

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

Appeal from the Court of Appeals
Honorable Richard A. Bandstra
Honorable Michael J. Talbot
Honorable Bill Schuette

SHEILA WOODMAN, as Next Friend of
TRENT WOODMAN, a minor,

Plaintiff-Appellee,

Supreme Court No. 137347
Court of Appeals No. 275079
Lower Court Case No. 06-00802-NO

v.

KERA, LLC, a Michigan corporation,
d/b/a BOUNCE PARTY,

Defendant-Appellant.

DEFENDANT/APPELLANT KERA, LLC'S REPLY BRIEF

PROOF OF SERVICE

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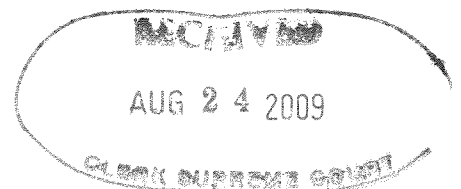


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ARGUMENT

The issue in this case parallels very closely the issue faced by this Court in *Terrien v Zwit*, 467 Mich 56, 648 NW2d 602 (2002). In *Terrien*, one of the questions faced by this Court is whether a covenant permitting only residential uses, and expressly prohibiting commercial or business use of property, prevented the defendant from operating a “family daycare home” in the neighborhood. In that case, the defendant argued that if the covenant, by its terms, did prevent such a daycare center, such a covenant violates the “public policy” in the State of Michigan. This Court conducted a thorough analysis as to when such unambiguous agreements should be struck down by the Court because they are in violation of “public policy.”

In *Terrien*, the defendants argued that daycare centers, which would provide a place for 1-7 children to be supervised during daytime hours, are a “favored use” of the property. Certainly, the defendant had an argument that such daycare centers were desirable because there is a policy in this state that children should be cared for and that children should have a safe place to go during the day when their parents may be at work. This Court analyzed when such public policy considerations should bar unambiguous agreements. This Court held:

To fail to recognize this distinction would accord the judiciary the power to examine the wisdom of private contracts in order to enforce only those contracts it deems prudent. However, it is not “the function of the court to strike down private property agreements and to readjust those property rights in accordance with what seems reasonable upon a detached judicial view.” *Oosterhouse, supra* at 289-290. Rather, **absent some specific basis for finding them unlawful, courts cannot disregard private contracts and covenants in order to advance a particular social good.** See *Johnstone v Detroit, G H & M R Co.*, 245 Mich 65, 73-74; 222 NW 325 (1928). As we said in *Oosterhouse, supra* at 288, “[w]e do not substitute our judgment for that of the parties, particularly where, as in the instant case, restrictive covenants are the means adopted by them to secure unto themselves the development of a uniform and desirable residential area.” Instead, we conclude that, if covenants that prohibit “family daycare homes” should not be enforced on public

policy grounds, such a decision should come from the Legislature, not the judiciary. The Legislature may think that it is wise to bar such covenants, but until it does so, we cannot say that they are contrary to public policy.

Terrien, at 69-70 (emphasis supplied, footnotes omitted).

Similarly, in the instant case, the Legislature may or may not deem it wise to invalidate liability waivers signed on behalf of minors. Until it does so, however, the courts should enforce such agreements as written.

Plaintiff-Appellee, in her Brief, cites numerous cases from the 1800's in an effort to establish that the law in this state is that such contracts are not enforceable. Those cases are not only old, but they are not on point. *Carrell v Potter*, 23 Mich 377 (1871) and *Dunton v Brown*, 31 Mich 181 (1875) both invalidated contracts entered into by the minor, himself. Defendant is not suggesting that if the five year old minor in this case had signed the liability waiver, that it would be enforceable. That, in fact, is the defendant's point – parents should be allowed to make the decision with respect to what is best for their children absent statutory authority to the contrary.

Similarly, *O'Brien v Loeb*, 229 Mich 405; 201 NW 488 (1924), involved a post-injury release signed by the minor's mother. In that case, the court was concerned about the mother signing a release on behalf of her child and taking the money. Of course, those cases were all decided long before the court rule on settlements for minors was enacted, MCR 2.420, which offers numerous protections for minors who receive a settlement or judgment.

Not only would invalidation of the liability waiver intrude on a parent's rights and responsibilities, but it would also violate the longstanding precedent from this Court that liberty of contract is to be recognized and respected. Justice Markman, in his dissent in *Genesee Foods Services, Inc. v Meadowbrook, Inc.*, 483 Mich 901 (2009) described concepts, that are as equally applicable to the instant case, as they were to that case, as follows:

It is well established that “competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts. *Terrien v Zwi*, 467 Mich 56, 71 (2002), quoting *Twin City Pipeline v Harding Glass*, 283 U.S. 353, 356 (1931); see also *Port Huron Ed Ass’n v Port Huron Area School Dist*, 452 Mich 309, 319 (discussing the “fundamental policy of freedom of contract,” under which “parties are generally free to agree to whatever specific rules they like”). (citation omitted).

* * *

While the instant contract in dispute may not seem to be of great consequence beyond the parties, it is entirely typical of thousands of such contracts freely entered into by “competent persons” throughout this state each day. **And it is essential to the rule of law that these contracts be respected and that this Court provide the leadership and direction to ensure that this occurs.** Although it is well established that “courts cannot rewrite the parties’ contracts,” *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197 (2008), the majority today allows the Court of Appeals to do just that.

483 Mich at 905 (emphasis supplied).

It is fair to say that lawsuits were not filed in the 1800’s when a child got injured from jumping from a slide. Lawsuits involving injuries incurred by children are becoming more and more common and are becoming a significant expense to any business that attempts to provide a service to children, such as the Bounce Party in this case. For example, a little league baseball player in New York recently received a \$125,000 settlement for injuries he incurred to his right knee while sliding into second base (see newspaper article, attached hereto as Exhibit “A”). These types of cases demonstrate why liability waivers are, unfortunately, now necessary. One has to wonder whether the defendant New Springville Little League will have a league for kids next summer. Two things are certain, regardless of the decision of this Court; in the future, kids are going to be injured after jumping from slides. Second, kids are going to be injured as a result of sliding into bases during baseball games. The question before this Court is whether such activities should be encouraged and made more accessible, or whether, as a result of the threat of litigation, such activities will be discouraged and less accessible.

The question of whether such liability waivers are or are not in the best interests of the State of Michigan is clearly a decision that should be left to the Legislature. Even if this Court decides to decide such a policy question, invalidation of the liability waiver is not in the best interests of children. Invalidation of the liability waiver is not in the best interests of business. Invalidation of the liability waiver is not in the best interests of the people of the State of Michigan. Defendant-Appellant, Kera, LLC, therefore, respectfully requests that this Honorable Court uphold the liability waiver in question and remand to the trial court for entry of summary disposition in favor of the Defendant-Appellant.

Respectfully Submitted,

FEUER & KOZERSKI, PC



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“EXHIBIT A”

Staten Island mom settles suit with Little League and coaches over knee injury

Posted by [gnyback](#) August 03, 2009 17:25PM

A bad slide that injured a young Staten Island player five years ago will cost Little League Baseball Incorporated and the New Springville Little League \$125,000.

Jean Gonzalez of Meiers Corners has agreed to settle a lawsuit in which she alleged her son Martin Gonzalez, then 12, tore up his right knee in a New Springville Little League game because he wasn't taught how to properly slide.



Advance file photo/Anthony DePrimoA Meiers Corners mother has settled a lawsuit with Little League Baseball Incorporated and the New Springville Little League.

Martin injured a ligament and meniscus while sliding into second base on May 4, 2004, court papers said. He was trying to stretch a hit into a double on the coach's instruction.

Now, 17, he underwent two surgeries to repair the damage.

Ms. Gonzalez sued the New Springville Little League, Little League Baseball Incorporated and two of Martin's coaches in state Supreme Court, St. George.

In addition to negligent coaching, she contended a stationary base was used, despite data showing that detachable bases were safer.

The defendants countered that Martin had been taught the proper sliding technique, and the bases used, detachable "Soft-Touch" 'pop-up' bags, were compliant with all safety standards.

Those bases, which rested in a soft-rubber, ground-mounted receptacle, were considered "less hazardous" than movable "break-away" bases anchored to a stationary, protruding in-ground post, the defendants maintained.

The Gonzalezes' lawyer, Alan C. Glassman of Brooklyn said today his clients were "satisfied" with the settlement, but he declined to discuss negotiations.

Jean Gonzalez did not return a telephone call seeking comment.

A judge must approve the agreement.

When the suit was filed two years ago, some lawyers not involved, believed the Gonzalezes didn't have a strong case. One told the Advance that participants assume a risk of injury when playing baseball. Another said it might be tough to prove negligent supervision by coaches.

"Apparently, the Little League International and the local Little League must have felt that I had some justification for the commencement of the action," Glassman said today.

Luis Mojica, president of the New Springville Little League, did not immediately return a telephone call seeking comment, nor did a Little League Baseball spokesman.

-Reported by Frank Donnelly

Categories: [Real-time news](#)

Comments

700RRRR says...

STATEN ISLAND IS THE ISLAND OF GETOVERS

Posted on 08/03/09 at 5:53PM

forexdaver says...

Did they make them sign a release form? Well now they will.

Posted on 08/03/09 at 6:15PM

oscargamble8 says...

You gotta be kidding me! I hope she buys an expensive car with the money and then wraps in around a telephone pole. Nice way to teach a child- sue when you get hurt playing a game. If I'm the parent of any kid that knows this kid I would never have him over the house, too risky.

Posted on 08/03/09 at 6:29PM

siadvtrash says...

This is an utter disgrace. What happened to this kid is definitely unfortunate. But lets get real here. It was a freak accident. Not negligence. What if the kid got hit in the face by a line drive and broke his jaw because he was staring into outerspace?? Would that warrant a lawsuit?? Would that be negligence on the part of the coaches? When you play sports you run the risk of getting hurt. Bottom line. This woman

should be ashamed of herself.

Posted on 08/03/09 at 6:37PM

Untamedheart says...

Charges should be brought against the coach and the parents, because they didn't teach the young boy how to slide into a base

Posted on 08/03/09 at 6:48PM

CurvesVIP says...

WHAT A DISGRACE. MAYBE SHE SHOULD SEND HER LITTLE BABY BOY TO BALLET LESSONS.

Posted on 08/03/09 at 6:48PM

anongkid says...

wow that kids gonna grow up too be useless

Posted on 08/03/09 at 6:54PM

mikednlw says...

This is why my dad never wanted to have anything to do with Little League. He knew he'd be only one uncoordinated kid away from ending up in court.

So what's the incentive to coach Little League when you're potentially liable for what some other little moron does on the field?

What was that Shakespeare said? First thing we do let's kill all the lawyers?

Posted on 08/03/09 at 6:57PM

searchers says...

I hope there is an book on how to duck from an inside pitch, or how to stop running when the ump calls you out and suppose there is a step in the dugout that hasn't been poned out in the pregame talk. Mom's lucky we don't have Pres. B.O.s health care yet, her son may have had his leg cut off to save on possible future complications. What is going on people?????????

Posted on 08/03/09 at 7:34PM

ITLBS1 says...

There goes the price of dirty water hot dogs, shux!

Posted on 08/03/09 at 7:52PM

grannynj says...

I am sure that the parents had to sign a release form. So who makes out on the deal the kid or the lawyer that took the case. And mommys brand new car. because she had mental stress from not be allowed to see her son finish the season

Posted on 08/03/09 at 9:45PM

intune says...

and this one of the reasons why it is so hard to get volunteers for anything today...

Posted on 08/03/09 at 9:57PM

ggooh says...

intune said: "and this one of the reasons why it is so hard to get volunteers for anything today..."

Well I'll be! Ain't that the truth? I stay away from any organized activity involving minors; just too much personal risk.

Want to get sued? Allow a Day Care to operate on your church property. Cynical...I know...but been there, done that.

Posted on 08/03/09 at 10:40PM

moonman110 says...

wow. one greedy, crazy lady brings down si little league. i bet she feels so proud. what a loser!!!!

Posted on 08/03/09 at 11:05PM

LoriM12 says...

This is a classic example of what they call playing the system. It is unfortunate that this woman's son got hurt while playing baseball but this lawsuit is assanine and the court is just as assanine to have entertained her lawsuit. This thing now opened up a can of worms. Who pays this \$125,00.00? The Little League, the coaches who were named as defendants or the parents of all the other kids get assessed a fee to pay for this settlement. From now on, every parent who signs thier child up for Little League should be made to sign a "Hold Harmless" form or your child doesn't play Little League baseball. This seems harsh but if that will prevent a greedy mom from riding the gravy train then so be it.

Posted on 08/03/09 at 11:38PM

sitruth says...

Alan C. Glassman, Esq. of Brooklyn should be ashamed of himself for taking this case.

If I was the judge, I would have thrown out the case and made the plaintiff pay all of the defendants' legal fees and I would have fined the attorney for commencing a frivolous lawsuit.

Who did they think was coaching this kid, Joe Torre? What a kick in the ass that is. You volunteer your time for the kids, and you wind up getting dragged into court and having to hire an attorney.

Every volunteer coach in little league should refuse to coach until the law protects them from bloodsucking, greedy parents looking to make a quick buck on the backs of their kids. Why isn't the bat banning James Oddo working on this?

This is why all of our insurance costs (including medical insurance) rise. The one thing that we need, and that the Obama administration refuses to address, is tort reform, because the Democrats are in the pocket of the trial lawyers.

Throughout the rest of the world, the losing party pays the successful party's legal fees and costs. This is what we need here.

As far as the release is concerned, its not worth the paper its written on. If the injuries and the insurance money are there, there will be a lawyer willing to accept the case in hopes of getting a quick settlement and easy money.

Posted on 08/03/09 at 11:46PM

AMEXGold says...

\$125,000 for a bad slide? Yup, that sounds about right.

If a misjudged pop fly hits the boy in the noggin, I'd say that's good for \$500,000.

Posted on 08/03/09 at 11:46PM

13clown says...

thank you very much shelly silver for your nonsense.

Posted on 08/03/09 at 11:51PM

siny69 says...

GONZALEZ, enough said...maybe she will buy her son some HGH or Anabolic Steroids so this might not happen again.

Posted on 08/04/09 at 12:47AM

13clown says...

what's next?

- \$40.00 for a blister from swinging the bat.

- \$50.00 for a splinter from the wood bat
- \$60.00 for a bee sting while standing in the outfield
Ms. gonzalez you make me ill!

Posted on 08/04/09 at 1:15AM

thumbelliina says...

my son got a papercut while turning the pages of a text book, anyone know if i can sue the Board of Ed?

Posted on 08/04/09 at 8:34AM

SIStallion says...

Don't blame the mother, blame the stupid court system that allows this type of stuff to happen.

Posted on 08/04/09 at 8:42AM

siguy9876 says...

When I was a kid in Brooklyn, we played softball and football in concrete schoolyards. Saw lot's of injuries, had a few myself. Now I am pissed that I couldn't sue the schools back then for laying concrete instead of grass in the schoolyard. My my how times have changed. Who's gonna want to coach this kid now with an ass for a mother?

Posted on 08/04/09 at 8:52AM

bleu1969 says...

wow...bad slide and the kid gets 125 grand? This really sets a bad precedent.

This is so so sad. It's pathetic and she should be ashamed of herself. And agreed, so should the the bright lights that let this thing proceed in the first place.

I guess litigation will replace baseball as the National Pastime.

Posted on 08/04/09 at 9:51AM

mchs2001 says...

You have to be kidding me! This lady is crazy! Probably only had kids so she could eventually benefit from their injury.

This useless p.o.s was just waiting for this to happen. She probably would have tried to sue the father for being a bad athlete and passing her son weak genes.

And another question, where is the dad? oh wait, that's a stupid question. I think I am going to take a

careless walk in front of her house and try to slip, fall and pull a hamstring: see you in court lady.

Posted on 08/04/09 at 10:53AM

dejavuman says...

what a pos--playing any kind of ball or game has its hazards..not the ll 's fault!!

Posted on 08/04/09 at 11:36AM

Buddy718 says...

This woman is a disgrace and feel bad for the kid. Injuries are part of the game and if you don't want your child getting hurt than don't let him play.

Posted on 08/04/09 at 1:43PM

siljj says...

Is this little Mary related to the idiot who fell into the manhole cover. Didn't learn how to properly slide, please.

As George Carlin put it: "The kid who eats too many marbles doesn't grow up to have kids of his own."

Posted on 08/04/09 at 1:55PM

drmorality says...

How many generations of little league baseball players have been sliding and scraping their knees or "hurting" themselves? Why these lawsuits are even permitted in the first place is beyond me. Ms. Gonzales will take her ill gotten gains and run out and buy a new Mercades and a new wardrobe. I hope the money is mismanaged and spent within a month. Get back to work.

Posted on 08/04/09 at 2:51PM

LafaMinute says...

Blame the Little League Baseball Incorporated and the New Springville Little League they paid. IDIOTS!!! Don't worry they will assess the parents for the money. It should have went to court. This lady is a disgrace. Sue the coaches???, no good deed goes unpunished.

Posted on 08/04/09 at 2:54PM

LibraBaby05 says...

I'm sorry the kid got hurt, but I'm with SIGUY, If PS 163 was sued everytime somebody got hurt while playing sports, there would have been no playgrounds to go too. Because of this dimwit now the waivers will need riders attached to them. IT'S JUST LITTLE LEAGUE BASEBALL. Now he can learn how to play an instrument or take some of that money and set a Barbie Doll display in room or read more.....I

bet all the 12 year olds are envious of him now.

Posted on 08/04/09 at 3:42PM

rtnilnd says...

This ridiculous judgement will make every parent who volunteers his time in any type of coaching or oversight position think twice. My dad taught me the fundamentals and all my coaches expounded further on them. Any game involves risks,if the Dugout collapses on your head thats one thing -sliding into second base is merely a part of Baseball.

Posted on 08/04/09 at 5:39PM

cwallx says...

Unfortunately LoriM12 it is all of us who pay. The costs, be it for Little League, or insurance, etc., all get passed along to the consumers.

Nevermind the fact that many more people will be thinking twice before they agree to coach a team.

Posted on 08/04/09 at 8:43PM

staten1 says...

Gee...in my opinion hope that little bit of money is worth the embarresment she caused her son because now no-one will ever want to play with him again. parents now have to worry about being sued, see my sons ages 10 and 12 are involved in many dangerous sports like motor cross racing/paintballing/football and if they get hurt there is no-one to blame but myself, i know the risks and if im gonna be afraid then they should not be involed

Posted on 08/04/09 at 10:10PM

linda08 says...

WOW what a thief - many years ago my sone broke his femur while at a high school football practise. He had pins, screws and a plate put in and was on crutches for 6 months - the following year he had the hardware removed and was then on crutches for 6 weeks so the holes would heal -

we all endured and we were ALL thankful to God that he healed properly and was not left with a limp or any permanent damage. He was 14 at the time.

I couldn't imagine suing anybody - it was an unfortunate accident - however, he is perfect today and for this we are grateful.

Seems like folks will sue anybody for anything the can get away with - foolish judge for hearing the case. However, the lawyer did make out on this.

Posted on 08/05/09 at 7:56AM

cr50l says...

this folks is the beginning of the end of youth sports.

my daughter fractured an ankle at CYO practice a three years ago - should I have sued the coach and the archdiocese of NY due to a non maintained gym floor? Many would say yes, but I would not.

as I said, this is the beginning of the end - who wants this headache? they can sign all the releases they want, some lawyer will still find a hitch. Now they know why people won't volunteer anymore; between the catholic school and the safe environment background checks and this - all you need is one kid to yell "he/she touched me". not worth the bother.

Posted on 08/05/09 at 8:21AM

kingbaybee says...

HAHAHAHAHAHAHAHAHAHA!!! what a douche bag

Posted on 08/05/09 at 10:07AM

budboy says...

Mommy won't get the money, it belongs to her son, unless of course she claimed pain and suffering because her poor little boy got hurt playing a sport she signed him up for. I feel sorry for all the coaches and managers of little league teams, because they are volunteers and not paid professionals. This kind of a case may prevent other men or woman from volunteering and kids won't be able to play ball because there are no coaches.

Posted on 08/05/09 at 10:28AM

upsidedown7 says...

I guess "Little League" will soon be placed on the "KILLED BY THE FRIVOLUS LAWSUIT" that lists all the things that made this country great.

I put this one up there with the "Dunkin Doughnuts" and the hot shower on the testicles suits.

Everybody always said the we must prepare a national defense against foreign invaders. Well the true death of this country will be at the hands of the cheap lawyers and thier money for stupidly lawsuits.

TORT REFORM IS WAY WAY OVERDUE!

Posted on 08/05/09 at 12:38PM

Ordinaryman says...

OMG!!! Not that I am surprised in this culture. Where does it end? Do you sue the sport of boxing because you got a black eye fighting.

The mom has just contributed to some severe hazing on her child

Posted on 08/05/09 at 1:26PM

shoefromnyc says...

Why wasn't the father teaching the kid to slide? This may be out of turn, but from personal experience (10 years of coaching LL) ♦ most father♦s don♦t spend enough time with their kids to teach them the basics. If I had a nickel for every time I heard ♦ his father is too busy to play catch ♦ or ♦ is out of the picture ♦ I would be driving a luxury sports cars to and from the fields!

Posted on 08/06/09 at 2:24PM

Footer