



Crawn v. Campo, 136 N.J. 494, 643 A.2d 600 (1994)

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Crawn v. Campo,

136 N.J. 494, 643 A.2d 600 (1994).

INTRODUCTION

Plaintiff Michael Crawn sued defendant John Campo to recover for injuries sustained during a pickup softball game. The New Jersey Law Division ruled for the plaintiff. The jury found that Campo acted “in reckless disregard for the safety of [Crawn].” The court determined that the applicable standard of duty of care for players engaged in informal sports is to avoid injurious conduct that is reckless or intentional. The appellate division reversed the trial court on the proper standard of care required, concluding that the applicable standard is to avoid conduct that would constitute negligence under the circumstances. The Supreme Court of New Jersey modified the judgment, and as modified, affirmed. The court held that the appropriate duty of care of participants in informal recreational sports is to avoid the infliction of injury caused by reckless or intentional conduct. The court also found that the trial court did not abuse its discretion by granting the defendant’s motion for a new trial.

FACTS

On May 1, 1988, the plaintiff, Michael Crawn, and the defendant, John Campo, were participants in a “pick-up” game of softball. Friends or bystanders joined in each week, so that the composition of the teams changed from week to week. The teams were not part of a league, and there were no official referees or umpires. The parties agreed that the general rules of softball governed. They disagreed, however, whether there was a rule prohibiting sliding.

The defendant was the runner on first base, and the next batter hit a ground ball to the shortstop. The shortstop flipped the ball to the second baseman to try for the force-out. The defendant slid into second base, taking the legs out from underneath the second baseman.

With the defendant safe on second, the next batter hit a fly ball to right field. The defendant rounded third base and headed for home. The plaintiff, the catcher, testified that he was standing on the first base side of home plate. His left foot touched the right side the plate, and he faced the oncoming runner. The defendant, according to the plaintiff, lowered his body and ran into the plaintiff’s left side. The plaintiff fell backwards, with the defendant ending up on top of the plaintiff’s lower leg. The plaintiff heard a pop in his leg, followed by severe pain. He later tried to resume play, but when he tried to run, his left leg collapsed under him. The plaintiff went to the hospital and was diagnosed with a torn knee ligament, which required surgery.¹

1. Plaintiff claimed that defendant deliberately ran into him, with the goal of dislodging the ball

The plaintiff sued to recover for his personal injuries, alleging in three separate counts that the defendant was liable because his conduct had been either negligent, reckless or intentional. The plaintiff voluntarily dismissed the intentional conduct claim before the trial. The jury found for the plaintiff, holding that the defendant's conduct had been reckless and that the plaintiff had not assumed the risk of reckless conduct. The defendant brought a motion for a new trial, which the court granted on evidentiary grounds.

The plaintiff appealed the grant of a new trial, and the defendant cross-appealed. The appellate division affirmed the trial court's grant of a new trial, but reversed on the proper standard required to establish liability for injuries sustained in informal athletic competition. It held that the proper standard was reasonableness under the circumstances — ordinary negligence.

The defendant filed a motion for leave to appeal the appellate division decision on the standard of care issue. The plaintiff filed a motion of leave to cross appeal on the affirmance of the grant of a new trial. The Supreme Court of New Jersey granted both motions.

LEGAL ANALYSIS

The Supreme Court of New Jersey considered two main issues: (1) the nature of a player's duty to avoid afflicting physical injury on another player; and (2) the necessity of expert testimony as to the applicable standard of care governing a softball game. The court also briefly dealt with the trial court's grant of defendant's motion for a new trial.

The main issue the court discussed was the appropriate standard of care applicable to informal sports activities. The trial court had determined that only reckless or intentional conduct would be liable, but the appellate division accorded liability to conduct unreasonable under the circumstances. The Supreme Court held that the trial court had been correct in its determination.

The court stated that the majority of jurisdictions that have considered this issue have concluded that to constitute a tort, conduct must exceed the level of ordinary negligence. "[T]he emerging legal standard requires either recklessness or specific intent to injure by defendant."² The Illinois Appellate Court in *Nabozny v. Barnhill*³ held that, "a player is liable for injury in a tort action if his conduct is such that it is either deliberate, willful or with a reckless disregard for the safety of the other player to cause injury to that player."⁴

The reasoning behind the preference for a standard of care that exceeds negligent conduct is the perception that the risk of injury is a common and inherent

from plaintiff's glove to avoid the out. He argued there was enough room for defendant to run past him and touch home plate without making contact. Defendant, on the other hand, claimed that plaintiff had one foot on either side of home plate, and that the only way to tag home safely was to slide.

2. Daniel E. Lazaroff, *Torts & Sports: Participant Liability to CoParticipants for Injuries Sustained During Competition*, 7 U. MIAMI ENT. & SPORTS L. REV. 191, 195, 198 (1990).

3. 334 N.E.2d 258 (Ill. App. Ct. 1975).

4. *Id.* at 261.

aspect of informal sports activity. In *Knight v. Jewett*,⁵ the Supreme Court of California noted that “the nature of a sport is highly relevant in defining the duty of care owed by a particular defendant ... in some situations, ... the careless conduct of others is treated as an ‘inherent risk’ of a sport”⁶ That court concluded that only if one player intentionally injures another or engages in conduct that is “so reckless as to be totally outside the range of the ordinary activity involved in the sport ...”⁷ is there a breach of duty.⁸

The New Jersey court discussed the two policy reasons that justified the imposition of a recklessness standard: the promotion of vigorous participation in athletic activities⁹ and the desire to avoid a flood of litigation.¹⁰ The appellate division, however, had concluded that these two policy justifications did not outweigh New Jersey’s well-established reliance on the ordinary negligence standard and its aversion to tort immunities. It explained that the only immunities acceptable were for important reasons of public policy and available in relatively exceptional situations. The appellate division did not consider the policy reasons that favor and encourage sports activities important enough to warrant such immunity. The Supreme Court agreed that wrongful conduct by the participants in sports activities should not be totally removed from the law of torts, but should be accorded partial immunity. It stated that legislative policy at least indirectly supports such a partial immunity. The New Jersey legislature established tort immunity for volunteer athletic coaches for injuries to participants except when conduct is willful, wanton or grossly negligent.¹¹ Accredited sports officials have the same sort of immunity.¹²

The court next asserted that participating in recreational sports is different from participating in other activities. For example, in many sports, including softball, some amount of contact is expected.¹³ Furthermore, a high level of emotional intensity accompanies the physicality of sports.¹⁴ The wide variations

5. 834 P.2d 696 (Cal. 1992).

6. *Id.* at 708.

7. *Id.* at 711.

8. *See also* *Gauvin v. Clark*, 537 N.E.2d 94 (Mass. 1989) (applying reckless disregard of safety standard to injury during college hockey game); *Ross v. Clouser*, 637 S.W.2d 11, 14 (Mo. 1982) (applying recklessness standard to injuries arising from church picnic softball game); *Dotxler v. Tuttle*, 449 N.W.2d 774 (Neb. 1990) (applying wilful-or-reckless-disregard of safety standard to injury arising in a pickup basketball game); *Marchetti v. Kalish*, 559 N.E.2d 699 (Ohio 1990) (applying either recklessness or intentional conduct standard); *Kabella v. Bouschelle*, 742 P.2d 290, 294 (Tex. Ct. App. 1983) (disallowing claim for negligence for injury in recreational football game). *But see* *Lestina v. West Bend Mut. Ins. Co.*, 501 N.W.2d 28 (Wis. 1993) (adopting the ordinary standard of negligence for sports cases).

9. *See* *Nabozny v. Barnhill*, 334 N.E.2d 258, 260 (Ill. App. Ct. 1975) (stating that the law should not “place unreasonable burdens on the free and vigorous participation in sports by our youth”).

10. *See* *Marchetti*, 559 N.E.2d at 702 (asserting that failing to apply a recklessness standard would “open the floodgates to a myriad of lawsuits involving the backyard games of children”).

11. N.J. STAT. § 2A:62A-6 (1993).

12. N.J. STAT. § 2A:62-6.1 (1993).

13. *See* *Gauvin v. Clark*, 537 N.E.2d 94, 96 (Mass. 1989).

14. *See* *Ross v. Clouser*, 637 S.W.2d 11, 14 (Mo. 1982) (noting “proper fervor” of competition);

in expectations regarding the physical contact and emotional intensity that is appropriate from sport to sport and from game to game complicates the analysis of the appropriate standard of care, as does the fact that violations of rules, even safety rules, are often a part of the game.¹⁵ Yet in spite of this, the appellate division felt that courts could adequately evaluate sports conduct and make clear to juries that a participant who creates only “normal” or “ordinary” risks acts as a “reasonable person” under the circumstances.¹⁶

The Supreme Court of New Jersey found three problems with the appellate division’s determination. To begin with, it would be extraordinarily difficult to judge conduct based on limitless variables concerning how different groups of people play the same game. Second, the reasonableness of conduct of an average person is highly subjective and cannot be reliably equated with the conduct of an average person under similar circumstances. Finally, there rarely is complete agreement between a group of people, eighteen to twenty in the case of softball, playing a team sport. A legal duty of care based on the standard of what an average reasonable person objectively would do under the circumstances is “illusory.”

The Supreme Court concluded that a recklessness standard is the correct one to apply in the sports context. This heightened standard will result in according liability for conduct that is clearly unreasonable and unacceptable from the perspective of those engaged in the sport, while leaving free from the supervision of the courts the risk-laden conduct that is inherent in sports and usually assumed to be “part of the game.”

The second issue before the Supreme Court of New Jersey concerned the defendant’s contention that expert testimony was essential to establish the standard of care that applied to players in a softball game. The trial court and appellate division determined that expert testimony was not necessary to establish the duty owed. The Supreme Court of New Jersey agreed.

The test as to the need of expert testimony is whether the subject matter is “so esoteric that jurors of common judgment and experience cannot form a valid judgment whether the conduct of the party was reasonable.”¹⁷ The court recognized that some sports-injury cases from other jurisdictions have allowed the introduction of expert testimony, but these cases dealt with organized leagues with specific rules. That was not present in this case. The court concluded that even though an expert would not be able to testify as to idiosyncracies of a specific softball game, jurors have sufficient understanding of the rules and conventions of a particular game as explained by its participants. Therefore, the lower court

Lazaroff, *supra* note 2, at 195 (noting difficulty of distinguishing “between negligence and recklessness in the context of a game where players are encouraged to play with reckless abandon”).

15. See *Knight v. Jewett*, 834 P.2d 696, 710 (Cal. 1992); *Oswald v. Township High Sch. Dist.*, 406 N.E.2d 157, 160 (Ill. App. Ct. 1980); *Turcotte v. Fell*, 502 N.E.2d 964, 969-70 (N.Y. 1986).

16. The Appellate Division listed at least 10 different factors to be considered in determining whether conduct was reasonable. *Crawn v. Campo*, 630 A.2d 368, 376 (N.J. Super. 1993).

17. *Butler v. Acme Markets*, 445 A.2d 1141, 1147 (N.J. 1982) (quoting 2 HARPER & JAMES, LAW OF TORTS § 17.1 (1956)).

committed no error by refusing to allow the defendant's expert to testify.

The third and final issue presented to the New Jersey Supreme Court was the basis for the trial court's grant of the defendant's motion for a new trial. The defendant based his motion on the combined effect of three procedural rulings. The trial court determined that these three factors combined to create a manifest denial of justice. The appellate division found support in the record for the grant of a new trial. The Supreme Court of New Jersey affirmed, finding that the result was "clearly the product of mistake, passion, prejudice or partiality."¹⁸

CONCLUSION

In summary, the Supreme Court of New Jersey held that the applicable standard of care for participants in recreational sports activities is to avoid reckless or intentional conduct, and not just conduct that would constitute negligence under the circumstances. It also found that expert testimony was unnecessary in this situation where the jury gained sufficient knowledge about the rules of this particular softball game from the participants who testified. The court modified the appellate division's judgment concerning the proper standard of care, and as modified, affirmed.

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