STATE OF MICHIGAN

COURT OF APPEALS

LARRY REAUME, as Next Friend of MATTHEW PATRICK REAUME, a Minor,

Plaintiff-Appellee,

v

JEFFERSON MIDDLE SCHOOL,

Defendant,

and

RYAN NADEAU,

Defendant-Appellant.

UNPUBLISHED
August 15, 2006

No. 268071
Monroe Circuit Court
LC No. 03-016704-NO

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendant Ryan Nadeau appeals as of right from the circuit court order denying his motion for summary disposition under MCR 2.116(C)(7). This case arises out of plaintiff Matthew Reaume's claim that Nadeau's grossly negligent conduct resulted in his personal injury. We affirm. We decide this appeal without oral argument.[1]

I. Basic Facts And Procedural History

On January 7, 2003, Matthew Reaume, a middle school student, went to the Jefferson Middle School gym for wrestling practice. As Reaume waited in the gym for the rest of the team and the coaches to arrive, he talked to his friends with his back to the entrance. Nadeau, an assistant wrestling coach, entered the gym, came up behind Reaume and, allegedly without alerting or informing Reaume, wrapped his arms around Reaume's chest and took Reaume to the ground. Once on the ground, Nadeau performed a wrestling roll. As the roll ended, Reaume posted his arm on the floor to right himself. However, Nadeau performed a second roll. During

[1] MCR 7.214(E).

the second roll, Reaume's elbow was fractured and required surgery to repair it. During Reaume's recuperation, he developed osteomyelitis.

Although Reaume was a middle school student, he was an experienced wrestler. He had wrestled since he was six-years-old in both school and non-school athletic programs using free-style, folk-style, and modified folk-style wrestling techniques. Nadeau had been Reaume's coach since Reaume was in the third grade. Nadeau was a qualified coach and had attended Michigan High School Athletic Association coaching clinics.

Larry Reaume, Reaume's father and next friend, sued Jefferson Middle School and Nadeau. Both defendants moved for summary disposition under MCR 2.116(C)(7) raising governmental immunity. The circuit court granted Jefferson Middle School summary disposition but denied summary disposition to Nadeau on the ground that his conduct was grossly negligent. Nadeau now appeals.[2]

II. Governmental Employee Immunity

A. Standard of Review

Nadeau claims that he is immune from suit because he is a coach who was simply teaching a particular wrestling move when Reaume was injured and that his teaching of the wrestling move was not grossly negligent.

We review de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(7).[3] Although the issue whether a governmental employee's conduct constitutes gross negligence under MCL 691.1407 is generally a question of fact, a court may grant summary disposition "if, on the basis of the evidence presented, reasonable minds could not differ."[4]

B. Gross Negligence

Governmental employees acting within the scope of their employment in the discharge of a governmental function are immune from suit for tort liability, unless the employee's conduct amounts to gross negligence.[5] Gross negligence is statutorily defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." [6]

Before wrestling practice began, Nadeau approached Reaume from behind and, without alerting Reaume, took him down to the floor and performed two successive rolls. Nadeau

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[2] MCR 7.202(6)(a)(v).

[3] *Poppen v Tovey*, 256 Mich App 351, 353; 664 NW2d 269 (2003).

[4] *Jackson v Saginaw Co*, 458 Mich 141, 146; 580 NW2d 870 (1998); *Xu v Gay*, 257 Mich App 263, 267; 668 NW2d 166 (2003).

[5] MCL 691.1407.

[6] MCL 691.1407(7)(a).

maintains that he was demonstrating a wrestling move to Reaume. However, without notice of what Nadeau was doing, Reaume would have little reason to understand or realize what Nadeau was demonstrating, and Reaume would have been unprepared to appropriately respond. This would significantly increase the probability of injury, especially when Nadeau weighed twice as much as Reaume.

Nadeau relies on several cases to argue that his conduct was not grossly negligent. However, we find those cases distinguishable because in each of those cases the defendant took measures that demonstrated his or her concern for safety even though the measures taken did not completely eliminate the risk of injury.[7] We conclude that reasonable minds could differ regarding whether Nadeau's conduct reflected a substantial lack of concern whether an injury occurred when he failed to announce his intentions to the unprepared student.[8]

C. Proximate Cause

Nadeau also claims that he was not the proximate cause of Reaume's injuries. He contends that Reaume's participation in wrestling was actually the proximate cause. We disagree. Under Michigan case law, an employee's gross negligence is the proximate cause of injury or damage if it is the one most immediate, efficient and direct cause preceding the injury.[9] Compared to Reaume's mere participation in the wrestling program, we conclude that Nadeau's unannounced demonstration of the roll technique was the more immediate, efficient, and direct cause of Reaume's injury.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder

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[7] *Tarlea v Crabtree*, 263 Mich App 80; 687 NW2d 333 (2004) (where the defendants took numerous precautions and safeguards to protect the safety of the football players in their charge); *Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992) (where the defendant "asked his maintenance supervisor to determine how the goals could be anchored, checked with the maintenance supervisor on his progress, made announcements in school instructing the children to stay off the goals, and disciplined students for climbing the goals."); *Conway v Estate of Ronald Popa*, unpublished opinion per curiam of the Court of Appeals, issued August 4, 2005 (Docket No. 261981) (where the defendant instructed his students on the safe operation of the unguarded saw); *Dama v Dietzel*, unpublished opinion per curiam of the Court of Appeals, issued April 7, 2005 (Docket No. 260110) (where the defendant attempted to isolate the palmaris longus tendon in the plaintiff's wrist and thought he had done so but was mistaken.).

[8] See *Jackson*, *supra* at 146.

[9] *Manuel v Gill*, 270 Mich App 355, 378; 716 NW2d 291 (2006).