ELA Case Commentary

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Feleccia v. Lackawanna College: A Demonstration of the Limitations of Negligence Waivers and the Assumption of Risk Doctrine

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Introduction

In *Feleccia v. Lackawanna College*,[1] two aspiring football players sued a nonprofit junior college after both were injured on March 29, 2010 while participating in a tackling drill on the first day of spring practice. Both players were trying out for the team, and neither player had been offered a scholarship to play football at the college.

Prior to the beginning of spring football tryouts in 2010, Augustus Feleccia and Justin Resch both signed a document titled "Lackawanna College Waiver of Liability and Hold Harmless Agreement," which all student-athletes participating in the football program were required to sign. Both players admitted to knowing that by signing the waiver, they had agreed not to sue Lackawanna College or any of its agents for any injury incurred while playing football at the college.

Lackawanna College responded to the lawsuit by filing a motion for summary judgment, arguing that the two plaintiffs had signed a valid waiver (exculpatory release) whereby they agreed to release Lackawanna from all liability arising from injuries incurred from participating in the football program. A Pennsylvania trial court granted the college's motion and dismissed the case.

In ruling for Lackawanna College, the trial court concluded that the waiver was valid for three reasons. First, the waiver did not contravene public policy by imposing on matters of public interest such as employer-employee relations or public utility services. Second, the waiver contract was a private matter between the players and the college. Third, each party entered into the agreement as a free bargaining agent, so the contract was not one of adhesion.[2] Like all exculpatory clauses, the waiver was intended to protect Lackawanna College from liability resulting from charges of wrongful acts, fault, or guilt.

Alternatively, the trial court ruled that Feleccia and Resch had relieved the college of responsibility for their safety on the football field under the assumption of risk doctrine. In the trial court's view, the two plaintiffs had "voluntarily and knowingly proceeded in the face of an obvious and dangerous condition," and thus Lackawanna owed the two no duty to protect them from injuries commonly associated with football.[3]

On appeal, a Pennsylvania intermediate appellate court reversed the trial court's decision and remanded the case for trial, citing genuine issues of fact regarding whether the waivers signed by Feleccia and Resch relieved the college from liability for gross negligence or reckless conduct.

The Superior Court's Analysis

On appeal, the Superior Court of Pennsylvania agreed with the trial court that the waiver, which Feleccia and Resch had both signed, was valid. Affirming the trial court's analysis, the appellate court concluded that the waiver was an agreement involving the private affairs of the parties, that it did not violate public policy, and was not a contract of adhesion. Nevertheless, in the appellate court's view, the trial court erred in granting summary judgment to Lackawanna.

First, the Superior Court ruled, a waiver, although valid, is not enforceable unless the language of the waiver makes clear "that a person is being relieved of liability for his own acts of negligence." In the court's view, "the waiver's language does not indicate that Lackawanna was being relieved of liability for its own acts of negligence."[4]

Second, the appellate court pointed out, Feleccia and Resch had alleged more than mere negligence; they had averred gross negligence and recklessness on the part of Lackawanna College. Moreover, a review of the record contained ample evidence that the Lackawanna defendants had acted with little or no regard for the safety of the college's student athletes.

In *Tayar v. Camelback Ski Corporation*, the Pennsylvania Supreme Court had previously ruled that a pre-injury exculpatory clause cannot be used to escape liability for reckless conduct.[5] Thus, the Superior Court observed, the trial court had erred in granting summary judgment to Lackawanna College based on the waiver that Feleccia and Resch had signed.

Finally, the Superior Court ruled that summary judgment was inappropriate because a material issue of fact existed "as to whether the College's failure to have qualified medical personnel at the March 29, 2010 practice constitutes gross negligence or recklessness, the latter of which . . . cannot be waived in a pre-injury exculpatory release."[6]

Indeed, Resch and Feleccia claimed that licensed and qualified athletic trainers had not been present at the March 29, 2010 practice session when they were both injured. Thus, they argued, both football players failed to receive timely and competent medical treatment, which jeopardized their health and safety. They further claimed that the college coaches were aware that licensed trainers were not present at the March 29

practice.[7] The plaintiffs presented evidence confirming that the two trainers were not licensed athletic trainers in the Commonwealth of Pennsylvania on the day the plaintiffs were injured.

In analyzing whether Lackawanna College's failure to have qualified athletic trainers at the March 29 practice constituted gross negligence or recklessness, the Superior Court reflected on the Third Circuit Court of Appeals' 1993 decision in *Kleinknecht v. Gettysburg College*.[8] Drew Kleinknecht, a sophomore lacrosse player, suffered a cardiac arrest and died during a regularly scheduled practice of the College's intercollegiate lacrosse team. No qualified athletic trainers were present at the practice, and there were no adequate provisions for emergency care of athletes or staff.

Drew's parents filed suit against Gettysburg College, arguing that the College had "a duty to its intercollegiate athletes to provide preventative measures in the event of a medical emergency."[9] In the end, the *Kleinknecht* court concluded that "Drew was participating in a scheduled athletic practice for an intercollegiate team sponsored by the college under the supervision of college employees."[10] Based on these facts, the Third Circuit predicted that the Supreme Court of Pennsylvania would hold that a special relationship existed between the college and Drew that was sufficient to impose a duty of reasonable care on the college.[11]

Conclusion

In the end, the Pennsylvania appellate court reversed the trial court's summary judgment decision based on two precedents. In *Tayar*, the Pennsylvania Supreme Court had ruled that a party cannot rely on a pre-injury exculpatory clause to escape liability for reckless conduct. In addition, the *Feleccia* court found the Third Circuit's *Kleinknecht* decision to be persuasive. Like Drew Kleinknecht, Feleccia and Resch were injured while participating in a scheduled practice for an intercollegiate athletic team sponsored by the college while on college property and under the supervision of college employees. Colleges are expected to put a priority on the health and safety of their students and adhere to reasonable standards of safety, particularly with regard to student-athletes who can be injured in competitive athletics. Accordingly, the appellate court in *Feleccia* concluded that the trial court incorrectly granted summary judgment because there was a genuine issue of material fact regarding whether Lackawanna College's failure to provide qualified (i.e., licensed) athletic trainers at the March 29 practice constituted gross negligence or recklessness, neither of which can be waived in a pre-injury waiver or exculpatory release. Although the waivers signed by Feleccia and Resch were deemed valid under Pennsylvania law, these exculpatory releases did not insulate the college from its own reckless conduct under precedent laid down by the Pennsylvania Supreme Court. Consequently, the appellate court reversed the summary judgment of the trial court and remanded the case for trial.

Endnotes

1 156 A.3d 1200 (Pa. Super. Ct. 2017).
2 *Id*. at 1209.
3 *Id*. at 1218 (quoting the trial court).
4 *Id*. at 1213.
5 47 A.3d 1190, 1203 (Pa. 2012) (noting that "a dominant public policy against allowing exculpatory releases of reckless behavior, which encourages parties to adhere to minimal standards of care and safety").
6 *Feleccia*, 156 A.3d at 1214.
7 *Id*. at 1203-1204.
8 989 F.2d 1360 (3d Cir. 1993).
9 *Id*. at 1215, quoting *Kleinknecht,* 989 F.2d 1366.
10 *Id*., quoting Kleinknecht, 989 F.2d at 1367.
11 *Id*., quoting Kleinknecht, 989 F.2d at 1367.