S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

RYAN BARRY, by his Next Friend, TERESA PELLONPAA, Plaintiff-Appellant,	UNPUBLISHED November 15, 2005
v	No. 262826 Marquette Circuit Court
ISHPEMING-NICE COMMUNITY SCHOOLS and JAMES IWANICKI, Defendants-Appellees.	LC No. 04-041640-NI

Before: O'Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7)(governmental immunity) in this action in which Ryan Barry was allegedly injured by his assistant football coach, defendant James Iwanicki, when Iwanicki struck Barry with a blocking shield outside of the football field's practice area after Barry had essentially stopped practicing and walked away from linemen drills because he was unable to continue due to a previously sustained injury. Barry alleged that he suffered torn ligaments in his right ankle that required orthopedic surgery as a result of Iwanicki's actions. We find that a factual dispute exists with respect to whether Iwanicki's actions constituted gross negligence for purposes of avoiding governmental immunity under MCL 691.1407(2). The deposition testimony of Barry and his teammates handily affords sufficient evidence to create a factual dispute, thereby necessitating resolution at trial by the trier of fact. Furthermore, a factual issue remains in regard to proximate cause. Accordingly, we reverse and remand.

This Court reviews de novo a trial court's ruling to either grant or deny a motion for summary disposition. *Kreiner v Fischer,* 471 Mich 109, 129; 683 NW2d 611 (2004). This includes a motion brought pursuant to MCR 2.116(C)(7). *Poppen v Tovey*, 256 Mich App 351, 353; 664 NW2d 269 (2003). Further, questions of law in general are reviewed de novo. See *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co,* 471 Mich 608, 612; 684 NW2d 800 (2004).

MCR 2.116(C)(7) provides, in part, for summary disposition where a claim is barred by immunity granted by law. In analyzing a (C)(7) motion predicated on immunity, this Court gives consideration to the affidavits, depositions, admissions, and other documentary evidence submitted by the parties. *Poppen, supra* at 353-354. For purposes of this subrule, the

documentary evidence must be construed in a light most favorable to the nonmoving party. *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). "If the facts are not in dispute and reasonable minds could not differ concerning the legal effect of those facts, whether a claim is barred by immunity is a question for the court to decide as a matter of law." *Poppen, supra* at 354, citing *Diehl v Danuloff*, 242 Mich App 120, 123; 618 NW2d 83 (2000).

Gross negligence is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Evidence of merely ordinary negligence cannot create a factual question concerning gross negligence. *Poppen, supra* at 356.

Review of Barry's deposition testimony and that of his former teammates provides evidence indicating, when viewed in a light most favorable to plaintiff, that Iwanicki was informed and had knowledge of Barry's existing ankle injury that was sustained in a game a few days before the incident at issue, that Barry had left the field's practice area by the time the incident with Iwanicki occurred, that Barry had removed his chin strap and had his helmet pushed back on top of his head when struck by the blocking bag or shield, and that Iwanicki either threw or shoved the shield in a forceful manner into Barry's face, thereby jamming it into or under his face mask, which forced his head to snap backwards as well as causing him to stumble. Furthermore, there was evidence that Barry was unprepared for and not expecting Iwanicki's action considering that Barry had essentially stopped practicing, that Barry was drinking water when struck, that the incident was outside the confines of the actual blocking drills, that the blocking shield was approximately two by three feet in width and length and heavy, that Barry, exasperated, told Iwanicki that he could not do the drills because he was hurting, and that Iwanicki was irate and frenzied when striking Barry with the blocking shield. Certainly, when viewing the evidence in a light most favorable to plaintiff, reasonable minds could differ with respect to whether Iwanicki's conduct was so reckless as to demonstrate a substantial lack of concern for whether an injury resulted to Barry.

As noted above, our summarization of the documentary evidence is gleaned from the deposition testimony, which, in light of our colleague's vigorous dissent, we shall now examine more closely. Barry testified as follows:

> And I'm like, "Well, you know, I want to [do the drills], but I can't." . . . "What more do you expect out of me?" And he goes, "Just get off – just get off my damn field," or something like that. "Get off the damn field." I started walking off the field. Iwanicki is behind me calling me a p***y, telling me that, you know, I'm just – I'm just being a p***y and that. It's not that I can't do it, it's that I don't want to – and swearing at me and calling me all kinds of names. And so I got off to the sideline and I'm like, "What am I supposed to do now?" And he's like, "Hold the bag," and I'm like, "I can't hold the bag." And he's walking towards me still and I'm on the sideline . . . . There was like four or five [blocking bags] laying on the ground in front of me and I unstrapped my helmet and I had it pushed up to where, you know, my – the face mask was . . . up here and I was taking a drink of water.
>
> And he came up and just grabbed the – grabbed the bag and when he grabbed the bag, he put his hands on the little handles and came up to me and just

> slammed it in my face and the face mask went up and sent my head backwards and I stepped back in – I stepped back from the blow it gave me and when I stepped back[,] I . . . felt my ankle just snap[.]

Player Jeff Huot testified that Barry conveyed to Iwanicki that he could not do the blocking drills, and, in response, Iwanicki became enraged. Huot, who indicated that Barry was hurting from the prior ankle injury, described the incident that caused the alleged injury as follows:

> Ryan was pretty much fed up and Coach said, “Get the hell off my field.” Ryan starts walking away. Right as Ryan gets off the field – we’re in our own little corner down there and Ryan gets off the field and turns around, “What the hell do you want me to do?” or something like that[.] . . . [Iwanicki] came walking up with the bag, “What I want you to do is hold the goddamn bag,” and he went like that (indicating). And when Ryan was walking off he had taken the straps off his head, so the helmet was sitting there free. . . . When Coach went to give him the – or give him the bag hard pretty much, he hit the face mask and it drove into Ryan’s face or face mask[.]

Player Eric Sibley testified:

> *Q*. Okay. Did you see Ryan get knocked back? Did you see his body go backwards?
>
> *A*. Like, I saw him go backwards. . . .
>
> * * *
>
> *Q*. Okay. And so whatever [Iwanicki] did had enough force to knock him backwards?
>
> *A*. Yeah.

Player Isaac Delongchamp testified that Iwanicki actually threw the blocking shield at Barry after Barry moments earlier had asked Iwanicki, “What more do you expect from me?” Delongchamp further testified, emphatically, that Iwanicki’s act of throwing the blocking shield at Barry was not part of a drill; it was “outside of the drill.” Delongchamp indicated that Barry’s chin strap was off, that his helmet was up, and that his face mask was off his face. He additionally testified:

> *Q*. You said, “It caught [Barry] off guard.” Are you sure about that?
>
> *A*. Yeah.
>
> *Q*. Did he take a step back?
>
> *A*. To catch himself I think he did.

Iwanicki testified that he became extremely angry when Barry walked off the field, and he acknowledged that he struck Barry with the blocking shield in the face. Iwanicki stated that the incident "was not part of the drill." He also regretted striking Barry, stating:

> I believe, the next week, I apologized to Ryan. And my words were, "Ryan, I'm sorry for what happened." I said, "If I would have known you were injured, it would have been a different story. Next time, you've got to let me know that you're hurt, and you can't go." That was my apology to Ryan.

Barry, however, testified repeatedly that he informed Iwanicki of the ankle injury before the incident occurred. On the issue, Barry testified in part:

> *Q*. Okay. So you're on the playing field now, Ryan, and you go through the drills. Coach Iwanicki comes out and you indicate to him that it's sprained?
>
> *A*. Yeah. I started telling him that my ankle is sprained and that's why I wasn't doing the karaoke shuffle stuff or those warm-ups.
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> * * *
>
> *A*. [I] said, "I can't do it because my ankle hurts."

Several of the players testified that Barry told Iwanicki that he could not do the drills, but they could not recall Barry specifically stating that it was because of his injured ankle.

It is abundantly evident that there exist many factual issues that require resolution. Accordingly, the trial court erred in ruling that Iwanicki was not grossly negligent as a matter of law.

Our opinion is not contrary to the Michigan Supreme Court's decision in *Ritchie-Gamester v City of Berkley*, 461 Mich 73; 597 NW2d 517 (1999), in which the Court addressed the issue of the appropriate standard of care for those voluntarily involved in recreational activities. Our Supreme Court held, "[W]e join the majority of jurisdictions and adopt reckless misconduct as the minimum standard of care for coparticipants in recreational activities." *Id.* at 89. This standard is comparable to the gross negligence standard, i.e., "conduct so reckless," set forth in MCL 691.1407(7)(a), and again, there was sufficient documentary evidence presented to create a factual dispute on the matter. Additionally, it is arguable that Barry was no longer "participating" in the football practice when the incident occurred.

The dissent places significance on the fact that Barry was still in his football pads when struck by the blocking shield that was designed to cushion heavy blows; however, there was evidence that Barry was struck in the area of the neck and face, which had diminished protection in light of the fact that he had removed his chin strap and raised his helmet. The dissent also indicates that if Iwanicki had broken Barry's nose or had snapped his head back, causing neck damage, then possibly a cause of action could have been sustained. We fail to understand this logic; MCL 691.1407(2) makes no distinctions on the basis of the nature or seriousness of an injury for purposes of avoiding governmental immunity. The injury occurred when Barry was forced backward, as would be expected when one is struck by a blocking shield, especially if

struck unexpectedly. Moreover, a medical evaluation revealed torn ligaments in Barry's ankle that required surgery. The dissent appears to be suggesting that a more serious and direct injury was necessary to establish Iwanicki's substantial lack of concern for whether an injury resulted. We disagree as there is not a necessary and determinative correlation between the seriousness and directness of an injury and establishing a substantial lack of concern for whether an injury results. Driving Barry backward by an unexpected thrust to the head from a blocking shield, which Iwanicki could clearly have anticipated, where there is evidence that Iwanicki had knowledge of Barry's injured ankle, evidence that Barry was no longer practicing and could not continue, evidence that Barry was unprepared for the blow, and evidence that Iwanicki was in an uncontrollable fit of rage, creates a scenario in which a reasonable person could conclude that Iwanicki acted in a reckless manner as to demonstrate a substantial lack of concern for whether an injury resulted. Importantly, we see nothing in the statutory language reflecting that a plaintiff must show that a defendant had a substantial lack of concern for whether a *particular* injury results.[1] As long as the injury is within the realm of results that would conceivably or likely flow from an action or inaction such that one could attribute a substantial lack of concern on the defendant's part and the defendant's conduct constituted recklessness, governmental immunity is avoided. Stumbling backward and injuring one's ankle is within the realm of conceivable or likely results when unexpectedly and forcefully struck by a blocking bag or shield.

The dissent argues that, while ultimately foolish and completely ill-advised, Iwanicki's jolt was controlled and calculated and meant merely to stun and arouse Barry's emotions, but not intended to injure him. *Post,* slip op at 2. With this statement, the dissent places himself in the shoes of the jurors by weighing the evidence and determining Iwanicki's state of mind; a "fit" that is not legally appropriate for purposes of summary disposition. Moreover, the statutory definition of gross negligence does not require proof of an intent to injure. MCL 691.1407(7)(a). Foolish and ill-advised actions can equate to recklessness. We cannot fathom how the dissent, in the context of a motion for summary disposition where the evidence must be viewed in a light most favorable to plaintiff, has conclusively determined that coach Iwancki was simply attempting to motivate Barry and the team. The documentary evidence suggests that Iwanicki went beyond the point of attempting to rationally push Barry into becoming a better player, but rather that Iwanicki was so worked up and agitated that he acted out of pure anger.[2] The team's players, while generally acknowledging their fondness for Iwanicki, portrayed him as being "a

[1] If a coach were to kick a player in the shin as part of some absurd drill causing the player to keel over and strike their head against a solid object, resulting in a claim based on a closed-head injury, certainly the coach could not avoid liability by virtue of an argument that his recklessness was not directed at the player's head but rather his shins.

[2] The dissent reads our opinion as requiring the imposition of liability in hypothetical circumstances envisioned and crafted by the dissent. The hypothetical scenarios and the conclusion that our opinion would mandate an award of damages in these scenarios can be best described as silly and exaggerated. Our opinion does not prevent coaches from coaching their players and teams with full force and vigor; it merely recognizes that, like with anything in life, matters or actions can be taken too far, which may or may not have been the case here.

little crazy." There was evidence that Iwanicki was out of control at the time of the incident. The important principle that must be kept in mind here is that the evidence can be reasonably viewed as either favoring a finding of gross negligence or a lack of gross negligence, and it is for a jury to resolve the matter and not a judge as a matter of law. We are not concluding that Iwanicki acted consistent with the statutory definition of gross negligence; we are simply concluding that there was sufficient evidence to create a factual issue with respect to the immunity threshold. Contrary to law, the dissent appears to be viewing the evidence in a light most favorable to the moving party, weighing the evidence, making factual determinations, and assessing credibility.[3] See *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994)(court cannot assess credibility or determine facts on a motion for summary disposition).

Turning to the secondary issue of causation, the trial court also stated that, even had it found a factual issue with regard to gross negligence, it would dismiss the case because the incident was not the proximate cause of Barry's alleged torn ligament injuries. The trial court relied on a doctor's report attached to defendants' brief in support of the motion for summary disposition, which report suggested that Barry's ligament injuries occurred in an earlier football game in which Barry was injured.

As cited in part above, Barry testified as follows regarding the incident with coach Iwanicki:

> [He] came up to me and just slammed [the blocking shield] in my face and the face mask went up and sent my head backwards and I stepped back in – I stepped back from the blow it gave me and when I stepped back and I just felt my ankle just snap and when it snapped, it – I just – I just went and like I just put my hand down on the ground and it just – it was just the most painful thing that I've ever had happen to me in my life. . . . And I got up and I could barely walk . . . .

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[3] As another example, the dissent indicates that it is illogical to conclude that Iwanicki intended to do anything that might harm a starting lineman such as Barry. The dissent is presuming that Iwanicki was acting in a detached, calm, and logical fashion when he struck Barry. This presumption cannot be made for purposes of summary disposition, and there was evidence to the contrary. The dissent further surmises that Iwanicki was indisputably behaving in such a way as to encourage the team to play tougher despite discomfort or weakness. While this might indeed have been Iwanicki's motivation, we cannot make that call as a matter of law under the factual circumstances. Furthermore, assuming that Iwanicki was acting solely out of an honest desire to strengthen the will and determination of the players as all good coaches strive to accomplish, it does not mean that his actions did not constitute gross negligence. By way of an admittedly exaggerated example, if a coach, in a sincere attempt to inspire greatness in his players, had the players run hills for three straight hours in 110 degree heat and in full pads, without water, it could not be legitimately disputed that the coach would be liable for gross negligence if a player were to die from heat stroke, despite no ill will or bad intent on the part of the coach; the action was reckless when viewed objectively. We recognize that the facts here do not present such a blatant and obvious case of gross negligence, nonetheless the underlying principle has application.

Barry further indicated that the injury incurred during the football game was simply a mild sprain, and he continued playing. Moreover, he went to practice the following Monday, the day of the incident with coach Iwanicki, and the ankle was taped up by team personnel and Barry was permitted to practice, engaging in various drills, although he admittedly was hurting.

The doctor's report relied on by defendants provides that Barry "was injured in a football game two and a half weeks ago." This statement comes under the heading of "chief complaint." The report also provides that Barry's "injury occurred when he got hit from behind and in the front in a rapid sequence with his foot fixed." This statement comes under the heading of "recommendations." These statements appear to merely reflect information conveyed by Barry to the doctor about the ankle injury sustained in the football game. The report does not mention anything about the incident with Iwanicki. We are uncertain whether the doctor was even made aware of the incident. We do not read the report as reflecting a definitive medical diagnosis that the injuries were indeed caused during play in the football game. There is nothing in the medical report suggesting that other possible causative sources or actions are medically precluded as having caused the injuries. In light of Barry's testimony about the severe pain that he experienced when knocked backwards by Iwanicki, the cursory and vague nature of the doctor's report, and the circumstances surrounding the injury incurred in the football game where Barry continued playing, we find that an issue of fact remains with respect to whether Iwanicki's actions caused the alleged injuries.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ William B. Murphy

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C O U R T O F A P P E A L S

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O'CONNELL, P.J. (*dissenting*).

Because I disagree with the majority's myopic application of the "gross negligence" standard, I respectfully dissent.

Ryan Barry was a 170-pound left guard on defendants' varsity football team. He injured his ankle in a Friday-night game during a trap play. His assignment was to pull out of position and charge along the offensive line, clearing the lane of rushing defensive linemen and blitzing linebackers. He was hit in the ankle by two helmets simultaneously, and he rolled his smashed foot inward and backward, twisting and straining his ankle ligaments under his weight. He felt his ankle "pop." Nevertheless, he played the rest of the offensive possession and continued to play well into the fourth quarter. After the game, the team trainer opined that the injury was a mild sprain and wrapped it. Barry iced it over the weekend.

On Monday, the head coach wrapped the ankle and told Barry to practice. Barry suited up and ran some warm-up drills. For example, he participated in the sled drill, which involved several linemen hitting and driving back tackling dummies attached to a large steel sled. He also participated in a "fit and drive" drill which involved one player ramming a large, cushion-like blocking shield held by another player and pushing the holding player and shield back several yards. For the "fit and drive" drill, Barry held a shield while the team's 265-pound center rammed into it and drove forward with his legs. Barry told the center to take it easy because his ankle hurt, so the two teammates merely went through the motions.

The line coach, defendant Iwanicki, saw the center's half-hearted effort and sloppy technique and immediately chastised him. Iwanicki, a 230-pound ex-lineman, proceeded to demonstrate the proper technique by driving his own body into plaintiff's shield, driving Barry

back. Barry later stated that, following Iwanicki's first blow, "I felt a sharp pain go to my ankle." Iwanicki noticed that Barry held the shield gingerly and did not provide enough resistance so Iwanicki could stay low and effectively push forward. Iwanicki grew angrier and told Barry to "hold the damned bag." Barry held the bag again and later stated that when Iwanicki hit the bag the second time, "I took another step back. And I felt something go in my ankle and I told him that I couldn't do it anymore." Iwanicki, in a fit of rage, ordered Barry off the field.

Barry walked ten yards to the edge of the field, but he continued to exchange heated words with Iwanicki about Iwanicki's expectations and Barry's lack of effort and heart. Barry pushed his helmet back on his head, drank some water, and then asked Iwanicki what he wanted him to do now. Iwanicki walked to the edge of the field and, blocking shield in hand, told Barry in colorful but unambiguous terms that he wanted him to hold the bag. During this final exhortation, Iwanicki shoved the shield up into Barry's chest and face. Barry stumbled back a few steps.

The majority finds Iwanicki's actions "so reckless as to demonstrate a substantial lack of concern for whether an injury [would] result[]." MCL 691.1407(7)(a). I disagree.

To demonstrate the required degree of recklessness, Iwanicki must have shoved the shield into Barry so hard that it demonstrated Iwanicki's lack of concern that it would injure Barry, who was the coach's starting left guard and defensive tackle. Except for the pushed-back helmet, Barry was wearing all his football pads, and Iwanicki hit Barry with a blocking shield designed to cushion the heavy blasts of charging nosetackles. Therefore, Barry must plead and show a collision that would demonstrate a disregard for injuring a fully padded starting lineman.[1] This would necessarily require a showing of a hard, full-strength blow directed at an area that the pads did not protect.[2] Perhaps if the blow with the shield had broken Barry's nose, or his head had snapped back, causing neck damage, Barry could substantiate his claim.[3] But Barry merely took a few surprised steps backward and put his hand down to catch his balance. He did not tumble over, even after he allegedly felt his ankle "snap." Using common sense, the blow was

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[1] While the majority criticizes my emphasis that Barry was in his pads, the standard requires us to review the facts that would demonstrate a substantial lack of concern that the actions would injure the player. Therefore, we must consider that Iwanicki hit a big, padded player with a blocking pad and take into account the amount of force he used.

[2] To hold that any hard contact will suffice would prevent a coach from ever demonstrating techniques that require hard physical contact, such as a forearm shiver, swim move, or a pulling block.

[3] I do not mean that no liability would follow from actions that fell short of this brutal behavior if a plaintiff claims battery. This case does not involve a battery, however, so our sole concern is whether the undisputed facts regarding the contact demonstrate a reckless disregard for whether the contact would cause injury. Because Iwanicki knew that Barry was fully padded, contact that would satisfy this standard would have to be extreme even for football standards.

controlled and calculated to stun Barry and arouse his emotions, not injure him. Therefore, while ultimately foolish and completely ill-advised, Iwanicki's jolt did not demonstrate the kind of reckless disregard for injury that the statute requires. MCL 691.1407(7)(a).

Under the circumstances, the evidence could only meet the standard for gross negligence if Iwanicki knew that Barry's ankle was so weak that even an awkward step backward could damage it. On this point, Barry asserts that he previously told Iwanicki that he had rolled his ankle and that it hurt. However, Barry also insists that before Iwanicki shoved the shield into him, the coaches and trainer declared that his injury was no more than a minor sprain. He admitted that he continued to play offensive tackle on the night of the original injury, walked on the ankle after the game, and walked without a limp on the following Monday before practice. Barry fails to explain how Iwanicki knew that a mild, taped sprain could lead to torn ligaments if Barry were forced to step backwards. In fact, Barry had just finished participating in a drill where he took several steps backward holding a shield against the full thrusts of Iwanicki and the team's center. Therefore, the majority overstates the degree of knowledge that Iwanicki could have possessed regarding the ankle and fails to indicate what potential injury Iwanicki was recklessly disregarding if he was not disregarding the possibility of injuring Barry's ankle.[4]

Also, while Barry claims that the drill caused him pain, he vehemently denies that it led to his injury, with good reason. Even the majority concedes that if the drill caused the torn ligaments, then Barry failed to demonstrate compensable fault because of his willing participation in the drill. However, the majority fails to draw any legal distinction between Iwanicki's actions on the field and his actions on the sidelines. Certainly, if this case turns on Iwanicki's knowledge of the ankle injury and the excessive use of force, then Iwanicki was also grossly negligent for driving his entire body into Barry during the drill. If the delineating factor is Barry's voluntary participation in the drill, then the majority has drifted away from gross negligence and into the area of consent to battery without discussing the corresponding legal principles.[5] The majority apparently fails to appreciate that it is setting a precedent for the "gross

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[4] The majority misreads my analysis as an extralegal requirement that Barry may not recover unless Iwanicki knew that he would cause the specific ankle injury. Actually, I simply lack the creativity to dream up injuries that could have resulted but did not, especially in this case. If Iwanicki could not have anticipated that Barry stepping backward would result in his ankle being injured, then Iwanicki would not have recklessly disregarded its possible occurrence, and we should affirm. I find it oddly necessary to reiterate the nugget of common sense that should drive this case: coaches hate injuries, especially to their starters. But the legal standard requires Barry to demonstrate that when Iwanicki acted, he acted without any regard for whether he would injure Barry. In other words, does Barry demonstrate that Iwanicki was so out of control that he no longer cared that he might be benching his starting right tackle for the rest of the season? The facts do not demonstrate this level of carelessness. A football coach shoving a blocking shield at a fully padded starting lineman only hard enough to knock him back a few steps simply does not demonstrate an attitude of complete indifference that the lineman will get hurt.

[5] Barry was not battered because the parties were voluntarily participating in a rough recreational activity. *Ritchie-Gamester v Berkley*, 461 Mich 73, 85; 597 NW2d 517 (1999); *Behar v Fox*, 249

(continued…)

negligence" of coaches generally, not just those that physically express their anger with players on the sidelines.[6] Therefore, any contact between a coach and a player that could cause the player to stumble now suffices to create a jury question regarding the coach's recklessness. Moreover, because the majority does not limit its holding to nonconsensual intentional contact by a coach, players with any history of injury would require special protection from *any* contact, or their coaches might be found reckless for disregarding the potential for further injury. The majority distorts the standard to right a perceived wrong rather than applying the standard to the

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(…continued)

Mich App 314, 317-318; 642 NW2d 426 (2002). At the time of the injury, Barry was voluntarily participating in the football practice; a fact evidenced by his ongoing verbal exchange with Iwanicki. In football, as in other contact sports, instruction and training may well, and often does, involve physical contact between players and coaches. *Behar*, *supra.* This contact may illustrate a fundamental skill (the "fit and drive" drill), motivate or encourage a player (a slap on the top of a helmet or shoulder pads after a good play), or correct a player (pushing him into position or pulling him closer to deliver instructions). On a mall escalator, or even in a saloon, each of these actions would probably constitute battery. On a football field they can be an integral part of the emotional and physical formation necessary for success. While Iwanicki's actions were ultimately detrimental, the legal standard for battery is not whether an injury results from a coach's conduct, but whether, applying common sense, the conduct was reckless, well outside the bounds of fair play, and a risk that was unassociated with the chosen activity. *Ritchie-Gamester*, *supra*, at 86, 89, 94. While I can easily imagine a coach's behavior satisfying this standard, Iwanicki's did not. Indisputably, Iwanicki's purpose was to encourage his team, specifically Barry, to play tougher despite discomfort or weakness, and his actions were calculated to convey this sentiment without causing injury. Therefore, in the circumstances of this case, Barry may not rely on the fact that Iwanicki intended the contact, but must also establish recklessness in its execution.

[6] Perhaps it would help if the majority provided football coaches with a handbook on coaching etiquette. After all, few coaches want to face hundreds of thousands of dollars in liability without knowing how soft their kid gloves must be to avoid contact that we may later brand "reckless" or the product of "gross negligence." The lack of guidance in the majority opinion is particularly alarming because it completely avoids analysis under *Ritchie-Gamester* or *Behar*, even though those cases deal as much with negligence as intentional torts. Under the majority's analysis, a jury could find that a quick no-look pass to an unsuspecting basketball player could slip through surprised hands and break a young player's nose, leaving a part-time or volunteer coach to pay for reconstructive surgery. According to the majority, if the coach could see the potential for injury on a cool, clear day with a pair of binoculars, but made the pass anyway, a jury should decide whether the pass was reckless. Any corrective tug on a horse collar, facemask, jersey, or other gear will create a genuine issue of fact regarding the coach's indifference that he or she could hurt the player. The factual possibilities are endless, and the legal boundaries between them are indecipherably blurred. I recommend that coaches approach their teams as a nervous chemistry teacher cautiously approaches an advanced placement lab, guarding their every word and deed against mistake or misunderstanding. It is better that coaches take their losses on the field rather than in their bank accounts.

facts. Because the contact in this case did not demonstrate the degree of recklessness required in MCL 691.1407, the trial court correctly dismissed Barry's tort claim. Therefore, I would affirm.

/s/ Peter D. O'Connell