "primary" sense of implied assumption of risk is that of a plaintiff who voluntarily enters a relationship with the defendant, knowing of risk involved, and who behaves reasonably in assuming it.⁸⁸ An example is that of a spectator entering a baseball park. By his attendance, he impliedly assumes the risk of injury such that the players are not obligated to take special precautions to protect him.⁸⁹ This type of implied assumption of risk is another way of stating that the defendant owes no duty to a plaintiff.⁹⁰ The "secondary" sense of implied assumption of risk describes a plaintiff's voluntary and unreasonable encountering of risk presented by a defendant's negligence.⁹¹ Thus a coach faced with a player's negligence action will often assert that the plaintiff impliedly assumed the risks inherent in the sport.

85. RESTATEMENT (SECOND) OF TORTS § 496A (1965). Stated in the more traditional way: "Volenti non fit injuria," or no wrong is done to one who consents. *Id.* at cmt. b. A subjective standard is usually employed to determine whether the plaintiff assumed the risk. "The standard is judged by what a particular plaintiff sees, understands and appreciates." J. Barton Goplerud, *Liability of Schools and Coaches: The Current Status of Sovereign Immunity and Assumption of the Risk*, 39 *DRAKE L. REV.* 759, 769 (1989).

86. RESTATEMENT (SECOND) OF TORTS § 496B (1965).

87. *Id.* § 496C.

88. See, e.g., *Larsen v. Pacesetter Sys.*, 837 P.2d 1273, 1290 (Haw. 1992).

89. *Id.* at 1291, citing RESTATEMENT (SECOND) OF TORTS § 496A cmt. c; *Ordway v. Superior Court*, 198 Cal. App.3d 98, 105 (1988).

90. *Larsen*, 837 P.2d at 1290.

91. *Id.* at 1291, citing *Meistrich v. Casino Arena Attractions*, 155 A.2d 90, 93 (1959); RESTATEMENT (SECOND) OF TORTS § 496A cmt. c (1965). In many jurisdictions the plaintiff's primary, or reasonable, assumption of a risk is a complete defense to a claim of negligence, while secondary, or unreasonable, assumption of risk has merged with comparative negligence to reduce a plaintiff's recovery, for example in products liability cases. *Larsen*, 837 P.2d at 1292; *Knight v. Jewett*, 834 P.2d 696, 706-711 (Cal. 1992).

a. *Implied Assumption of Risk and the Inherent Risk of the Activity*

The primary assumption of risk defense proved successful in the recent case of *Foronda v. Hawaii International Boxing Club*.⁹² In *Foronda*, plaintiffs were the parents of an amateur boxer who died after sparring under the supervision of his coach.⁹³ During the match, the boxer received a blow that caused him to sit on and lean against the ropes surrounding the ring.⁹⁴ He slipped through the ropes and fell to the floor, striking his head.⁹⁵ Despite protective headgear, he suffered a severe traumatic intracranial injury, and died three days later.⁹⁶ The plaintiffs sued the owner and operator of the boxing ring, claiming negligent construction and maintenance of the ring and negligent supervision.⁹⁷ The lower court granted the defendants' summary judgment motion, holding that the deceased had assumed the risk inherent in the sport of boxing.⁹⁸ The appellate court affirmed.⁹⁹

The court emphasized the importance of the doctrine of primary implied assumption of risk in the sports context,¹⁰⁰ and held that it is a complete defense where the defendant's conduct is an inherent risk of the sports activity.¹⁰¹ To assess the inherent risk, the court said, it should consider "the nature of the activity, the relationship of the defendant to the activity and the relationship of the defendant to the plaintiff."¹⁰² With respect to boxing, said the court, the inherent risks are extreme, since the participants aim at injuring their opponents in ways that in any other context would be criminal;¹⁰³ "[b]oxing is a savage sport, with inherent perils commensurate with its nature."¹⁰⁴ Furthermore, the court noted that the deceased boxer in this case was an experienced amateur, who had signed

92. 25 P.3d 826 (Haw. Ct. App. 2001).

93. *Id.* at 828-30.

94. *Id.* at 829.

95. *Id.*

96. *Foronda*, 25 P.3d at 830.

97. *Id.*

98. *Id.* at 828.

99. *Id.*

100. *Foronda*, 25 P.3d at 838. "The policy underlying [the primary assumption of risk defense in the sports context] is 'the belief that the law should not place unreasonable burdens on the free and vigorous participation in sports.'" *Id.*, quoting *Turcotte v. Fell*, 502 N.E.2d 964, 968 (N.Y. 1986).

101. *Id.* at 841. It is not an affirmative defense to be proved by the defendant, but rather an "alternate expression for the proposition that the defendant was not negligent." *Id.*, quoting *Meistrich*, 155 A.2d at 93.

102. *Id.* at 841.

103. *Id.*

104. *Foronda*, 25 P.3d at 845.

three waivers of liability during his career¹⁰⁵ and was well aware of the inherent risks of “being hit hard in the stomach, suffering head injury from punches, hitting his head on the padded canvas, leaning against the ropes for some time without help from his coach or trainer, and falling backward through a properly built ring and thereby suffering injury.”¹⁰⁶ In affirming the lower court’s judgment, the court held that the deceased “assumed the risk that coaching and supervision cannot guarantee against injury while boxing.”¹⁰⁷ Therefore primary implied assumption of risk provided a complete defense to the plaintiffs’ claims.¹⁰⁸

Balthazor v. Little League Baseball, Inc.,¹⁰⁹ also addressed the primary implied assumption of risk in relation to an eleven-year old baseball player. When the player was struck in the face by a wild pitch in a Little League game, he and his mother sued the league and claimed that it had “breached its duty not to increase the risks inherent in baseball.”¹¹⁰ The trial court granted summary judgment to the league, concluding that recovery was barred by primary implied assumption of risk.¹¹¹ The appellate court affirmed.¹¹²

As in *Foronda*, the appellate court stated that to determine whether a defendant in a sports case has increased the risks to a participant beyond those inherent in the sport, a court must examine “the nature of the activity or sport in which the defendant is engaged and the relationship of the defendant and the plaintiff to that activity or sport.”¹¹³ Since the Little League had supervisory control over the young player, the court looked at

105. *Id.* at 831-32. The lower court did not consider these waivers as valid contractual releases or waivers but rather as evidence of the implied assumption of the risk by the deceased. The appellate court implicitly agreed with that analysis. *Id.* at 841 n.2.

106. *Id.* at 842. Plaintiffs conceded that the deceased had assumed the risk of boxing, but they attempted to argue that he had not assumed the risk of a hazardous condition in the ring, i.e., that the ring ropes were too loose. *Id.* The appellate court agreed with the lower court that there were no facts in the case to show that the owner-operator of the ring and the coaches had done anything to increase the risks beyond those that inherent in the sport. *Id.* at 843-45.

107. *Id.* at 845.

108. *Foronda*, 25 P.3d at 845.

109. 62 Cal. App. 4th 47 (Cal. Ct. App. 1998).

110. *Id.* at 48, 51. Specifically, plaintiffs claimed that the league had failed to provide adequate lighting for the game played at dusk, failed to remove the pitcher after he had struck two earlier batters with wild pitches, and failed to provide helmets with faceguards. *Id.* at 51-52. Plaintiffs attempted to apply the doctrine of secondary implied assumption of risk. *Id.* at 48.

111. *Id.* at 49.

112. *Id.* at 53.

113. *Balthazor*, 62 Cal. App. 4th at 50, quoting *Knight v. Jewett*, 834 P.2d 696 (Cal. 1992). In *Knight* the court said that it was “improper to hold a sports participant liable to a coparticipant for ordinary careless conduct committed during the sport – for example, for an injury resulting from a carelessly thrown ball or bat during a baseball game.” *Knight*, 834 P.2d at 706.

cases involving instructors rather than those involving coparticipants.¹¹⁴ Only in cases where an instructor is found to have acted “so as to increase the risk of harm inherent in a particular sport” is that instructor deprived of the defense of primary assumption of risk.¹¹⁵ The court held that the Little League had not increased the normal risks of baseball, either by failing to end the game as sunset approached (since changes in lighting conditions are inherent in baseball), or by failing to remove the “wild pitcher” from the game, since to require accuracy of a pitcher would “alter the fundamental nature of the game and most certainly chill vigorous participation.”¹¹⁶ Finally, the League had no duty to reduce the risk of injury by providing helmets with faceguards, since a defendant in such a case has no duty to decrease the risks inherent in baseball.¹¹⁷

b. Implied Assumption of Risk and the Plaintiff's Knowledge or Experience

While *Foranda* and *Balthazor* based the assumption of risk on the inherent danger of the sport, other cases emphasized the plaintiff's knowledge or experience. In *Vendrell v. School District No. 26C*,¹¹⁸ the Oregon Supreme Court absolved a school district from liability because of the plaintiff's prior experience in the sport. In *Vendrell*, the plaintiff was a high school football player who sued his school district for neck injuries he sustained when he was tackled in a football game.¹¹⁹ He received a substantial judgment in lower court and the school district appealed.¹²⁰ On appeal, the issue was whether the plaintiff's injury resulted from a failure by the coach to provide adequate instruction and supervision.¹²¹

The appellate court reversed the judgment. Despite the plaintiff's youth,¹²² the court said he had “undergone extensive training, practice and

114. *Balthazor*, 62 Cal. App. 4th at 50.

115. *Id.* at 51, quoting *Fortier v. Los Rios Cmty. Coll. Dist.*, 45 Cal. App. 4th 430, 436 (Cal. Ct. App. 1996). For example, the court cited *Galardi v. Seahorse Riding Club*, 16 Cal. App. 4th 817, 819 (Cal. Ct. App. 1993) (no primary assumption of risk defense was available where a riding instructor directed his student to “jump his horse over fences that were unreasonably and unnecessarily high for the circumstances”).

116. *Id.* at 51-52. *Balthazor*'s injury was “simply a result of an inherent risk in the sport.” *Id.* at 52.

117. *Id.*

118. 376 P.2d 406 (Or. 1962).

119. *Id.* at 408, 409. The plaintiff, alleging acts of negligence by his coaches, apparently sued the school district only, based on the doctrine of respondeat superior. *Id.* at 408.

120. *Id.* at 407.

121. *Id.* at 408-09.

122. At the time of the injury the plaintiff was fifteen years old. *Vendrell*, 376 P.2d at 409.

play under competent instruction and supervision.¹²³ The coaches employed by the defendant school district had supplied the athletes with the proper protective equipment and provided adequate instruction regarding the use of the equipment in the sport.¹²⁴ The coaches, said the court, “had the right to assume that [the plaintiff] possessed the intelligence and stock of information of a normal young man . . . and that he knew of the possibility of injury” involved in the violent sport of football.¹²⁵ The court concluded that the plaintiff, based on his extensive participation and experience in the sport, assumed the ‘obvious’ risk attendant upon being tackled.¹²⁶ Accordingly, the court held that the judgment in favor of the plaintiff should be reversed.¹²⁷

Thus, in considering whether a plaintiff impliedly assumed the risk, the courts may make a largely subjective inquiry or a largely objective one. In *Foronda* and *Balthazor*, the courts analyzed the plaintiff’s implied assumption of risk based largely on an objective standard arising from the obvious risks of the sports involved—boxing is obviously an inherently risky sport; a baseball player may obviously be struck by a wild pitch.¹²⁸ On the other hand, the court in *Vendrell* conducted a partially subjective inquiry, based on the plaintiff’s experience in the sport and his awareness of the risks involved in playing it. Under that analysis, the more experience the plaintiff has in the sport, the more likely it is that he made an informed judgment regarding the inherent risks. The stakes are high in this determination, since primary implied assumption of risk completely bars a

123. *Id.* at 410. The plaintiff had participated for two years at the junior high school level. *Id.* He had undergone physical examinations and practiced football eight hours a week. *Id.* at 409. The training included substantial calisthenics and conditioning, with particular exercises to strengthen the neck and instruction in the proper positioning of the head and neck during contact. *Id.* at 410.

124. *Id.* at 411-13.

125. *Id.* at 414.

126. *Vendrell*, 476 P.2d at 414. The court cited PROSSER ON TORTS and the American Legal Reporter for the proposition that a participant in a lawful contest assumes the inherent risk in the game and is barred from recovery for injury therefrom. “The timorous may stay at home.” *Id.*

127. *Vendrell*, 476 P.2d at 414. *See also* *Hale v. Davies*, 70 S.E.2d 923, 925 (Ga. Ct. App. 1952) (high school football coach was not liable for the injuries of a player, where the player was a sixteen-year-old normal boy of “average intelligence” who assumed the risk of being injured while engaging in the practice or play of football). The skill and experience of an injured high school football player was also part of the assessment of his assumption of risk in *Benitez v. N.Y. City Board of Education*, 543 N.Y.S. 2d 29, 33 (N.Y. 1989).

128. The court in *Foronda* made the importance of the objective standard explicit: “What the particular plaintiff knew or did not know about the risks of the sport cannot be controlling. The very concept of inherent risk implies indwelling risk independent of the participant’s subjective knowledge or perception of it. . . . The inquiry is an objective one, and must be, for the vagaries of prior knowledge or perception of risk would undermine the doctrine’s underlying policy, that ‘the law should not place unreasonable burdens on the free and vigorous participation in sports.’” *Foronda*, 25 P.3d at 842.

plaintiff's claim.¹²⁹

2. Qualified Immunity

A coach who is employed by a public entity may also seek to avoid liability by invoking qualified immunity, a protection for government employees that derives from the doctrine of sovereign immunity. At common law sovereign immunity precludes suits against the government without its consent, but it has been limited and waived at least partially by state and federal statutes. Likewise under the common law, qualified immunity has generally protected public employees from personal liability for damages arising from their "discretionary" acts, as opposed to "ministerial functions," taken in good faith within the scope of their authority.¹³⁰ Traditionally, therefore, one question for a court to answer in determining whether a governmental employee is shielded from suit by qualified immunity is whether the act or omission complained of can be said to be "discretionary." That was the crux of the appeal in *Gasper v. Freidel*.¹³¹

In *Gasper*, the plaintiff was a football player at a public high school who was injured in off-season conditioning drills.¹³² Gasper sued his coaches, the school superintendent, and the school board, asserting that the defendants maintained "an unauthorized and unlawful conditioning pro-

129. The defense of comparative negligence may also be used in addition to that of assumption of risk. However, in the school context, "assumption of risk appears to be the more prominent [defense], if not the more successful." McCaskey and Biedzynski, *supra* note 43, at n.232, quoting Eugene C. Bjorklun, *Assumption of Risk and Its Effect on School Liability for Athletic Injuries*, 55 EDUC. L.REP. 349, 350 (1989).

130. RESTATEMENT (SECOND) OF TORTS § 895D cmts. d, f (1979). Some statutes, in providing for a partial waiver of sovereign immunity, and for protection of its employees from personal liability, abolish the distinction between "discretionary" and "ministerial" functions. For example, the Florida statute providing for a limited recovery from the state for torts committed by state officers includes a provision precluding personal liability of state officers and employees for injuries or damage suffered as a result of acts taken in the scope of employment, except for those taken "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." FLA. STAT. ANN. §768.28(9)(a) (West 2000). All other claims are to be brought directly against the relevant state entity. *Id.* The view that qualified immunity should apply to all state employees, regardless of the nature of the duties involved in the complained-of acts or omissions, "is based upon the difficulties courts encounter in making so-called arbitrary distinctions between discretionary and ministerial functions, and upon the premise that it is unfair to withhold official privilege from any governmental employee whose actions were taken reasonably and in good faith." Kathryn Dix Sowle, *Qualified Immunity in Section 1983 Cases: The Unresolved Issues of the Conditions for its Use and the Burden of Persuasion*, 55 TUL. L. REV. 326, 355 (1981), citing W. PROSSER, HANDBOOK OF THE LAW OF TORTS 1990-91 (4th ed. 1971). The Restatement notes that as to what is a discretionary function, "[t]he cases are legion and are in wide disarray...." RESTATEMENT (SECOND) OF TORTS § 895D cmt. d (1979).

131. 450 N.W.2d 226 (S.D. 1990).

132. *Id.* at 228.

gram without proper supervision” on school grounds.¹³³ The lower court granted the defendants’ summary judgment motions based on the doctrine of sovereign immunity,¹³⁴ which, at the time of the accident, extended broadly to protect school districts and their officers “if they did not act in excess of their lawful authority or commit intentional torts.”¹³⁵ The issue before the South Dakota Supreme Court was whether sovereign immunity shielded the coaches from liability when a student is injured in a summer weight-conditioning program;¹³⁶ under South Dakota law the resolution of that issue turned on whether the coaches’ conduct in relation to that program (1) was within the scope of their employment; (2) was grossly negligent; and (3) involved a “discretionary” or “ministerial” function.¹³⁷

The court held that the summer conditioning program, being part of the coaches’ twelve-month contract, was conducted within the scope of their employment, and that the coaches’ supervision of the program was not grossly negligent.¹³⁸ As to whether the actions taken by the coaches in carrying out the program were discretionary or ministerial, the court looked at factors laid out in the Second Restatement of Torts.¹³⁹ The court concluded that the imposition of liability on the coaches in these circumstances would “impair the free exercise of discretion” in the carrying out of a coach’s duties, in this case the “important function of conditioning student/athletes for all sports.”¹⁴⁰ “No person will want to be a coach if his

133. *Id.* The plaintiff admitted that he had been instructed in the proper use of the weight-lifting equipment, including the necessity of requesting spotters when lifting heavy weights, but that he had ignored instructions and lifted 335 pounds from the squat rack without spotters, warm-up, or a properly fitting weight belt. *Id.*

134. *Id.*

135. *Gasper*, 450 N.W.2d at 229. Some time after the *Gasper* accident, the South Dakota Legislature passed a statute providing for waiver of sovereign immunity by school districts if they bought liability insurance. *Id.* at 229 n.*.

136. *Id.* at 229.

137. *Id.* at 231. “Generally, discretionary acts require the exercise of judgment, whereas ministerial acts involve the implementation of the judgment decisions of others.” *Id.* at 234 (Sabers, J., concurring).

138. *Id.*

139. The court summarized the Restatement factors as follows:

The nature and importance of the function that the officer is performing. . . .

The extent to which passing judgment on the exercise of discretion by the officer will amount necessarily to passing judgment by the court on the conduct of a coordinate branch of government. . . .

The extent to which the ultimate financial responsibility will fall on the officer. . . .

The likelihood that harm will result to members of the public if the action is taken. . . .

The nature and seriousness of the type of harm that may be produced. . . .

The availability to the injured party of other remedies and other forms of relief.

Gasper, 450 N.W.2d at 230, quoting RESTATEMENT (SECOND) OF TORTS § 895D cmt. f (1979).

140. *Gasper*, 450 N.W.2d at 232.

or her judgment in supervising athletic training is continually open to lawsuits."¹⁴¹ Furthermore, the court did not want to be in the position of having to decide whether "the string of athletic injuries that occur every year are the result of coaching negligence."¹⁴² Thus the court decided that the coaches were entitled to summary judgment under the discretionary function test for sovereign immunity.¹⁴³

The Alabama Supreme Court applied a similar analysis in *Lennon v. Petersen*.¹⁴⁴ The plaintiff in *Lennon*, a recipient of a soccer scholarship at the University of Alabama, experienced pain in the hip and groin area while practicing at the beginning of his first season.¹⁴⁵ The athletic trainer treated him for groin strain, but the pain persisted, and when the plaintiff went home in mid-November and sought medical treatment, he was diagnosed and treated for avascular necrosis.¹⁴⁶ The plaintiff sued his coach and athletic trainer for negligence, arguing that they were not entitled to discretionary immunity for their allegedly negligent treatment of his condition, since they had exceeded their authority under the law – the coach because he had "discouraged players from seeking treatment for their injuries," and the athletic trainer because she had treated him for injury without a license to practice medicine.¹⁴⁷

The Alabama Supreme Court, like the South Dakota Supreme Court in *Gasper*, looked to the Restatement of Torts to define the extent of immunity of public employees: "A public officer acting within the general scope of his authority is not subject to tort liability for an administrative act or omission if ... he is immune because engaged in the exercise of a discretionary function."¹⁴⁸ The court noted that since "discretionary function" is not expressly defined, the Restatement factors are used for making a determination.¹⁴⁹ "A discretionary function does not include ministerial tasks like the mere filling out of a form, nor does it include acts made 'fraudulently, in bad faith, beyond [the actor's] authority, or ... under a mistaken interpretation of the law.'¹⁵⁰ Furthermore, the court said, discretionary functions involve "personal deliberation," "difficult decision making," and

141. *Id.*

142. *Id.*

143. *Id.*

144. 624 So. 2d 171 (Ala. 1993).

145. *Id.* at 173.

146. *Id.*

147. *Id.*

148. *Lennon*, 624 So. 2d at 173, quoting RESTATEMENT (SECOND) OF TORTS § 395D(3)(a) (1965).

149. *Lennon*, 624 So. 2d at 173; *supra* n. 139.

150. *Lennon*, 624 So. 2d at 173, quoting *Nance v. Matthews*, 622 So. 2d 297 (Ala. 1993).

“the ability of public officers to engage in making a decision by weighing the policies for and against it.”¹⁵¹

The court concluded that both the trainer and the coach had acted within their authority and that the complained-of actions had clearly been discretionary, since they required decision-making and the use of judgment.¹⁵² The coach, entrusted with the authority inherent in his coaching job, among other things “had to make difficult decisions in determining whether a player was injured and should report to the trainer or whether the player was merely faking an injury to avoid practice...”¹⁵³ The trainer, likewise, acting within the authority applicable to athletic trainers at the time of the filing of plaintiff’s complaint, was responsible for determining whether an athlete needed medical attention and when he should be allowed to return to the field.¹⁵⁴ Both jobs required the exercise of judgment and discretion; thus the court held that both the coach and the athletic trainer were entitled to discretionary-function immunity.¹⁵⁵

The Mississippi Supreme Court addressed the issue of qualified immunity in a negligence action for heatstroke injuries against two high school football coaches in *Prince v. Louisville Municipal School District*.¹⁵⁶ Since the case arose before Mississippi arrived at a scheme providing for a limited waiver of sovereign immunity, the court had to decide the immunity issue under the common law, which required a finding of whether the complained-of act involved a discretionary function or a ministerial one.¹⁵⁷ The court quoted from the description of a coach’s duties made by the court in *Lennon*, and said that likewise in the case before it, a coach carrying out his responsibility for supervising the football program and maintaining good order and discipline “must use his discretion in judging whether or not an individual player is injured and then whether the player should report to a trainer or seek other medical aid.”¹⁵⁸ Since the plaintiff had produced no evidence of “disregard for his health or any other outrageous action,” the coaches were protected from personal liability by

151. *Lennon*, 624 So. 2d at 174 (citing cases).

152. *Id.* at 174-75.

153. *Id.*

154. *Id.*

155. *Lennon*, 624 So. 2d at 175.

156. 741 So. 2d 207 (Miss. 1999).

157. *Id.* at 210. In the statutory scheme defining the extent of sovereign immunity and providing for a limited remedy for injuries caused by the state and its employees, the Mississippi Legislature has abrogated the distinction between discretionary and ministerial acts. Public employees are not to be liable for acts done by them within the course and scope of their employment, as long as such acts do not constitute “fraud, malice, libel, slander, defamation or any criminal offense.” MISS. CODE ANN. § 11-46-7 (2002).

158. *Prince*, 741 So. 2d at 212.

qualified immunity.¹⁵⁹

Thus, under the common law coaches acting within the scope of their employment in tasks requiring the exercise of discretion are largely shielded from personal liability by qualified immunity. Furthermore, modern statutes waiving sovereign immunity may provide sweeping immunity from personal liability for public employees, with respect to all but certain narrow categories of outrageous or illegal acts.

3. Volunteer Statutes

Several states have enacted "volunteer statutes" to protect certain persons, such as volunteer Little League and youth soccer coaches, from liability for injuries arising from their simple negligence in connection with their coaching activities. Such statutes are designed to provide varying degrees of tort immunity for volunteers where neither no other immunity for them would be available, such as sovereign immunity or charitable immunity.¹⁶⁰

Most volunteer statutes apply only to coaches or officials who serve as volunteers without compensation in activities benefiting young people, and do not provide immunity for willful or wanton negligence. Some statutes require that in order to enjoy the immunity a coach must undergo approved safety training.¹⁶¹ Others specifically exclude negligence arising from the operation of a motor vehicle.¹⁶² The general trend seems to be toward encouraging participation in volunteer coaching by lessening the risk of incurring liability for mere negligent acts committed during coaching activities.

III. CIVIL RIGHTS VIOLATIONS

Under extreme circumstances an injured athlete playing for a public institution may also pursue a federal civil rights claim against his coach under 42 U.S.C. § 1983.¹⁶³ In *Roventini v. Pasadena Independent School*

159. *Id.*

160. For examples of various approaches to providing immunity for volunteer coaches and other volunteer service providers, *see, e.g.*, COLO.REV. STAT. § 13-21-116 (2002); GA. CODE ANN. § 51-1-41 (2002); 745 ILL. COMP. STAT. ANN. 80/1 (West 2002); IND. CODE ANN. §§ 34-30-19-1 to -4 (West 1999); MASS. GEN. LAWS ch. 231, § 85V (West 2003); N.J. STAT. ANN. § 2A:62A-6 (West 2003); N.M. STAT. ANN. § 41-12-1 (Michie 1996); N.D. Cent. Code § 32-03-46 (2001); 42 PA. CONS. STAT. § 8332.1 (2002); R.I. GEN. LAWS § 9-1-48 (2002).

161. *See, e.g.*, LA. REV. STAT. § 9:2798 (West 2002); N.J. STAT ANN. § 2A:62A-6 (West 2003).

162. *See, e.g.*, R.I. GEN. LAWS § 9-1-48 (2002).

163. 42 U.S.C. §1983 (2001) reads (in part):

Every person who, under color of any statute ... of any State ... subjects any citizen of the

*District*¹⁶⁴ a district court judge discussed the standard for a claim brought under § 1983 that an athlete at a public institution was deprived by his coaches of life without due process of law.¹⁶⁵ The plaintiffs in *Roventini*, parents of a high school student who died of heat stroke after a school football practice, alleged that their son had been subjected to grueling hot-weather exercise by the school's football coaches, who deliberately ignored the player's symptoms of dehydration and failed to seek medical care for him.¹⁶⁶ The plaintiffs sued the school district, the coaches, and other officials under § 1983 for violating their son's "constitutional rights to life, liberty, health, safety, and bodily integrity and to a safe environment protecting him from violations of his rights by state actors."¹⁶⁷

The court noted that such a § 1983 claim must allege egregious misconduct on the part of a coach, since "not every personal hurt by a state officer constitutes a violation of the fourteenth amendment."¹⁶⁸ Under Fifth Circuit and United States Supreme Court precedent, the Fourteenth Amendment is violated when a schoolchild is deprived of his bodily integrity or life by the "callous indifference of public school officials," in this case by being "run to death" by coaches in an overly strenuous practice session and then by being denied water, rest, and medical attention.¹⁶⁹ Thus the court held that allegations of such conduct, which would be "grossly disproportionate" to the demands of coaching a high school football team, stated a claim under § 1983 against all defendants, if such conduct was alleged to be inspired by "deliberate indifference and callous disregard" for the players' constitutional rights.¹⁷⁰

IV. CONCLUSION

A. *Coach Green Is Probably Not Liable for the Death of Corey Stringer*

Coach Dennis Green of the Minnesota Vikings is in the same position as that of the coaches of the professional athletes in *Ellis v. Rocky Moun-*

United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

164. *Roventini*, 981 F.Supp. 1013 (S.D. Tex. 1997).

165. *Id.* at 1017-1023.

166. *Id.* at 1016. The allegations were later withdrawn and the complaint was dismissed. *Roventini v. Pasadena Indep. Sch. Dist.*, 183 F.R.D. 500 (S.D. Tex. 1998).

167. *Roventini*, 981 F. Supp. at 1016.

168. *Id.* at 1020.

169. *Id.* at 1019.

170. *Id.* at 1020. The court let stand the claims against all defendants except those sued only in their official capacities. *Id.* at 1015.

tain Empire Sports, Inc.,¹⁷¹ and *Bayless v. Philadelphia National League Club*,¹⁷² which demonstrate society's strong preference for arbitration and workers' compensation over litigation in the employment context. Professional coaches are generally protected against lawsuits for deaths and injuries of players in all cases but those involving intentional torts or extreme negligence. In the case of Korey Stringer's unfortunate death, it is fairly clear that Green is shielded from personal liability. Professional football teams usually practice in the extreme heat of summer. Green conducted summer practices that were no harsher than those of other professional teams in hotter regions, such as Dallas or Miami. Stringer was a veteran of the team and its training camps. He was familiar with the routine and was aware of the expectations of the coaching staff and organization. His case seems to have been aberrational, an extreme reaction to an otherwise normal practice session. Since there is no evidence that Green acted intentionally to inflict injury on Stringer or that he acted outside the scope of his employment as a head coach, Stringer's death probably falls squarely in the auspices of the arbitration clause and the Minnesota Workers' Compensation Statute.

B. Coach Spurrier and Coach Walker Would Probably Not Be Held Liable for the Deaths of Their Athletes

Coach Spurrier (University of Florida) and Coach Walker (Northwestern University) face different liability issues. Collegiate players are not considered 'employees,' so they have no professional player contracts and no workers' compensation coverage. Many coaches' status and huge salaries make them obvious targets for suits brought for the deaths of collegiate players, suits that would most likely be based on alleged negligence regarding supervision or instruction.

As discussed above, it is well-established that a coach has a duty to protect his players from foreseeable risks, but it is not always clear what the exact limits of that duty are. Should Coach Spurrier or Coach Walker be held to the standard of a football coach unskilled in medical diagnosis? If they are held to a higher standard of care, where is the line drawn? Even if a coach is held to a higher standard of awareness regarding his athletes, it is impossible for a coach to recognize all possible health issues facing his players. A college football coach such as Spurrier or Walker is responsible for more than sixty players, and delegates much responsibility for athletes' health concerns to a staff of skilled trainers and physicians. It is

171. 602 P.2d 895 (Colo. Ct. App. 1979).

172. 472 F. Supp. 625 (E.D. Pa. 1979).

unrealistic to expect the coaches' knowledge of medical issues to extend far beyond the standard of a reasonable observer.

Even if the applicable standard of care is identified, a plaintiff faces a huge task in establishing the other elements of negligence. Both Autin and Wheeler died after participating in normal summer practices that precede every football season. At the usual college football practice, trainers are present, water is readily available, and players are instructed to inform the staff if they experience a health problem. If such precautions were observed, it would be exceedingly difficult to prove the foreseeability of the death of a young athlete at the height of his physical capabilities.

Such plaintiffs would also have to content with the defenses available to the coaches. The doctrine of assumption of risk would be a formidable barrier to such suits. As discussed above, cases such as *Foronda v. Hawaii International Boxing Club*, *Balthazor v. Little League Baseball*, and *Vendrell v. School District No. 26C* show that an athlete's participation in an inherently risky sport, coupled with the awareness of these risks, will probably preclude recovery in a tort action.

It is obvious that football is a brutal and violent sport. Severe injuries are common and games are played in a variety of weather conditions.¹⁷³ In all areas of the country and at all levels of participation, the football season begins in the "dog days" of summer and finishes in the dead of winter. Weather conditions are a component of the game¹⁷⁴ and, as such, are inherent risks of the sport. While heat stroke and heat exhaustion are not common occurrences among highly trained and conditioned athletes, they are not rare either.

Both Autin and Wheeler had played football for a number of years before starting to play college football. They were top performers in the sport in elite football programs. They had played and practiced in hundreds of events in their young lives, and had probably watched many more. Given their familiarity with the sport, Spurrier and Walker can probably assert the complete defense of implied assumption of risk.¹⁷⁵

173. Unlike many other sports, a football game is rarely, if ever, cancelled because of inclement conditions.

174. Coaches often complain that their players become winded when playing in the thin air of Denver. Players in Miami are better acclimated to warm weather than visiting opponents from cooler climates. Conversely, the Tampa Bay Buccaneers, a Florida professional football team, have never won a game when the temperature at game time is less than forty degrees. Katherine Smith, *Bucs Can't Shed Cold-Weather Loser Tag*, TAMPA TRIB., Jan. 1, 2001, at 7.

175. In the case of Rasheedi Wheeler, there may also be issues of comparative negligence associated with his asthma condition and alleged use of a performance-enhancing supplement. Lance Pugmire, *Wheeler Family Hires Cochran*, CHI. TRIB., Aug. 14, 2001, at Sports 1. Witnesses apparently said that Wheeler had taken a controversial supplement, ephedrine, prior to the fateful practice. *Id.* Additionally, Wheeler died with a bronchial inhaler in his hand, suggesting that he was aware of

Coach Spurrier, on the basis of his employment at a public university, may also employ the defense of qualified immunity. As discussed above, under the traditional view, Spurrier, having been entrusted with tasks that would be considered "discretionary," would be protected from liability for injuries alleged to arise from simple negligence. Being in charge of the overall supervision of the football program and the players, he coordinates the practices, plans the strategies, and keeps track of his players' injuries. He must use his discretion to determine the best manner to employ individual talents and how the injuries affect the team. Under the view of the modern statutory waivers of sovereign immunity, such an employee is usually protected from personal liability save for outrageous acts.

Thus it is very difficult for an athlete to sue a coach for injuries sustained while participating in a sport. It is a hurdle merely to establish a prima facie case of negligence, not to mention the defenses of assumption of the risk, comparative negligence, and various forms of immunity that a coach may assert. While some cases show that a plaintiff may succeed where facts going to extreme disregard for a player's safety are shown, courts have been generally hesitant to find liability, on the general principle that "the law should not place unreasonable burdens on the free and vigorous participation in sports."¹⁷⁶ In addition, there is widespread respect and affection for high-status football coaches such as Green, Spurrier, and Walker. It would probably be hard to find a jury that would find such a coach liable for a death that occurred as a result of anything but truly wanton conduct. For these reasons, the families of Corey Stringer, Rashidi Wheeler, and Eraste Autin would face limited prospects in recovering damages from their coaches.

his condition and knew that it was aggravated by intense physical exertion. *Id.*

176. *Foronda*, 25 P.3d at 842.

