[Cite as *Crace v. Kent State Univ.*, 2008-Ohio-6487.]

Court of Claims of Ohio
The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ANGELA D. CRACE, et al.

Plaintiffs

v.

KENT STATE UNIVERSITY

Defendant
Case No. 2005-07275

Judge Joseph T. Clark

DECISION

{¶ 1} Plaintiffs brought this action alleging negligence and loss of consortium. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} From 1998 to 2001, plaintiff Angela Crace was a member of defendant's varsity cheerleading squad.[1] During the 1999-2000 school year, Coach Lenee Buchman and members of the squad practiced a cheerleading stunt known as the "Big K," or human pyramid. The bottom tier of the Big K included three participants standing on the ground, each with another squad member standing on their shoulders to form the second level of the pyramid. The three squad members on the second level held their arms upward to support two other squad members known as "flyers" who were lying horizontally atop the formation. The flyers positioned their limbs and torsos to achieve

[1]For the purposes of this decision, "plaintiff" shall refer to Angela Crace.

the appearance of a letter "K." Other squad members on the ground provided support to the formation and acted as "spotters" to catch any participant who might fall.

{¶ 3} In early 2000, after months of practicing the Big K, the 1999-2000 squad performed the stunt publicly for the first time at the Universal Cheerleading Association College Cheerleading National Championship. The performance was successful and the squad placed high in the competition; however, due to personnel changes between the 1999-2000 and 2000-2001 school years, the squad did not again attempt the Big K until February 12, 2001.

{¶ 4} On that date, the squad made three unsuccessful attempts to perform the Big K. Each attempt failed in part because plaintiff, who was a flyer in the stunt, was not pitched upward properly by others so as to reach her position atop the formation. On the first two attempts, plaintiff fell forward but had her fall broken by the "front spotter" who had been assigned to catch her. However, during the third attempt, plaintiff fell backward and the "rear spotter" failed to break her fall. As a result of the incident, plaintiff suffered severe injuries, resulting in paralysis in her lower body.

{¶ 5} Plaintiff alleges in her complaint that defendant and its employees were negligent in allowing the squad to attempt the Big K. Plaintiff further asserts that she is entitled to recovery on a claim for negligent supervision based upon plaintiff's assertion that Buchman negligently supervised the cheerleading squad, particularly in directing Detrick Cobbin to serve as a spotter for plaintiff. Defendant contends that plaintiff's claims are barred by the doctrine of primary assumption of the risk.

{¶ 6} In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that defendant's acts or omissions resulted in a breach of that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.*, 99 Ohio St.3d 79, 81, 2003-Ohio-2573, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75, 77. A non-participant in a recreational activity may be found liable for her negligent supervision of the activity under certain narrow circumstances, such as allowing the activity to take place absent any management or allowing an individual with a known propensity for violence to participate. *Santho v. Boy Scouts of America*, 168 Ohio App.3d 27, 2006-Ohio-3656 citing *Rodriguez v. O.C.C.H.A.* (Sept. 26, 2000),

Mahoning App. No. 99 C.A. 30; see also *Kline v. OID* (1992), 80 Ohio App.3d 393; *Hanson v. Kynast* (1986), 24 Ohio St.3d 171, 179 (J. Holmes, concurring).

{¶ 7} Primary assumption of the risk is generally a bar to recovery in a negligence action on the basis that the defendant owes no duty of care to the plaintiff. *Anderson v. Ceccardi* (1983), 6 Ohio St.3d 110, 114. Courts must apply the doctrine of primary assumption of the risk cautiously, and it is generally not applied outside recreational or sporting activities. *Gallagher v. Cleveland Browns Football Co.*, 74 Ohio St.3d 427, 431, 1996-Ohio-320; *Whisman v. Gator Investment Properties, Inc.*, 149 Ohio App.3d 225, 236, 2002-Ohio-1850.

{¶ 8} An individual who is injured in the course of a recreational or sporting activity assumes the ordinary risks of such activity and cannot recover unless it can be shown that another participant acted recklessly or intentionally in causing the injury. *Marchetti v. Kalish* (1990), 53 Ohio St.3d 95, syllabus**.** "A plaintiff cannot recover from any injuries that stemmed from 'conduct that is a foreseeable, customary part' of the activity in which the plaintiff was injured." *Santho*, supra, at 37, quoting *Thompson v. McNeill* (1990), 53 Ohio St.3d 102, 104. Participants and spectators are generally owed no duty by recreation providers to eliminate the risks inherent in a sport. Id. at 35. Primary assumption of the risk may relieve both participants and non-participants from liability. *Bundschu v. Naffah*, 147 Ohio App.3d 105, 2002-Ohio-607.

{¶ 9} Witnesses to the incident testified that the stunt came apart on the third attempt because plaintiff was pitched slightly too high above her intended position. In turn, the formation swayed and collapsed, causing plaintiff to fall backward. Cobbin testified that he was responsible for catching plaintiff in the event that she fell backward, but that he failed to do so because he had suddenly panicked upon seeing the large formation collapse. However, Cobbin also testified that plaintiff fell in such a trajectory that he was not in a position to catch her. Cheerleader Jaime Martin, who stood on the shoulders of another cheerleader while attempting to catch and hoist plaintiff atop the Big K, testified that when the stunt came apart, she fell onto Cobbin and may have prevented him from catching plaintiff.

{¶ 10} Plaintiff testified that during her time on the squad, she and other cheerleaders occasionally fell without being caught. According to plaintiff, she suffered

a dislocated elbow in a cheerleading accident during the 1998-1999 school year and she also suffered a fall while practicing the Big K during the 1999-2000 school year. Plaintiff further testified that prior to participating in defendant's cheerleading program each school year, she signed an "informed and medical consent" form that contained warnings as to the risk of injury inherent in sporting activities. Specifically, plaintiff acknowledged that she understood "that the dangers and risks include, but are not limited to, death, serious neck, and spinal injuries, paralysis, injuries or impairment to the musculoskeletal system, or other aspects of the body, general health, and well-being."2 (Defendant's Exhibits 1-3.)

{¶ 11} Daniel Grega testified that he belonged to defendant's cheerleading squad from 1996 to 2001, and that while acting as a spotter, he had occasionally failed to catch teammates who had fallen while performing stunts. Grega stated that the failure of spotters to properly break a cheerleader's fall is an ordinary part of cheerleading. James Blanchard testified that as a member of the squad from 1998 to 2000, at times he failed to adequately catch cheerleaders who fell during stunts. Steven Amicarelli stated that he belonged to the squad during the 2000-2001 school year; he recalled that it was common for stunts to collapse.

{¶ 12} Defendant's expert, Jomo Thompson, Head Coach of the University of Kentucky Cheerleading Team, testified that cheerleading involves an inherent risk of injury. Plaintiff's expert, Dr. Gerald George, Professor Emeritus of Kinesiology at the University of Louisiana and Senior Editor of the American Association of Cheerleading Coaches and Advisors (AACCA) Safety Manual, acknowledged that there is an inherent risk of injury in cheerleading and that such risk is more pronounced in the course of performing mounted stunts such as the Big K. Dr. George testified that the practice of developing a cheerleading squad involves an element of trial and error. Chapter 6 of the AACCA Manual, entitled Spotting and Cheerleading Safety, begins with the following quote that is attributed to Dr. George: "Spotting is not 100% fail-safe. Even

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[2]The court has previously rejected defendant's argument that the consent form released defendant from liability. In the January 17, 2006 decision denying defendant's motion for summary judgment, the court noted "that the form contains no language that would suggest plaintiffs agreed to indemnify, discharge, or otherwise release defendant from liability for any claim that resulted from plaintiff's participation in the cheerleading program."

under the very best of conditions, the window of foreseeability is never fully opened and the element of risk is forever present." (Defendant's Exhibit 27.)

{¶ 13} Based upon the testimony and evidence, the court finds that the risk of injury due to a fall while performing a mounted stunt is a result of a foreseeable, customary part of the sport of cheerleading. The court further finds that plaintiff had a complete appreciation of the risks inherent in cheerleading when she voluntarily participated in the Big K stunt. It therefore follows that plaintiff assumed this risk, that defendant owed plaintiff no duty to eliminate the risk, and that absent proof of plaintiff's injury being caused by another participant's reckless or intentional conduct, plaintiff is precluded from recovery by the doctrine of primary assumption of the risk.

{¶ 14} "Ohio has adopted the definition of recklessness contained in the Restatement of the Law 2d, Torts (1965), Section 500 * * *: 'The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.'" *Santho*, supra, at 36, 37, quoting *Marchetti*, supra, at fn. 2.

{¶ 15} Cobbin, who was in his first season with the squad during the 2000-2001 school year, testified that he was lacking in skill and physical strength at that time, relative to other male squad members. Cobbin testified that, for this reason, he told Buchman just before the incident that he was not comfortable with spotting for plaintiff. This statement was not corroborated by any other witness. Plaintiff alleges that Buchman disregarded Cobbin's concern and that her decision to assign Cobbin as a spotter for the Big K stunt constituted reckless, willful and wanton conduct.

{¶ 16} Buchman testified that Cobbin made no such statement to her and that he had sufficient ability to act as a spotter during the stunt. Indeed, Cobbin admitted that he had previously served as a spotter in mounts similar in form to the Big K and that Buchman had instructed him on spotting technique on prior occasions.

{¶ 17} In regard to Cobbin's purported statement to her, Buchman testified that she would not have had a cheerleader perform an act with which he was not

comfortable. Cobbin remained on the squad through two more school years after the incident and Buchman testified that he never expressed any such sentiments to her. Even if the court were to accept as true Cobbin's testimony that he told Buchman he was uncomfortable participating as a spotter in the Big K, there is no evidence to show that Cobbin had ever failed to catch a flyer prior to February 12, 2001.

{¶ 18} Buchman stated that based upon her observations during the 2000-2001 school year, the cheerleaders had demonstrated the ability to perform the Big K on February 12, 2001. Indeed, plaintiff testified that components of the Big K, and stunts similar in height and form to the Big K, had been performed throughout the school year. Buchman testified that she instructed squad members on how to perform the Big K during the February 12, 2001 practice and that she assigned the members to their roles within the formation.

{¶ 19} Defendant's experts Thompson and Jim Lord, Executive Director of the AACCA, testified that Buchman met the applicable standard of care in directing the squad's attempt at the Big K. Lord also stated that Buchman complied with all applicable AACCA safety standards. Dr. George and Thompson both testified that Buchman had assigned a sufficient number of spotters to attend both to the flyers and to other participants who attempted to perform the stunt. Dr. George acknowledged that the facilities at defendant's field house were appropriate for performing mounted stunts.

{¶ 20} The testimony and evidence established that Buchman had evaluated both the skill level of each member of the squad and the ability and readiness of the squad as a whole. Squad members corroborated Buchman's testimony that the participants prepared for the Big K by performing "progressions" which involved completing components of the stunt as a warm-up activity. The court finds that Buchman coached a well-trained squad that had successfully performed the progressions for the Big K prior to attempting to execute the stunt on February 12, 2001.

{¶ 21} Although the exact circumstances of plaintiff's fall are not clear due to the nature of the incident, the evidence does not support a finding either that Buckman was reckless in her supervision of the cheerleading squad, or that any participant caused plaintiff's injury through reckless or intentional conduct. Accordingly, the court finds that plaintiff's claim is barred by the doctrine of primary assumption of the risk.

{¶ 22} Finally, plaintiffs Rhonda Crace and Robert Crace are precluded from recovering on their loss of consortium claims in that such claims are derivative and "dependent upon the defendant's having committed a legally cognizable tort upon the [individual] who suffers bodily injury." *Bowen v. Kil-Kare, Inc*. (1992), 63 Ohio St.3d 84, 93. Inasmuch as plaintiff has failed to prove her claim of negligence, the loss of consortium claims must also fail. Accordingly, judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently

herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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JOSEPH T. CLARK
Judge

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