Flying v. Jump Kicks: Defining Ordinary Action in Sport

Megenity v. Dunn
68 N.E.3d 1080 (Ind. 2017)
Supreme Court of Indiana

Facts of the Case

Karate is a popular activity for adults and children alike. Principles of the sport teach participants the importance of self-control and discipline while being physically active (Objectives and Values, 2013). Participation in such activities should be encouraged, as it contributes to the overall health of our nation (Bu, Haijun, Yong, Chaohui, Xiaoyuan, & Singh, 2010). This concept played a large role in the following case decided in February of 2017 by the Supreme Court of Indiana.

Tresa Megenity was an experienced martial artist. She practiced karate for over two years and had already achieved her black belt, among the highest levels of skill mastery. Megenity was a regular at her karate gym and frequently participated in group classes. David Dunn, a green belt, was a relatively inexperienced participant who also trained at the gym Megenity frequented. One Saturday morning a large group of participants with varying skill levels, from beginner to advanced, were invited to participate in a group session. These types of sessions were common at the gym and allowed participants to practice an assortment of karate skills and techniques. Megenity and Dunn were both in attendance. One drill held during the class was called, "Kick the Bag" and required participants to practice their side and flying kicks into standing padded bags held by volunteers. Participants were asked to complete both of the sidekicks before running to the last bag for the flying kick, a kick leaving one foot on the ground while turning and kicking high into the padded bag with the bottom of the foot. Megenity, as she had done many times before, volunteered to hold the bag designated for flying kicks. As the drill

progressed, Dunn waited in line for his turn in the "Kick the Bag" drill while watching others practice their side and flying kicks. Eventually, Dunn properly completed the two side kick stations before running towards the flying kick station where Megenity was reinforcing the bag. Dunn ran to the bag and jumped with both feet off of the ground to kick the bag, performing a jump kick instead of a flying kick. The force from the blow to the bag knocked Megenity to the ground causing an injury to her knee that required surgery and rehabilitation.

Complaint

Megenity filed a negligence suit against Dunn claiming recklessness and unreasonable action with an intent to injure her during the class drill.

Procedural History

Dunn moved for summary judgement at the trial court level on the grounds there was no material fact or evidence that would prove plaintiff's case. The court agreed and granted summary judgement in favor of Dunn. Subsequently, Megenity filed an appeal and the lower court's decision was reversed by the appellate court on the grounds that karate is not a commonly understood activity and it was not fully determined what would be considered ordinary conduct. The appellate court also noted there was still a question as to whether a breach of duty for negligence occurred. Thus, Dunn petitioned to have the case transferred to the Supreme Court of Indiana and it was accepted for review.

Findings

The question before the court was whether Dunn was negligent in his action towards Megenity. More specific was the key element of breaching his duty to act with reasonable care toward the plaintiff. While determining the answer to a question of fact is usually the job of lower courts, the Supreme Court of Indiana applied as a matter of law the legal precedence

created by *Pfenning v. Lineman* (2011) which created a "limited new rule applying only to sports injury cases"(p. 1083). The *Pfenning* case involved a teenaged girl in a beverage cart on the golf course being struck in the head and injured by an errant drive off the tee box for which the golfer failed to yell "fore!" A golfer not yelling "fore," albeit improper etiquette, was determined to be ordinary to the sport of golf, especially at the recreational level. Therefore, the defendant was not liable for the injury sustained as a result of his golf shot. This case set the precedent for injuries resulting from actions deemed "within the range of ordinary behavior of participants in the sport" (*Pfenning*, p. 404) to not be a breach of duty.

In the current case a jump kick was considered an ordinary activity in karate. Yet, the two sides disputed whether ordinary activity should apply to the sport or to the specific activity/drill at the time of the incident. The Supreme Court of Indiana decided that ordinary activity in such cases should apply to the sport in general rather than the specific activity. By interpreting the law in this general manner, court justices do not need to know the minute details of how a sport is performed, and can simply focus on whether the activity is ordinary to the sport. Thus, Dunn did not breach any duty to protect Megenity from unreasonable risk of harm.

A second issue the court had to reconcile was whether Dunn acted with intent to injure Megenity, or with recklessness in choosing to jump kick rather than using a flying kick. Under the limited new rule, a participant who injures a co-participant intentionally or recklessly can be considered to have breached his/her duty. While both parties agreed that Dunn had not intentionally injured Megenity, she claimed he behaved recklessly. In order for an action in a sport to be considered reckless it must meet three criteria created by *Mark v. Moser* (2001): 1) there must be a deliberate act or failure to act; 2) the offender must be indifferent as to the safety of the other person; and, 3) must exhibit conduct reflecting "a state of mind that is not at all

ordinary to the sport" (p.1085). Megenity was not able to produce sufficient evidence to fulfill these criteria. Further, Dunn expressed his apologies to Megenity immediately following the kick. Thus, Dunn was deemed to have only acted negligently and not in a reckless manner.

Verdict

The Supreme Court of Indiana granted defendant Dunn's petition to transfer, which effectively vacated the Indiana Court of Appeals ruling on this case. In other words, when Dunn requested the grant of transfer of this case to the Supreme Court of Indiana, the Court had jurisdiction over the appeal and all issues as if originally filed in the Supreme Court.

Implications

This case is another example in a long line of cases where participants in sport programs bring legal action against one another for injuries stemming from aggressive play. Injuries incurred in sport contests and activities are typically not of a tortious nature, but rather occur as the result of the natural (i.e., inherent) risks associated with the sport (Yasser, 1995), particularly in contact sports. The Court of Appeals of Indiana clearly established this precedence in *Mark v. Moser* (2001) when they ruled that an "allegation or proof of negligent conduct is insufficient to create liability" (p. 423). More recently, in *Pfenning v. Lineman* (2011), the Supreme Court of Indiana further specified that the standard should apply generally to contact sports rather than to the specific action or timing of the action by one participant to another. Now, with *Megenity v. Dunn* (2017), the Court had the opportunity to test their limited new rule in judging cases where plaintiff's injuries resulted from participation in sport activities. Sport participants should be able to engage in a game without the fear of litigation, particularly when action ordinary to the sport is involved. The *Megenity* ruling supports the general concept of primary assumption of risk and places the responsibility of understanding associated risks of the sport on the

participants during play. Applying this precedent to certain sports where the objective is to control or dominate opponents, such as wrestling, boxing, or mixed martial arts makes proving negligence extremely difficult. As a result it is important for coaches and co-participants to know the rules and understand the concepts/risks associated with the sport activity to protect themselves against negligence claims.

Regardless of liability, no instructor or coach wants to see their players/participants injured. As a result the following list provides risk management tips for coaches to prevent similar incidents:

- Separate a large group of participants into smaller groups based on experience, physical size, and skill level to avoid mismatching which could lead to injuries.
- Choose activities suitable for participants with the lowest level of experience to prevent injury when participants of mixed experience levels ***are*** participating together.
- Demonstrate proper technique prior to starting an activity and verbally check with participants for understanding.
- Provide appropriate supervision for the chosen activity. Complex movements, skills, or drills with higher risk of injury will require a more controlled environment and supervision than basic skills involving less contact/potential for injury.
- Following compliance with the above points, allow for participants to begin practicing skills with progressively increasing the level of difficulty:
    1. Separate the complex movement into a series of small segmented steps, or checkpoints, that add up to the whole. Practice each step separately and in sequence while checking form and technique at each stopping point.
    2. Practice the entire movement as one motion at half speed.

3. Performance without an opponent at full speed.
4. Perform the movement at half speed with an opponent.
5. Progress to full speed with an opponent only when all of the above have been demonstrated appropriately.

References

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