

# NORTH CAROLINA LAWYERS WEEKLY

www.nclawyersweekly.com

DECEMBER 22, 2008

## Spectator hit by soccer ball can sue, court rules

By GUY LORANGER, Staff Writer  
guy.loranger@nc.lawyersweekly.com

In what the plaintiff's attorney called a warning shot to stadium operators, the Court of Appeals has ruled that a woman hit in the head by a ball at a women's pro soccer match can go forward with her negligence suit.

The appeals panel issued the ruling Dec. 16 in the case of *Allred v. Capital Area Soccer League, Inc.* (North Carolina Lawyers Weekly No. 08-07-1383, 19 pages).

Judge Sanford L. Steelman Jr. wrote the first-impression decision. Chief Judge John C. Martin and Judge Linda H. Stephens concurred.

The panel reversed a Wake County court's decision to boot the spectator's lawsuit against the defendants, which included the Cary stadium's owners and operators.

The complaint adequately stated a case for negligence and did not contain allegations that, on their face, presented an "insurmountable bar" to recovery, the panel said.



Hartsoe



Schmitz

However, the opinion also pointed out that spectator injury cases in North Carolina and jurisdictions nationwide have rarely survived summary judgment.

"It's certainly not a slam-dunk win from here out," said Winston-Salem attorney R. Anthony Hartsoe, who is representing the plaintiff along with Joseph R. Schmitz.

"But I think it was a good decision that doesn't allow sports arena operators to simply not regard, not think about or consider how to protect their patrons on at least a minimal basis from the most dangerous part of the game," Hartsoe said.

Raleigh attorney Stephen C. Keadey, who represented the

defendants, said only that his clients were "dissatisfied" by the outcome.

### Background

The case arose in April 2003 at the stadium that is now called SAS Soccer Park. A practice shot before a Women's United Soccer Association match sailed over a goal and into the stands directly behind the goal, striking the plaintiff in the head.

In a complaint filed in April 2006, the plaintiff alleged that she suffered post-concussive syndrome and a neurological disorder as the result of the incident.

The plaintiff claimed she had never attended a soccer match at the stadium before nor had any "knowledge or underlying information that there was a significant risk of being struck by a soccer ball" while watching a match at that venue.

The complaint also alleged that no protective netting had been placed behind the goals, which were located roughly 10 feet from the stands, according to Hartsoe.

■ See **SPECTATOR**, next page

■ **SPECTATOR** continued

The plaintiff said the defendants had breached a duty to the stadium's patrons by not warning them of the risk of getting hit by a ball, providing a safe environment or installing protective netting.

"There's only two places where people are kicking a ball that hard, trying to direct it at that point, and that's behind the two goals," Hartsoe said.

"Had they hung a \$100 net, hung from a couple of poles behind the goal, it would have changed this woman's life."

The defendants denied the allegations and alleged contributory negligence and assumption of risk. In arguing for a dismissal, the defendants said the risk of getting hit by the ball was so open and obvious of a danger that the plaintiff should have known it.

They also argued that if the risk should have been apparent to the defendants, then it must have been reasonably foreseeable to the plaintiff.

Superior Court Judge Paul C. Ridgeway granted the defendants' motion to dismiss in February 2007. The plaintiff appealed.

### **First impression**

Because no North Carolina cases had ever dealt with spectators getting hit by a ball at

a soccer match, the appeals panel turned to general premises liability law and prior baseball cases to reach its holding.

The basic duty of the defendants was to "exercise reasonable care in the maintenance of their premises for the protection of lawful visitors," the panel said, quoting from *Nelson v. Freeland*, 349 N.C. 615 (1998).

However, in baseball cases from other jurisdictions, it had been accepted as a matter of law that no duty existed where "a patron's being struck in the stands by an errant baseball was an inherent and obvious risk of attending the game."

The panel also cited *Hobby v. City of Durham*, 152 N.C. App. 234 (2002), which held that a baseball stadium owner had discharged his duty of care by providing some form of screened spectator seating, such as behind home plate.

In this case, the panel found that the plaintiff had expressly alleged in her complaint that neither she nor any reasonable person would have knowledge of an "obvious" risk of getting hit by a ball at the stadium.

At the same time, she alleged that the risk should have been foreseen by the stadium's owners and operators because of their "particular knowledge of the sport of soccer."

The panel said that because the spectator alleged a lack of knowledge, the suit could be not dismissed at the Rule 12(b)(6) stage under an assumption of risk argument.

Still, the panel pointed out issues that could arise at the summary judgment or directed verdict stage of the case.

"Whether the plaintiff had knowledge of the danger is not limited to her experience at this particular stadium but would encompass her knowledge of soccer in general and of the sport derived from attendance at other venues," Judge Steelman wrote.

As far as the defendants' duty to provide protective netting, the panel said it depended on "the protection customarily provided in facilities designed for the viewing of a particular sport." That determination could not be made at the pleadings stage, the panel held.

The opinion pointed out that only two other cases in the country had dealt with spectator injuries at soccer matches — and both had made it at least to the summary judgment phase.

As the litigation progresses, Hartsoe said his client would try to develop evidence about stadium design and the inherent dangers of attending soccer games.

"Basically, this just gets us to first base," he said. "We get to keep moving."