Considerations For Assumption Of Risk In NY Sports Suits

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On April 27, the New York Court of Appeals analyzed the assumption of risk doctrine in sport activities in its decision for Grady v. Chenango Valley Central School District and Secky v. New Paltz Central School District.

The court's opinion raised numerous issues and considerations for applying the assumption of risk doctrine. This article focuses on the court's application of the doctrine as a complete defense in New York and compares and reviews the court's application of the assumption of risk doctrine to the specific facts at issue in Grady and Secky.

The Grady Case

At issue in Grady were the circumstances regarding a baseball drill. Pursuant to this drill, two coaches would hit "balls to players stationed in the infield, with one coach hitting to the third baseman," according to the opinion.

The third baseman would throw the baseball to first base, while the player at shortstop would throw the ball to the second baseman, who would then throw the ball to short first base, which was located a few feet from regulation first base.

Between regulation first base and short first base was a seven-by-seven-foot protective screen, which was positioned to protect the first baseman and short first baseman. The plaintiff in Grady was located near regulation first base when he was hit in the face by an errant baseball intended for short first base.

As a result of the incident, the plaintiff sued the coach and the school district. The defendants moved for summary judgment, arguing that the plaintiff was aware of the risks associated with the drill. The New York Supreme Court granted the motion and the Appellate Division, Third Department affirmed. One of the Third Department judges dissented, questioning the adequacy of the protective screen.

The Court of Appeals reversed the lower courts' rulings, stating that a question of fact existed as to:

- "Whether the drill, as conducted here and with the use of the seven-by-seven-foot screen, 'was unique and created a dangerous condition over and above the usual dangers that are inherent' in baseball;" and

- "Whether plaintiff's awareness of the risks inherent in both the game of baseball and the practices that are a necessary part of the participation in organized sports encompassed the risks arising from involvement in the drill performed [in Grady]."

As such, the Court of Appeals concluded the drill consisted of unique circumstances that required a jury's determination.

The Secky Case

The plaintiff in Secky was an amateur basketball player who was participating in a basketball drill, during which the players competed to retrieve a rebound. There were no boundary lines and "only major fouls would be called."

As the plaintiff was attempting to rebound the basketball, the plaintiff collided with another player and ultimately fell into the bleachers, resulting in an alleged shoulder injury.

Following the basketball drill incident, the plaintiff's mother commenced a lawsuit against the coach and the school district, arguing that the elimination of the boundary lines of the court increased the inherent risks.

The defendants ultimately moved for summary judgment, which was denied by the New York Supreme Court but granted by the Appellate Division, Third Department.

The Third Department's majority opinion concluded that the "elimination of the boundary lines during the drill 'did not unreasonably increase the inherent risks of the drill or playing basketball.'"

Justice Molly Reynolds Fitzgerald of the Third Department issued a dissent, which stated that "whether the elimination of boundaries and relaxation of foul calls unreasonably enhanced the risk to the child ... [is] a question of fact to be determined by a jury."

On April 23, the Court of Appeals affirmed the Third Department's ruling. The decision focused on whether the drill "unreasonably increase[d] the risk of injury beyond that inherent in the sport of basketball."

Essentially, the Court of Appeals did not find the elimination of boundary lines and certain fouls to heighten the risks associated with basketball.

The Court of Appeals also responded to Fitzgerald's dissent by stating that it has been previously held that '"the risk of collision [with an open and obvious item near a basketball court] was inherent in playing on that court' and so plaintiff had assumed the risk of that injury." As such, the defendants' motion for summary judgment was ultimately granted.

Assumption of Risk as a Complete Bar to Recovery

Given that New York is a comparative fault jurisdiction, one may assume that the assumption of risk doctrine does not completely bar a plaintiff from recovering damages for

personal injuries.[1]

However, the Court of Appeals' decisions for Grady and Secky demonstrate that the doctrine continues to serve as a complete bar to recovery in limited circumstances, despite the enactment of Civil Practice Law and Rules Article 14-A.

In analyzing the issues presented in both matters, the court reaffirmed that, despite the enactment of CPLR 1411, the primary assumption of risk doctrine remained "applicable only in a narrow set of circumstances, in recognition of the fact that 'athletic and recreative activities possess enormous social value, even while they involve significantly heightened risks.'"[2]

The court reasserted the principles articulated by Chief Judge Benjamin Cardozo — who found in Murphy v. Steeplechase Amusement Co. in the New York Court of Appeals in 1929 — that an individual "who takes part in ... a sport accepts the dangers that inhere in it so far as they are obvious and necessary."[3]

As such, the court emphasized that the primary assumption of risk doctrine remains in "full force" in these limited circumstances.[4]

Although the Court of Appeals determined that the assumption of risk doctrine is still applicable to sports and recreational activities, it also expressed its understanding that New York is a comparative fault jurisdiction.

Harmonizing its holding with CPLR 14-A, the court stated that "assumption of risk in this context is no longer treated as a defense to the abandoned contributory negligence equation," but rather defines "the standard of care under which a defendant's duty is defined and circumscribed because assumption of risk in this form is really a principle of no duty, or no negligence and so denies the existence of any underlying cause of action."[5]

Notably, Judge Jenny Rivera expressed adamant disagreement with the majority's application of the assumption of risk standard in Grady and Secky.

In doing so, Rivera stated that the Legislature unequivocally abolished "contributory negligence and assumption of risk as complete defenses."[6] Rivera relied on the plain language of the CPLR 1411 in order to give effect to the intention of the Legislature, determining that "the text sounds the death knell of contributory negligence and assumption of risk."[7]

Interestingly, this is not the first instance since the enactment of CPLR 1411 that the Court of Appeals has given effect to the assumption of risk doctrine as a complete bar to recovery.[8] However, Rivera argued, "the Court has misapplied CPLR 1411 by retaining a bar to recovery in contravention of the text and the legislature's intent."[9]

Nevertheless, the majority relied upon the court's prior decisions and the fact that the Legislature has not sought to correct the court's application of the assumption of risk standard in these limited circumstances.[10] Thus, the majority opinion rejected the "entreaty to abandon decades of applicable precedent," finding that no compelling justification existed to waiver from such precedent.[11]

Unless the Legislature acts otherwise, the assumption of risk doctrine will continue to serve as a complete bar to recovery in sport and recreative activities. However, as discussed below, the application of the assumption of risk doctrine in these limited circumstances will seemingly be heavily fact dependent.

Differentiating the Opinions and Application of the Doctrine

The circumstances in both Grady and Secky stem from drills performed by the plaintiffs for their respective sports. Nevertheless, the Court of Appeals' decisions differentiated the circumstances of the two drills, which resulted in summary judgment being granted in Secky but denied in Grady.

In Grady, the Court of Appeals placed emphasis on the complexity of the baseball drill and the size of the protective screen.[12] Essentially, the court questioned the adequacy of the screen and whether the risks specific to the drill were inherent in baseball.

However, the Court of Appeals did not find such questions of fact to exist in Secky. Rather, the court simply found that the plaintiff was injured while attempting to rebound a basketball and that the bleachers were an open and obvious item — a player's collision with them is an inherent risk in the sport of basketball.

One reason for the different outcomes in Grady and Secky is that the Court of Appeals did not find that the basketball drill at issue in Secky created a dangerous condition over and above the usual dangers that are inherent with the sport of basketball.

It is worth acknowledging, though, that the analyses applied in Grady and Secky are arguably distinguishable, as the plaintiff in Grady was seemingly given more benefit of the doubt than the plaintiff in Secky.

To an extent, the Court of Appeals' decision in Secky focuses on the specific act of rebounding a basketball, as opposed to Grady, where the Court of Appeals' decision emphasizes the unique circumstances surrounding the complex baseball drill.

For instance, the court has held that being hit by an errant baseball may be an inherent risk of playing baseball, as stated by Judge Madeline Singas in her dissent in Grady and concurrence in Secky.

Yet, the majority seemed to focus on the protections provided to the plaintiff in the specific drill at issue in Grady. However, in Secky, the court did not find that the basketball players were exposed to additional dangers as a result of eliminating the boundary lines and certain fouls — essentially a removal of typical protections.[13]

Notably, the Third Department asserted in its decision in Secky that "[t]he primary assumption of risk doctrine ... encompasses risks involving less than optimal conditions."[14] The Third Department proceeded to conclude that the elimination of boundary lines did not increase the inherent risks associated with basketball.

However, in light of the Court of Appeals' decision in Grady, ambiguity remains as to what is

considered "less than optimal conditions."

These decisions reveal that determining what rules and activities may be outside the inherent risks of a given sport involves nuance.

The difference as to whether the assumption of risk doctrine is applicable requires an analysis of the totality of the circumstances surrounding the injury-causing activity, in these cases — practice drills.

What remains clear is that the application of the assumption of risk doctrine is heavily dependent on both the facts and the sport at issue.

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[1] See N.Y. CPLR 1411 ("In any action to recover damages for personal injury, injury to property, or wrongful death, the culpable conduct attributable to the claimant or to the decedent, including contributory negligence or assumption of risk, shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the claimant or decedent bears to the culpable conduct which caused the damages").

[2] Grady v. Chenango Valley Cent. School Dist., 2023 N.Y. Slip. Op. 02142, at *1 (2023) (quoting Trupia v. Lake George Cent. School Dist., 14 N.Y.3d 392, 295 (2010)). The Court did not define the "narrow set of circumstances" that the primary assumption of risk doctrine remained applicable. However, it is evident from the decision that these limited circumstances refer to matters concerning a plaintiff becoming injured while participating in an athletic and/or recreational activity.

[3] Id. (quoting Morgan v. State of N.Y., 90 N.Y.2d 471, 482–83 (1997)).

[4] Id.

[5] Id. (internal citations and quotations omitted).

[6] Id. at *2.

[7] Id. at *3.

[8] See, e.g., Maddox v. City of N.Y., 66 N.Y.2d 270 (1985); see, e.g., Turcotte v. Fell, 68 N.Y.2d 432 (1986); see, e.g., Morgan, 90 N.Y.2d 471; see, e.g., Trupia, 14 N.Y.3d 392.

[9] Grady, 2023 N.Y. Slip. Op. at *5.

[10] Id. at *1.

[11] Id. at *1.

[12] The Court's consideration of the protective screen could be compared to the Court's analysis for Siegel v. City of N.Y. in Morgan v. State of N.Y., 90 N.Y.2d 471, 482, 488 (1997), where the Court considered the adequacy of, and inherent risks associated with, a torn net for indoor tennis.

[13] The Third Department noted in its decision in Secky that "[t]he primary assumption of risk doctrine . . . encompasses risks involving less than optimal conditions." Secky v. New Paltz Cent. School Dist., 195 A.D.3d 1347 (3d Dep't 2021) (internal citations and quotations omitted).

[14] Secky v. New Paltz Cent. School Dist., 195 A.D.3d 1347 (3d Dep't 2021) (internal citations and quotations omitted)