

Nigel v. Burbank Unified School District
2023 DJDAR 6822

The primary assumption of the risk doctrine does not apply when a student-plaintiff injures themselves during a PE touch football game because participation was mandatory.

FACTS/PROCEDURE

In April 2018, Plaintiff-Nigel B. was taking part in a touch football game as part of the curriculum for his physical education (“PE”) class at John Muir Middle School in the Burbank Unified School District (“District”). Students’ participation in PE class sporting activities was mandatory. One student, Richard, routinely pushed Nigel during PE class, and in an ultimate frisbee game, Richard grabbed and twisted Nigel’s arm and asked him if he wanted to die. Nigel reported this incident to Celaya, an assistant principal, but neither Celaya nor the school principal advised the physical education teacher, Dylan Washausen (“Washausen”), that the plaintiff had complained about Richard. However, in the present case, during the touch football game, another student (“Gianni”) with a history of harassing and bullying behavior toward Nigel slammed into him, causing Nigel to tear a ligament in his knee.

Nigel filed suit against the District, Gianni, Gianni’s parents, and Washausen. Washausen requested that the trial court instruct the jury on the doctrine of the primary assumption of the risk, but the trial court refused because Nigel had been injured during a mandatory class. The jury returned a verdict in Nigel’s favor that the District breached a mandatory duty under the Education code, Washausen was negligent, and plaintiff suffered resulting harm. The defendants appealed.

HOLDING/DISCUSSION

Primary Assumption of Risk

Where the primary assumption of risk doctrine applies to a recreational activity, instructors and participants owe other participants only the duty not to act to increase the risk of injury over that inherent in the activity. Although the doctrine has been applied to a range of school activities, the plaintiff’s voluntary participation in the activity has always been a prerequisite to its application. Here, it was undisputed that Nigel’s participation in PE class activities, including the touch football game that led to his injury, was part of the PE curriculum and mandatory. Therefore, his participation in the activity was not voluntary, and the assumption of the risk doctrine did not apply to the compulsory activity.

The appellate court held that because a middle school student injured during a mandatory physical education class was not a voluntary participant but was compelled to attend under Ed. Code, § 48200¹. So, the primary assumption of risk doctrine did not apply to limit the duty of due care under Civ. Code, § 1714(a)[1]². Therefore, the trial court did not err when it refused to instruct

¹ See. (Cal. Civ. Code, § 48200.) (people between the ages of 6 and 18 years old are subject to compulsory full-time education.)

² See. (Cal. Civ. Code, § 1714.) (people generally owe a duty of care not to cause an unreasonable risk of harm to others.)

the jury on the primary assumption of risk because Nigel's participation in the activity was not voluntary, and the assumption of the risk doctrine did not apply to the compulsory activity.

Breach of Mandatory Duty

A school district is required to inform teachers about students who have engaged in or are reasonably suspected of having engaged in "causing or threatening physical injury or willfully using violence upon another person, except in self-defense."³ Where a liability claim is premised on the administration's failure to inform a teacher of a student's disciplinary record⁴, the fact finder must inquire whether the teacher's lack of this specific information was a substantial factor in bringing about the harmful conflict. Here, there was no evidence that the plaintiff complained about Gianni to a teacher or school administrator. The District was aware of but failed to report Richard's conduct toward the plaintiff to the teacher in violation of their mandatory duty. Specifically, Gianni, not Richard, caused the plaintiff's injury. So, the District's failure to inform Washausen about Richard's conduct toward the plaintiff does not justify imposing liability against the District for Gianni's conduct. Therefore, the appellate court reversed the trial court's judgment and remanded for the trial court to enter judgment in favor of the District.

Special Verdict Form – Comparative Fault

Finally, the defendants argue that question number four of the special verdict form misadvised the jury that it could not apportion fault between the defendants and Gianni if it concluded that Gianni had engaged in an intentional act. Proposition 51 provides that "each defendant shall be liable only for the amount of noneconomic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount."⁵ To penalize the negligent tortfeasor in such circumstances will only frustrate the statute's purpose and violates the commonsense notion that a more culpable party should bear the financial burden caused by its intentional act. The appellate court held that Gianni intentionally ran into the plaintiff was a substantial causative factor in the plaintiff's injury and Washausen's. So, the appellate court remanded the apportionment of fault issue for because apportionment of fault should not increase a negligent defendant's obligation based on a more culpable party acting intentionally. Therefore, the defendants should be entitled to seek allocation of fault under Cal. Civil Code § 1431.2.

³ Cal. Civ. Code, § 49079(a). See. Breach of Mandatory Duty, Cal. Civ. Code, § 49079.

⁴ See. Breach of Mandatory Duty, Cal. Civ. Code, § 49079.

⁵ Cal. Civil Code § 1431.2.