

Hass v. Rhodyco Productions (2018)

The release signed by participant assumed all risks associated with participation in race, precluding claim for ordinary negligence; release was not void against public policy; there was a genuine issue of material fact as to whether organizer's management of race constituted gross negligence; and primary assumption of the risk doctrine did not bar action.

FACTS

In 2011, Peter Hass (Hass) suffered a cardiac arrest, collapsed, and died as he crossed the finish line at the 2011 Kaiser Permanent San Francisco Half Marathon. Hass's wife and his children (Hass family) sued the race's organizer, RhodyCo Productions (RhodyCo). In their complaint they alleged negligent organization and failure to manage their emergency medical services plan (EMS) for the race. Before Hass registered for the race he signed an express waiver online releasing RhodyCo of liability.

At trial, RhodyCo moved for summary judgment against the Hass family asserting they were barred by the waiver Hass signed and the primary assumption of the risk doctrine. The trial court entered summary judgment for RhodyCo on both counts. The Hass family filed for a new trial asserting that the express waiver signed by Hass was an express waiver to ordinary negligence and not gross negligence. The Hass family asserted this claim based on additional evidence that RhodyCo failed to follow their EMS plan. Specifically, by failing to hire a medical doctor to supervise the EMS and hiring a chiropractor instead. The trial court granted the Hass family's motion for a new trial to allow them amend their complaint to plead gross negligence. RhodyCo appealed the order granting a new trial and the Hass family cross appealed the order granting summary judgment.

DISCUSSION

The Court of Appeal for the First Appellate District affirmed that there was a triable issue of material fact as to whether or not the waiver was effective as to EMS plan. Further, the Court of Appeal also reversed the summary judgment, finding that it was not warranted based on primary assumption of the risk.

In applying long standing rules regarding express waivers the Court of Appeal cited to (*Coates v. Newhall Land & Farming, Inc.* (1987) 191 Cal.App.3d 1), explaining that participant's heirs are barred from subsequent wrongful death based on ordinary negligence, but not gross negligence. In evaluating Hass's express waiver, the court found that he assumed all risks associated with the race releasing RhodyCo of all liability, including Hass's family claim for ordinary negligence. The Court also found that the amended complaint for RhodyCo's failure to implement the EMS plan constituted gross negligence.

In assessing the primary assumption of the risk doctrine and the duties owed to participants by organizers of recreation activities the court reviewed (*Knight v. Jewett* (1992) 3 Cal.4th 296), (*Nalwa v. Cear Fair, L.P.* (2012) 55 Cal.4th 1148). There is a limited duty for operators of recreational activities not to increase the risks of activity and to minimize the extrinsic risks of the activity without altering the nature of the activity itself.

Here, the court found that although cardiac arrest is an inherent risk in running a marathon, RhodyCo did not increase that risk. Further, the court found that an EMS plan was not an inherent risk to running and therefore could be provided by an organizer without altering the fundamentals of running a marathon. Therefore, the primary assumption of the risk doctrine could not bar the Hass family with respect to gross negligence in their management of their EMS plan.

The holding of *Hass* illustrates that express waivers may bar a claim for wrongful death based on ordinary negligence, where the language of the waiver expressly waives liability and assumes all liability. Additionally, operators of recreational activities have a limited duty to not increase inherent risks of an activity under the primary assumption of the risk doctrine. This limited duty is to minimize the extrinsic risks of the activity without altering the nature of the activity.