SECREST WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

08.12.11

Play Ball! Court Of Appeals Reaffirms Recreational Activities Doctrine Applies To Coaches

By Drew Broaddus

Michigan law has long recognized that when a person chooses to participate in certain sports, he or she takes on certain risks. See *Ritchie-Gamester v City of Berkley,* 461 Mich 73, 77-79 (1999). "Participation in a game involves a manifestation of consent to those bodily contacts which are permitted by the rules of the game." *Id.* at 79. From this line of cases, the Michigan Supreme Court developed the "recreational activities doctrine" as set forth in the aptly named *Ritchie-Gamester* decision.

In *Ritchie-Gamester*, the Court changed the common law standard for liability between co-participants in recreational activities. *Ritchie-Gamester* rejected the ordinary negligence standard and adopted a "reckless misconduct" standard, stating:

> "[We] adopt reckless misconduct as the minimum standard of care for co-participants in recreational activities. [W]e believe that this standard most accurately reflects the actual expectations of participants in recreational activities…. [W]e believe that participants in recreational activities do not expect to sue or be sued for mere carelessness. A recklessness standard also encourages vigorous participation in recreational activities, while still providing protection from egregious conduct."

SECREST WARDLE NOTES:

French **underscores the rule, announced in** ***Ritchie-Gamester,*** **that ordinary negligence is not enough to impose liability upon a co-participant in a recreational activity.**

The opinion suggests that a showing of "reckless misconduct" would require something totally unrelated to the recreational activity in question. Since hitting a ball with a bat is a central part of softball practice, it could not be "reckless misconduct" even if no warning was given.

French **also reiterates that a coach is a co-participant when he or she physically participates in the activity.**

In *French v MacArthur,* unpublished per curiam opinion of the Court of Appeals, decided 7/19/11, the Court was called upon to apply this standard. In a timely decision – released just as high school football practice begins across the state – the Court of Appeals found that a parent/assistant coach who was physically participating in practice was a "co-participant" and was entitled to summary disposition.

In *French*, Plaintiff was injured during a youth-league softball practice when – during a practice drill – defendant hit a line-drive that struck plaintiff's face, while she was standing on the pitcher's mound. Defendant was a parent of one of the players, who volunteered to assist at practice. The incident occurred during a drill in which a coach is supposed to hit a softball to the infielders or the outfielders after the child batter swung and missed. Defendant attempted to hit a fly ball to center field, but instead his swing resulted in a line-drive at the pitcher's mound that struck plaintiff. Plaintiff sued Defendant. Defendant moved for summary disposition under *Ritchie-Gamester.* The motion was denied.

The Court of Appeals reversed, and remanded for entry of an order dismissing defendant from the case. The Court of Appeals began its analysis by pointing out that Defendant was indeed a "co-participant" at the softball practice, even though he was a coach. This issue had previously been addressed in *Behar v Fox,* 249 Mich App 314, 318 (2001), where the Court of Appeals determined that a defendant's role as a coach did not necessarily take him out of the category of "co-participant." More specifically – like the assistant coach in *Behar* – Defendant in *French* was physically participating in the activity (*i.e.*, taking part in the action on the field) with the permission of the head coach.

The Court of Appeals noted that there was a factual dispute as to whether Defendant called out the word "outfield" before swinging (apparently, the drill called for the coach to alert the players that he was swinging and where he intended to hit the ball). The panel determined that this fact question would not change the analysis, regardless of how it was resolved. Even if Defendant should have shouted "outfield" and failed to do so, this could not be "reckless misconduct" as a matter of law. "We agree that a reasonable juror could find negligence based on these facts, but no facts have been proffered that could justify a finding of reckless misconduct." *French, supra* at *2.

CONTACT US

Farmington Hills
30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens
94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing
6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids
2025 East Beltline SE, Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

SECREST SW WARDLE

CONTRIBUTORS

Premises Liability Practice Group Chair
Mark F. Masters

Premises Liability Practice Group Co-Chair
Caroline Grech-Clapper

Editor
Bonny Craft

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for Boundaries, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at **swsubscriptions@secrestwardle.com** or **248-539-2850**.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowner's Alert – Defense strategies for property owners and managers
No-Fault Newsline – A road map for motor vehicle insurers and owners
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
Standards – A guide to avoiding risks for professionals
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability