# The Hazards Of School Sporting Events

The United States Court of Appeals for the Third Circuit, Judge Thomas I. Vanaskie, a Lycoming College graduate, tossed out a case against the Palmerton Area School District. In November 2011, Sheldon Mann was playing football for the school district. He experienced a "hard hit" during a practice session. Some of the players believed that Sheldon was showing concussion-like symptoms. Nevertheless, he was sent back into the practice by his coach, Chris Walkowiak. After returning to practice, Sheldon suffered another violent hit and was removed from the practice field. He was later diagnosed with traumatic brain injury.

Sheldon's parents sued Palmerton Area and Walkowiak. The student and parents claimed that by requiring Sheldon to stay in practice after sustaining the first hard hit, Walkowiak had violated Sheldon's constitutional right to bodily integrity. The law provides that a local agency such as a school district could be liable under the United States Constitution for creating a danger to a citizen who, like a student, was under the control of a government body.

As to the School District, the student and the parents claimed that they were accountable for failure properly to train and supervise the coach.

The lower court ruled in favor of Walkowiak and Palmerton Area, dismissing the case. The Court of Appeals noted that while there was "ample evidence" to suggest the coach was guilty under a state-created danger theory of liability, the parents and student still could not prevail. Why? The reason why the parents and the student could not present their case to a jury is a beast called "qualified immunity." In 2011, it was not "clearly established" that subjecting a student to a high risk of concussion while practicing football was not clear or well known.

As to the School District, the Court of Appeals found that there was no custom or policy to violate constitutional rights, such as those of the student and the parents.

In the words of the Court, "To be free from deliberate exposure to a traumatic brain injury after exhibiting signs of a concussion in the context of a violent contact sport" was not, in the view of the appellate tribunal, "clearly established" in 2011. Both the coach and the School District walked away from their highly disturbing behavior which will result in changing the student's life forever.

The courts are very reluctant to recognize what is sometimes disparagingly referred to as "constitutional tort." People who work for the state or a local agency may be sued in their individual capacity under 42 U.S. Code § 1983 unless they enjoy qualified immunity. Qualified immunity is protection that exists unless the conduct of the state or local employee

clearly violates established statutory or constitutional rights of which a reasonable person would have known.

Keep in mind that Walkowiak had testified in his deposition that he was aware of symptoms of a concussion, and he had been trained as to how to identify them. He claimed that he tried to err on the side of caution. The coach admitted that Sheldon's hit could have been characterized as a "stinger" and that this could be a symptom of a concussion.

The court was willing to assume that Walkowiak was aware that the student had sustained a substantial blow and exhibited signs consistent with having sustained a concussion. This may have represented a "deliberately indifferent" ignoring of a risk posed by sustaining a second heavy blow to the head.

While recognizing the student's right not to be exposed to continuing harm, the coach was able to sneak away from responsibility by the little understood doctrine of qualified immunity. In essence, what the court did was to climb into a time machine and determine what a reasonable person would have known in 2011. "We are aware of no appellate case decided prior to November of 2011 that held that a coach violates the student's constitutional rights by requiring the student to continue to play in these circumstances." In other words, the dog must have bitten once before, to be liable for what he knew was wrong and dangerous at the time that it occurred, in 2011.

This is a surprising opinion from Judge Vanaskie, who understands the consequences of permitting state and local employees to trample on the rights of citizens, and then claim that at the time of the occurrence, they did not know their action was wrong. The Judge also gave credit to the fact that there was no evidence of a pattern of recurring head injuries in the Palmerton Area football program. There was no deliberate exposure of the injured players to the continuing risk of harm that playing football poses. Therefore, while the coach may have been incompetent and neglectful, and the School District a partner in ineptness, there is no remedy for the brain damaged student.

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