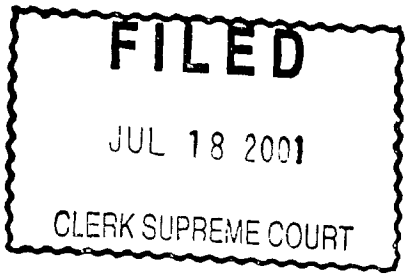
IN THE COURT OF APPEALS OF IOWA

No. 1-032 / 00-697
Filed July 18, 2001



SHAWN A. MURTHA,
Plaintiff-Appellant,

vs.

HLV SCHOOL DISTRICT,
Defendant-Appellee.

Appeal from the Iowa District Court for Iowa County, David M. Remley, Judge.

Plaintiff, a high school student who was injured at track practice, appeals following the entry of summary judgment dismissing his personal injury action against the school district. **AFFIRMED.**

Anders L. Johnson, Marengo, for appellant.

Terry J. Abernathy and Thad J. Collins of Pickens, Barnes & Abernathy, Cedar Rapids, for appellee.

Considered by Sackett, C.J., and Zimmer and Miller, JJ.

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SACKETT, C.J.

Plaintiff-appellant Shawn Murtha appeals the decision of the district court which granted summary judgment to defendant-appellee HLV School District in this personal injury action. He claims summary judgment was not proper in this case. We affirm.

Plaintiff was a member of the HLV High School track team. On May 14, 1997, the track team had afternoon practice. The track coach, William Larkin, instructed the students to run a route off the school grounds. At a T-intersection, the team was to turn right onto a gravel road.

After plaintiff turned right at the T-intersection he looked back. His foot hit a rock or twisted in the wrong way and it "popped." Larkin drove him back to the school. Plaintiff went home and treated his foot with ice. The next day, an x-ray revealed plaintiff fractured his fifth metatarsal, a bone in the foot near the little toe. Plaintiff had surgery on his foot.

Plaintiff filed suit against the school district, claiming that by requiring plaintiff to run an endurance practice on a gravel road he was subjected to an unreasonably high risk of injury. The school district filed a motion for summary judgment. It claimed plaintiff's claims must fail as a matter of law under the assumption of risk standards applicable to sports injury claims in Iowa.

The district court granted the motion for summary judgment. The court found defendant did not conduct the track practice in a manner to create an unreasonable risk of harm for plaintiff. The court stated, "This is one of those exceptional cases where questions of negligence and proximate cause may be decided as a matter of law."

Plaintiff claims summary judgment is not appropriate in this case. He states there was sufficient evidence the track coach subjected him to an unreasonable risk of harm. Plaintiff introduced evidence the team had generally turned right, not left, at the T-intersection. He asserts this was a "breach of custom" and should be considered negligence. He also showed the route taken was wet and it was sprinkling rain.

We review a district court's summary judgment for errors at law. *Sampson v. American Standard Ins. Co.*, 582 N.W.2d 146, 149 (Iowa 1998). Under Iowa Rule of Civil Procedure 237, summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Howell v. Merritt Co.*, 585 N.W.2d 278, 280 (Iowa 1998). We review the record in the light most favorable to the party opposing the motion. *Ranney v. Parawax Co.*, 582 N.W.2d 152, 153 (Iowa 1998). The burden of showing the nonexistence of a material fact is upon the moving party. *Tenney v. Atlantic Assocs.*, 594 N.W.2d 11, 14 (Iowa 1999).

To prove a prima facie case of negligence, a plaintiff must establish: (1) defendant owed a duty of care to him; (2) defendant breached that duty; (3) the breach was the actual and proximate cause of plaintiff's injuries; and (4) plaintiff suffered damages. *Walls v. Jacob North Printing Co., Inc.*, 584 N.W.2d 247, 250 (Iowa 1998).

In *Dudley v. William Penn College*, 219 N.W.2d 484 (Iowa 1974) the Iowa supreme court considered the duty of care a coach owes to a team member. There, a baseball player, who was sitting on the bench, was hit by a foul ball and injured. *Dudley*, 219 N.W.2d at 485. The court stated:

> As to the issue of the negligence of Penn and the coach, players in athletic events accept the hazards which normally attend the sport. This does not mean, however, that the sponsor is absolved of using care. He is subject to the general duty to conduct himself as an ordinarily prudent person under like circumstances to protect others from unreasonable risk of harm.
>
> What the law regards as unreasonable risk of harm to players is somewhat unique in athletic contests, since risks naturally attend such events. Hence the cases involving successful plaintiffs are not plentiful. Most injuries in athletic contests result from the rough and tumble of the game itself.

Id. at 486 (citations omitted). Dudley had attempted to show negligence by breach of custom. *Id.* He alleged players should have been protected by a fence or screened dugout, but failed to show this was a custom. *Id.* The court concluded Dudley failed to generate a jury question on the issue of negligence, and affirmed the grant of a directed verdict for the coach and school. *Id.* at 486-87.

A participant in an athletic event assumes certain risks normally associated with the activity. *Leonard ex rel. Meyer v. Behrens,* 601 N.W.2d 76, 79 (Iowa 1999). This phrase has two meanings; "It means the duty of care does not extend to natural risks of the activity, or there is no breach of care when the injury results from a risk inherent to the activity." *Anderson v. Webster City Community School Dist.,* 620 N.W.2d 263, 267 (Iowa 2000).

Plaintiff admitted the team ran on gravel roads in the past, and he had no problems. He also, in his deposition, admitted he knew he was at risk for twisting an ankle while running under these conditions and while participating in high school track. He testified on deposition as follows:

> Q. Had you ever twisted your ankle or anything before that day while you were running on gravel? A. No.

> Q. Did you know that was something that could happen running on gravel? A. Could have, yes.
> Q. You knew that before May 14th, '97, didn't you? A. (Witness nods his head). Yes.
> Q. You could injure yourself running on a track, couldn't you? A. Yeah.
> Q. Or running on grass? A. Yeah.
> Q. Injuring your foot or injuring your ankle is just one of the risks associated with running and with track, isn't it? A. Yeah.

Plaintiff has failed to allege facts to show he was subjected to a risk greater than that normally associated with participation in high school track. He admitted he knew twisting an ankle was a risk of the sport and of running on gravel in practice. There is no genuine issue of material fact concerning whether or not the plaintiff was subjected to an unreasonable risk of harm. We affirm the district court's dismissal of the case on summary judgment.

We distinguish *Sain v. Cedar Rapids Community School Dist.*, ___ N.W.2d ___, ___ (Iowa 2001), where the court held summary judgment should not have been granted defendant where plaintiff's claim rested on negligent misrepresentation after a high school guidance counselor allegedly provided inaccurate information to plaintiff. Plaintiff's claim here is not based on negligent misrepresentation.

AFFIRMED.