

NORTH CAROLINA Lawyers Weekly

Tort/Negligence – Personal Injury – Premises Liability – Professional Soccer – First Impression – Spectator Injury

By: dmc-admin December 22, 2008

Allred v. Capital Area Soccer League, Inc. (Lawyers Weekly No. 08-07-1383, 19 pp.) (Sanford L. Steelman Jr., J.) Appealed from Wake County Superior Court. (Paul C. Ridgeway, J.) N.C. App.

Holding: A soccer spectator has stated a negligence claim against the stadium owner after she was hit in the head by an errant practice shot just before a professional match.

We reverse the trial court's grant of defendants' motion to dismiss.

There are no N.C. cases dealing with spectators injured as a result of being struck by a ball at a soccer match. The cases previously decided in North Carolina deal with spectators being struck by balls at baseball games. These cases have been uniformly decided against the spectator, either on the basis that the stadium operator was not negligent or that the spectator assumed the risk of being hit by a baseball.

The owner of a public facility has a duty of reasonable care under the circumstances to its invitees.

As a general rule, there is no duty to protect a lawful visitor against dangers which are either known to her or so obvious and apparent that they reasonably may be expected to be discovered. Nor is there a duty to warn against dangers either known or so obvious that they should have reasonably been discovered by plaintiff. The "no duty" rule was not abolished when the distinction between duties owed by landowners to licensees and invitees was abolished by *Nelson v. Freeland*, 349 N.C. 615, 507 S.E.2d 882 (1998).

It has been accepted as a matter of law that a patron's being struck in the stands by an errant baseball was an inherent and obvious risk of attending the game.

When an operator of a baseball facility provides some seating which has a screen to protect patrons from errant baseballs, they are held to have discharged their full duty to spectators in safeguarding them from the danger of being struck by thrown or batted balls. This rule applies even if there is an unusually large crowd and patrons desiring screened seating are unable to obtain it.

The concept of assumption of risk has frequently been used in sports spectator injury cases to bar recovery by plaintiffs. The two elements of the common law defense of assumption of risk are (1) actual or constructive knowledge of the risk and (2) consent by the plaintiff to assume that risk. A plaintiff's consent to assume a risk may be either express or implied. The principles of assumption of risk apply not only to being struck during the course of a game, but also to preliminary or warm-up activities.

Defendants owed plaintiff a duty of reasonable care. Plaintiff asserts that defendants were negligent in failing to warn patrons of the danger from soccer balls leaving the field of play, failure to provide a safe environment, and failure to install protective netting behind the goals. Plaintiff also alleged that defendants had superior knowledge of the risks that led to her injuries and that their negligence caused those injuries. These allegations are adequate to establish a duty, a breach of that duty, and damages arising out of the alleged breach of duty.

The defendants' duty to warn is qualified to the extent that the danger is known or so obvious that the plaintiff should have been aware of it. The question thus becomes whether the complaint contains allegations which affirmatively establish actual or constructive knowledge, that the danger was either known to plaintiff or so open and obvious that it should have been known. We hold that it does not.

Regarding actual knowledge, the complaint specifically alleged that plaintiff "had no knowledge or underlying information that there was a significant risk of being struck by a soccer ball when attending such events at this facility." We hold that this allegation is sufficient to withstand defendants' N.C. R. Civ. P. 12(b)(6) motion on the basis of plaintiff's actual knowledge.

Defendants contend that if, as the complaint alleges, it was reasonably foreseeable to defendants that this was a danger to spectators, then it must have also been reasonably foreseeable to plaintiff, and thus an "open and obvious" condition.

We disagree. This allegation was specifically qualified and based upon defendants' "particular knowledge of the sport of soccer." Nothing in the complaint intimates that plaintiff possessed this particularized knowledge, or that a

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knowledge of the danger is not limited to her experience at this particular stadium.

Assumption of risk is an affirmative defense. The first element of assumption of risk is the plaintiff's actual or constructive knowledge of the risk. The complaint's allegations do not affirmatively establish either actual or constructive knowledge of the danger. Thus, it was improper for the trial court to dismiss the complaint at the motion to dismiss stage of the proceedings.

The owner of a sports facility is not required to provide screening for all seats, only a portion of the seats. While the fact of some screening would bar recovery, the complaint does not affirmatively disclose whether there was *any* protective screening at defendants' stadium.

"The duty of the owner extends to the physical condition of the premises, themselves, and to contemplated and foreseeable activities thereon by the owner and his employees, the contestants and the spectators. The amount of care required varies, but the basis of liability for injury to the invitee from any of these sources is the same – the failure of the owner to use reasonable care under the circumstances." *Aaser v. Charlotte*, 265 N.C. 494, 144 S.E.2d 610 (1965).

"As to what constitutes reasonable protection, Courts have looked to the protection customarily provided in facilities designed for the viewing of a particular sport...." *Hagerman v. City of Niagara Falls*, 29 O.R.2d 609 (Ont. S.C. (H.C.J.) 1980).

While the body of law dealing with the duty to provide protective screening at a baseball game is well-developed, there are no reported decisions pertaining to an owner's duty at a soccer match. The scope of an owner's duty should be determined in accordance with the standard set forth in *Hagerman* and *Aaser*. Based upon the allegations contained in the complaint, this cannot be done at the pleadings stage of the proceedings.

Reversed and remanded.