

Gee v. National Collegiate Athletic Association

Cal. Ct. App., Dec. 24, 2024, No. B327691

California Court of Appeal, Second Appellate District, Division 8.

The assumption of the risk doctrine applies to plaintiffs injured by an inherent risk of a sport, irrespective of whether the specific injury itself was inherent to the sport.

What is inherent is determined by the conduct or condition necessary to engage in the sport.

ISSUE

1. Does the doctrine of assumption of the risk absolve the NCAA of liability for football players who end up with CTE?

HOLDING

Yes, “it is undisputed that getting hit in the head is an inherent risk of college football. So under the assumption of risk doctrine, the NCAA's only duty was not to increase that risk.” *Gee v. National Collegiate Athletic Association* (Cal. Ct. App., Dec. 24, 2024, No. B327691) 2024 WL 5319287, at *4, reh'g denied (Jan. 10, 2025).

FACTS

In 2018, Matthew Gee died at age 49. He played football for the University of Southern California from 1988 to 1992. A coroner determined that his death was due to the combined toxic effects of alcohol and cocaine, as well as hypertensive and atherosclerotic cardiovascular disease, anomalous small coronary arteries, complications of hepatic cirrhosis, obstructive sleep apnea and obesity. His widow, Alana Gee, donated his brain to Boston University's Chronic Traumatic Encephalopathy (CTE) Center for study. One Dr. Thor Stein examined his brain and determined he had Stage II CTE, which is now referred to as low level CTE.

Alana Gee subsequently filed a wrongful death action against the National Collegiate Athletic Association (NCAA), contending that CTE was a substantial factor in her husband's death, and that the NCAA negligently failed to take reasonable steps which would have reduced his risk of contracting CTE. The NCAA asserted an assumption of the risk defense.

DISCUSSION

The Court noted the general rule that individuals have a duty to use due care to avoid injury to others and may be held liable if their careless conduct injures another. However, the Court stressed there is a fundamental difference when it comes to sports. To determine the duty of care owed to a plaintiff in the sports setting boils down to the nature of the sport.

A defendant has no duty to eliminate risks inherent in the sport itself. However, the defendants generally have a duty to use due care **not to increase the risk to the participant over and above those risks inherent to the sport**. The scope of the duty is predicated on the defendant's role in, or relationship to, the sport. In general, co-participants and coaches/instructors have a duty to participants to not intentionally harm them and not to engage in conduct **outside the range of ordinary activity for the sport**.

The Court found that a specific injury need not be the risk assumed. In other words, the Court did not require that Gee assumed the specific risk of contracting CTE. The Court agreed with the trial court's conclusion that "a pathological definition of the risk to be assumed makes little sense **The risk athletes assume is the risk of a physical event; the precise nature of the subsequent pathological consequences is not something that can or need be predicted**. It cannot reasonably be disputed that blows to the head are an inherent risk of college football."

The Court provided an illustration distinguishing between instances when the doctrine applies and when it does not:

Knowing that a skier suffered a broken leg from a fall while skiing is not sufficient to determine whether the doctrine applies. If the skier broke his or her leg in a fall while skiing moguls, the injury was caused by a risk inherent in the sport and the doctrine applies; if the skier broke his or her leg due to a poorly maintained towrope, the doctrine does not apply. Thus, it is not the specific injury which is determinative, it is the nature of the conduct or condition which caused it.

The Court focused on the distinction, explaining that risk refers to conduct or a condition of the sport, not the specific injury which results from that conduct or conditions. In doing so, the court noted that the term "extrinsic risk" comes from a conduct or condition that is not inherent to the sport. The Court rejected out of hand that CTE was an extrinsic risk and thus did not consider Plaintiff's arguments that the risk of CTE could have been reduced.

COMPARISON BRIEF GENERATED BY AI (COPILOT)

Case Brief: Gee v. National Collegiate Athletic Association (Cal. Ct. App., Dec. 24, 2024, No. B327691)

Procedural History

Alana Gee, the widow of Matthew Gee, a former University of Southern California (USC) football player, filed a wrongful death lawsuit against the National Collegiate Athletic Association (NCAA). She alleged that Chronic Traumatic Encephalopathy (CTE) was a substantial factor in her husband's death and that the NCAA negligently failed to take reasonable steps to reduce his risk of contracting CTE. The Superior Court of Los Angeles County ruled in favor of the NCAA, applying the assumption of risk doctrine. Alana Gee appealed the judgment[1].

Disposition

The California Court of Appeal, Second Appellate District, affirmed the lower court's judgment, holding that the assumption of risk doctrine applied and that the NCAA did not have a duty to mitigate the inherent risks of college football[1].

Holding

The court held that the NCAA could not be held liable for Matthew Gee's death because the risks associated with repeated head hits are inherent in the sport of college football. The court also found that the NCAA did not unreasonably increase these risks nor fail to take measures that would have minimized the risks without altering the essential nature of the sport[1].

Rule Statements

1. **Assumption of Risk Doctrine:** The assumption of risk doctrine applies when the risks are inherent to the activity, and the defendant does not have a duty to mitigate these inherent risks[1].
2. **Inherent Risks:** Activities like college football have inherent risks, such as repeated head hits, which participants are deemed to accept[1].
3. **Duty to Mitigate:** The defendant is not required to take additional safety measures if such measures would alter the essential nature of the activity[1].

Discussion

In **Gee v. National Collegiate Athletic Association (2024)**, the California Court of Appeal analyzed the application of the assumption of risk doctrine in the context of college football and the inherent risks associated with the sport. The court's analysis focused on several key points:

1. **Inherent Risks of Football:** The court emphasized that repeated head hits are an inherent risk of playing college football. It noted that all college football players are exposed to numerous head impacts during their careers, and these impacts are a fundamental part of the game^[1].
2. **Foreseeability of Injury:** The court found that the risk of injury from head impacts, including the potential for developing Chronic Traumatic Encephalopathy (CTE), was foreseeable. The court stated that while not all players develop CTE, the possibility of such injuries is a known risk that players assume when they choose to participate in the sport^[1].
3. **NCAA's Duty:** The court concluded that the NCAA did not have a duty to mitigate the inherent risks of football. The court reasoned that imposing such a duty would fundamentally alter the nature of the sport. The court also noted that the NCAA did not unreasonably increase the risks beyond those inherent in the sport^[1].
4. **Plaintiff's Argument:** Alana Gee argued that her husband did not specifically assume the risk of contracting CTE. However, the court rejected this argument, stating that the assumption of risk doctrine applies to the general risks of the sport, not to specific medical conditions that may arise from those risks^[1].
5. **Instructional Error:** The court also addressed the plaintiff's contention that the trial court erred in its jury instructions regarding the NCAA's responsibility for the actions or inactions of its members. The court found that any instructional error was harmless and did not affect the outcome of the case^[1].

In summary, the court's analysis in **Gee v. NCAA** reaffirmed the principle that participants in inherently risky activities, such as college football, assume the risks associated with those activities. The court held that the NCAA was not liable for failing to mitigate these inherent risks, as doing so would alter the essential nature of the sport.

If you have any more questions or need further clarification, feel free to ask!

^[1]: [Gee v. National Collegiate Athletic Association \(Cal. Ct. App., Dec. 24, 2024, No. B327691\)](#)

References

[1] [Gee v. National Collegiate Athletic Association - Justia Law](#)