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Palmer v. Mount Vernon Township High School District 201,

No. 78875, 1996 WL 19018 (Ill. Jan. 18, 1996).

Introduction

Donnell Palmer ("Palmer"), a student and star player on defendant's basketball team, and Suzanna Palmer, Donnell's mother, sued Mt. Vernon Township High School District 201 ("the school district") for negligence, which allegedly resulted in a serious eye injury to Palmer. The Illinois Circuit Court of Jefferson County denied two jury instructions, recommended by Palmer, addressing the affirmative duties owed to students by the school district. Instead, the circuit court instructed the jury that the school district only had the duty to exercise ordinary care in furnishing equipment to students to prevent serious injuries. The circuit court then entered judgment on the jury verdict in favor of the school district. The Illinois Appellate Court for the Fifth District reversed the verdict and remanded the case for a new trial. The appellate court found that the circuit court had erred in failing to instruct the jury, as Palmer had requested, that the school district had both the duty to warn students that they should furnish their own protective equipment and the duty to allow them to use such equipment. The Supreme Court of Illinois reversed the appellate court's decision and affirmed the judgment of the circuit court.

Facts

During a basketball tournament in December, 1985, Palmer was hit with an elbow on the cheekbone, below his left eye, but was not seriously injured. At that time Palmer began to have concerns that he might sustain a serious eye injury while playing basketball. However, at no time had Palmer been warned by anyone from Mt. Vernon Township High School that he should provide his own eye-protection equipment, nor did Palmer ever inform anyone from the school district that he felt he needed some form of eye-protection. Sometime in January, 1986, while shooting baskets before the day's practice, Palmer was approached by a teammate carrying a pair of "Rec-Specs" eye goggles. The teammate allowed Palmer to wear the goggles as he shot baskets before practice. Coach Lee Emery then came into the gymnasium, and upon seeing Palmer wearing the goggles, told him not to wear them because someone else might get hurt. Coach Emery testified at trial that he could not recall any basketball practice at which Palmer wore protective eye gear. After that January practice, Palmer did not try to wear eye goggles again, because he presumed that Coach Emery would not let him. During practice on February 4, 1986, Palmer was poked in the left eye by another player's finger. As a result of the injury, Palmer lost all vision in that eye. Based on this injury, Palmer and his mother brought an action for negligence against the school district.

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At the conclusion of the trial, Palmer was allowed to set forth his three theories of negligence against the school district in a jury instruction. Palmer's jury instruction number twenty-one claimed that the school district was negligent in one or more of the following respects: (1) that the school district did not furnish him with protective eye equipment, (2) that the school district did not warn him that he should furnish his own protective eye equipment, and (3) that the school district did not allow him to use protective eye equipment. Palmer also tendered two jury instructions which the circuit court refused to give the jury. The two instructions refused by the court were as follows:

> Plaintiff's number 15: 'Where students are engaging in school activities, it is the duty of the school district to exercise ordinary care *to warn* the students that they should furnish their own equipment to prevent serious injuries.'
> Plaintiff's number 16: 'Where students are engaging in school activities, it is the duty of the school district to exercise ordinary care *to allow the students to use* equipment to prevent serious injuries.'[1]

The circuit court refused to give the jury both instructions "for the reason that no case in Illinois specifically set forth the rule of law stated by either instruction."[2] Instead, the jury received plaintiff's instruction number fourteen, taken almost verbatim from *Lynch v. Board of Education of Collinsville Community Unit District No. 10*,[3] which stated: "where students are engaging in school activities, it is the duty of the school district to exercise ordinary care *to furnish* equipment to students to prevent serious injuries."[4] The jury then found for the school district, and the circuit court entered judgment on the jury verdict in favor of the school district.

On appeal, the Illinois Appellate Court for the Fifth District reversed the verdict in favor of the school district and remanded the case for a new trial. The appellate court reasoned that the jury instructions given by the circuit court failed to adequately instruct the jury, as Palmer had requested, regarding the school district's duty to warn students about wearing protective equipment, and its duty to allow students to use protective equipment. The Supreme Court of Illinois granted the school district's petition for leave to appeal.[5]

LEGAL ANALYSIS

The issue before the Supreme Court of Illinois was whether a school district has either an affirmative duty to warn students that they should provide their own safety equipment or an affirmative duty to allow students to use their own safety equipment to prevent serious injury.[6] The supreme court began by point-

1. Palmer v. Mount Vernon Township High Sch. Dist. 201, 647 N.E.2d 1043, 1047 (Ill. App. Ct. 1995)(emphasis added).

2. *Id.* at 1046.

3. 412 N.E.2d 447 (Ill. 1980).

4. *Palmer*, 647 N.E.2d at 1047 (emphasis added).

5. Palmer v. Mount Vernon Township High Sch. Dist. 201, 652 N.E.2d 344 (Ill. 1995) (granting petition for leave to appeal).

6. Palmer v. Mount Vernon Township High Sch. Dist. 201, No. 78875, 1996 WL 19018 (Ill.

ing out that the appellate court had relied principally upon the *Lynch*[7] and *Gerrity v. Beatty*[8] decisions. Following the reasoning of those cases, the appellate court found that the school district had both a duty to warn students that they should provide their own safety equipment and a duty to allow students to use their own safety equipment to prevent serious injury. The school district argued "that Gerrity and Lynch set out the scope of a school district's duty to provide adequate safety equipment for students' use during school athletic activities but did not impose upon a school district"[9] either of the "separate and distinct"[10] duties found by the appellate court. In opposition, Palmer contended that these duties "are logical corollaries to the duty to furnish safety equipment that was established in Lynch and Gerrity."[11] The supreme court then briefly discussed both the *Gerrity* and *Lynch* cases.

In *Gerrity*, the plaintiff, a high school student, was seriously injured while making a tackle in a high school football game, and alleged that the school district was negligent in furnishing a defective football helmet.[12] The school district claimed immunity under the School Code[13] for negligent acts of a teacher undertaken during supervision or discipline of students.[14] The supreme court rejected the school district's argument reasoning that "a school district cannot vicariously claim immunity of a school teacher where it is alleged that the school district's liability is premised upon the district's independent duty to provide adequate safety equipment to the students."[15] Therefore, as expressly recognized by the *Gerrity* court, a school district has a duty to provide safety equipment necessary to protect students from serious injury during school athletic activities.[16]

In *Lynch*, the supreme court expanded the rule of *Gerrity* to include more than just formally organized athletic activities. In that case, students engaged in a football game on school property without the express authorization of the school.[17] The school administration was aware that the game was planned but did not provide safety equipment to those students participating.[18] The supreme court stated that the school district could be held liable for head injuries sustained by a student who was not wearing a helmet.[19] The *Lynch* court held that "a school district has an affirmative duty, where students are engaging in school

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Jan. 18, 1996).

7. 412 N.E.2d 447 (Ill. 1980).
8. 373 N.E.2d 1323 (Ill. 1978).
9. *Palmer*, 1996 WL 19018 at *3.
10. *Id.*
11. *Id.*
12. *Gerrity*, 373 N.E.2d at 1324.
13. ILL. REV. STAT., ch. 122, para. 34-84a (1985) (105 ILCS 5/34-84a (West 1992)).
14. *Gerrity*, 373 N.E.2d at 1324.
15. *Palmer*, 1996 WL 19018 at *4 (citing Gerrity v. Beatty, 373 N.E.2d 1323 (Ill. 1978)).
16. *Id.*
17. *Lynch*, 412 N.E.2d at 451.
18. *Id.* at 451-52.
19. *Id.* at 459.

activities, whether they are extracurricular, or formally authorized as part of the school program, to furnish equipment to prevent serious injuries."[20]

The supreme court then stated that Palmer's argument was in conflict with its holdings in these two cases. Both *Gerrity* and *Lynch* impose an affirmative duty to furnish equipment to prevent serious injuries.[21] The supreme court found that to impose upon the school district "[a] duty to warn students of the advisability of wearing such equipment, and a duty to allow students to wear such equipment if it is purchased at their own expense . . . " would allow the school district to avoid its obligation to furnish appropriate safety equipment in the first place.[22] The court further noted that if a school district were allowed to advise its students that they should purchase safety equipment at their own expense, then only students who could afford such equipment would be able to participate in school athletic activities, and this result was clearly discouraged by the court in *Lynch*.[23] Therefore, the supreme court concluded that the school district's only duty was to furnish Palmer with "the safety equipment that was reasonably necessary in order to protect [him] from reasonably foreseeable, serious bodily injury."[24]

The supreme court then examined Palmer's second contention that he deserved a new trial "because his evidence demonstrated that he was 'denied his right' to wear safety equipment while playing basketball."[25] The supreme court began by stating that Palmer's contention failed to distinguish between the duties of a school district and those of its teachers. It was the supreme court's opinion that "[a] school district has a duty to furnish safety equipment, while a teacher has a separate and distinct duty to supervise the student's wearing or use of safety equipment."[26] In light of the distinct duties of a school district and teacher, the supreme court concluded that the decision as to whether Palmer could wear the protective goggles was in the hands of the supervising teacher, Coach Emery. The supreme court then pointed out that it is well settled "that teachers stand in loco parentis to their students, and that their supervision of students' activities is cloaked with immunity. . ." in the absence of willful or wanton misconduct by the supervising teacher.[27] Palmer did not claim that Coach Emery's denial of protective eye-wear constituted willful and wanton misconduct, nor was

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20. *Id.*

21. Palmer v. Mount Vernon Township High Sch. Dist. 201, No. 78875, 1996 WL 19018, *1 *5 (Ill. Jan. 18, 1996).

22. *Id.*

23. Lynch v. Bd. of Educ. of Collinsville Community Unit Dist. No. 10, 412 N.E.2d 447, 460 (Ill. 1980).

24. *Palmer*, 1996 WL 19018 at *5. The jury found that the school district had not breached this duty to furnish adequate safety equipment, and Palmer did not dispute this finding on appeal. *Id.*

25. *Id.* at *6.

26. *Id.* (citing Thomas v. Chicago Bd. of Educ., 395 N.E.2d 538, 540-41 (Ill. 1979)).

27. *See* Kobylanski v. Chicago Bd. of Educ., 347 N.E.2d 705 (Ill. 1976) (holding that an educator should stand in the place of a parent or guardian in matters of discipline, and absent proof of willful and wanton misconduct the teacher and school district could not be held liable on a negligence theory for injuries sustained by students in physical education class).

there anything in the record to support such a claim.[28] Therefore, the supreme court held that Palmer was not entitled to recover from the school district for the eye injury at issue in this case.

CONCLUSION

The Supreme Court of Illinois reversed the decision of the appellate court and affirmed the judgment of the circuit court. The supreme court held that a school district has neither a duty to warn students that they should provide their own safety equipment, nor a duty to allow students to use their own safety equipment to prevent serious injury. The court reaffirmed, however, that a school district does have "a duty to furnish reasonably necessary safety equipment to protect students from reasonably foreseeable serious injury."[29]

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28. Palmer v. Mount Vernon Township High School Dist. 201, 1996 WL 19018 at *6.
29. *Id.* at *5.