

TORTS—DUTY OF CARE—A COLLEGE OWES A DUTY TO A RECRUITED STUDENT ATHLETE TO PROVIDE PROMPT AND ADEQUATE EMERGENCY MEDICAL SERVICE TO THE STUDENT ATHLETE WHEN THE STUDENT ATHLETE IS PARTICIPATING IN THE SPORT FOR WHICH THE COLLEGE RECRUITED THE STUDENT ATHLETE TO PLAY—*Kleinknecht v. Gettysburg College*, 989 F.2d 1360 (3d Cir. 1993).

In *Kleinknecht v. Gettysburg College*, 989 F.2d 1360 (3d Cir. 1993), Drew Kleinknecht was a sophomore student at Gettysburg College in September 1988. *Id.* at 1363. Gettysburg College recruited Kleinknecht for its Division III intercollegiate lacrosse team. *Id.* Kleinknecht, who did not have a history of a heart problem or any other unusual medical condition, collapsed and suffered a fatal cardiac arrest while participating in lacrosse practice. *Id.* at 1362. Kleinknecht's parents filed a wrongful death and survival action against the college on August 15, 1990. *Id.*

After denying the college's motion for summary judgment, the United States District Court for the Middle District of Pennsylvania reversed its denial of the college's motion for summary judgment and entered summary judgment for the college. *Kleinknecht v. Gettysburg College*, 786 F. Supp. 449 (M.D.Pa. 1992). At trial, the lower court held that the college did not have a duty to anticipate and to guard against the possibility that one of its healthy student athletes will have a heart attack during practice. *Id.* The court also determined that the actions of the school were reasonable. *Id.* at 456. As a result, Gettysburg College would not have breached a duty if one existed. *Id.*

On appeal, the United States Court of Appeals for the Third Circuit reversed and remanded the decision of the United States District Court for the Middle District of Pennsylvania. *Kleinknecht*, 989 F.2d at 1360. Judge Hutchinson, writing for the majority, addressed three issues on appeal. *Id.* at 1365. The first issue was whether the college had a duty to implement preventative measures assuring quick response and treatment in the event that one of the college's student athletes suffered cardiac arrest while participating in a school sponsored intercollegiate sport. *Id.* The second issue was whether the school employees acted reasonably when Kleinknecht suffered the heart attack. *Id.* Lastly, the third issue was whether the school was entitled to immunity under Pennsylvania's Good

Samaritan Law. *Id.*

The court examined the Kleinknecht's claim that the school owed a duty to their son because of his membership on the college's intercollegiate lacrosse team. *Id.* at 1366. The United States Court of Appeals for the Third Circuit analyzed whether a special relationship existed between the college and Kleinknecht. *Id.* Relying on *Hanson v. Kynast*, No. Ca-828 (Ohio Ct. App. June 3, 1985), *rev'd on other grounds*, 494 N.E.2d 1091 (1986), which held that the issue of whether a school acted reasonably when it failed to have an ambulance at an athletic field during a sporting activity or when the school employees failed to have quick access to the field when a student athlete requires medical assistance during an intercollegiate lacrosse game is a question of fact for the jury. *Kleinknecht*, 989 F.2d at 1367. By sending this question to the jury, the court in *Hanson* indirectly concluded that the school owed a duty of care to its student athletes. *Id.* The facts in *Hanson* are similar to the case at hand. *Id.* Gettysburg College recruited Kleinknecht to play lacrosse as a student athlete. *Id.* Kleinknecht collapsed during a lacrosse practice which college employees supervised. *Id.*

Judge Hutchinson determined that, in this case of first impression, the Supreme Court of Pennsylvania would hold that a special relationship existed between Gettysburg College and Kleinknecht. *Id.* at 1367. This special relationship imposed a duty of reasonable care between the school and the recruited athlete. *Id.* at 1369. The United States Court of Appeals for the Third Circuit distinguished this case from two prior decisions which held that a school did not owe a duty to its students. *Id.* at 1367-68 (citing *Alumni Ass'n v. Sullivan*, 572 A.2d 1209, 1211 (Pa. 1990); *Bradshaw v. Rawlings*, 612 F.2d 135, 138 (3d Cir. 1979). In *Sullivan*, the Supreme Court of Pennsylvania held that a school could not be liable for damages incurred when an intoxicated student, who is under the legal drinking age, started a fire. *Kleinknecht*, 989 F.2d at 1367. The court declined to impose a duty based only on the custodial relationship between the school and its students. *Id.* In *Bradshaw*, the United States Court of Appeals for the Third Circuit held that a school is not liable when a student left a school sponsored picnic with an intoxicated student and was involved in a car accident. *Id.* at 1368. Distinguishing the decision in *Bradshaw*, the Third Circuit concluded that Kleinknecht was not a student pursuing a private interest, like the student in *Bradshaw*, when Kleinknecht suffered his fatal heart attack. *Id.* at 1368. The court stressed that a distinc-

tion must be made between a student who is injured while participating in an intercollegiate sport for which the school recruited the student to play, and the student who is injured while pursuing his private interests. *Id.* The court further stated that Kleinknecht was unlike the average student. *Id.* Gettysburg College recruited Kleinknecht for its own benefit, hoping that his lacrosse talents would benefit the school by enhancing both its lacrosse program and its recruiting class. *Id.*

The court concluded that since Kleinknecht's cardiac arrest occurred during an event involving the intercollegiate sport for which Gettysburg College recruited him to play, a duty existed. *Id.* The court limited this duty to student athletes and did not extend the duty to other broader classes of students on a college's campus. *Id.* at 1370. The United States Court of Appeals for the Third Circuit then addressed whether a life-threatening injury during lacrosse practice was reasonably foreseeable. *Id.* at 1369. Based on the evidence provided by the Kleinknecht family and testimony given by athletic experts who stated that they were aware of student athletes dying during intercollegiate athletic events, the court determined that it was foreseeable that an student athlete participating in the sport of lacrosse practice could suffer a serious injury. *Id.* at 1370. The court held that a college's failure to protect against such a foreseeable risk was reasonable. *Id.* Judge Hutchinson added "the magnitude of the foreseeable harm — irreparable injury or death to one of its student athletes as a result of inadequate preventative emergency measures — is indisputable." *Id.* The court further stated that whether Gettysburg College breached its duty and was the proximate cause of Kleinknecht's death is a question of fact and would be determined by a jury on remand. *Id.*

After determining that the college owed a duty, the United States Court of Appeals for the Third Circuit addressed Gettysburg College's claim that the college was immune from liability under Pennsylvania's Good Samaritan Law. *Id.* at 1373. The law stated that "any person who renders emergency care . . . shall not be liable . . . for any civil damages as a result of any acts or omissions in rendering the emergency care . . ." *Id.* (citing 42 PA. CONS. STAT. ANN. § 8332(a) (1982)). In addition, Judge Hutchinson noted that the statute required that the party administering the emergency care must be certified in an approved first aid, advanced life saving, or basic life support course and must correctly perform the certified procedures. *Id.* (citing 42 PA. CONS. STAT. ANN. § 8332(b) (1982)).

The court rejected the college's claim of immunity. *Id.* at 1374-75. The court reasoned that Pennsylvania's Good Samaritan Law encouraged rescue attempts and the lending of assistance at the scene of an emergency, and these types of actions could only be performed by a "natural person." *Id.* at 1374. The court proclaimed that the General Assembly of Pennsylvania did not intend that institutions, such as Gettysburg College in this action, to be considered a "natural person" and to be eligible to achieve the requisite certification required under Pennsylvania's Good Samaritan Law. *Id.* As a result, Pennsylvania's Good Samaritan Law does not apply, precluding Gettysburg College from immunity. *Id.*

The court held that the school was negligent for two reasons: (1) the college owed Kleinknecht a duty of care due to his recruited athlete status, and (2) the type of medical emergency that Kleinknecht suffered was within a reasonably foreseeable class of tragic events which could occur while participating in an intercollegiate sport. *Id.* at 1372. The court stated that a college should be required to install safeguards to prevent and to react to such injuries that foreseeably could happen during an intercollegiate athletic activity. *Id.*

The United States Court of Appeals for the Third Circuit in *Kleinknecht* held that a special relationship existed between a school and its recruited student athlete who was participating in the athletic event for which the college recruited him to play. By imposing a duty on the school, colleges must implement proper emergency medical procedures for injuries suffered by a student athlete who is participating at a college during the sponsored athletic activity for which the college recruited the student athlete to play.

*Mark A. Robinson*