
**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
EASTERN GRAND DIVISION**

FLETCHER C. EGGERS,)
)
 Claimant,) **Claim No. T20140329**
 v.)
) **Regular Docket**
)
 STATE OF TENNESSEE,)
)
 Defendant.)

AMENDED ORDER GRANTING STATE'S MOTION FOR SUMMARY JUDGMENT

This claim came on for further hearing before the undersigned on January 15, 2015, in Dandridge, Tennessee. At that time, A. Philip Lomonaco, Esq., a member of the Knox County Bar appeared on behalf of the Claimant. The Claimant himself, Fletcher Christian Eggers, was present with his attorney. Appearing on behalf of the State of Tennessee was Joshua R. Walker, Esq., of the Office of the General Counsel and Secretary at the University of Tennessee-Knoxville. Mr. Walker is also a member of the Knox County Bar.

This claim was previously dealt with by an earlier Order of this Commission. The findings and legal principles discussed in that Order are explicitly incorporated herein by reference.

In our earlier decision, at page 17, the Commission made the following statement:

The Commission denies the State's motion with some serious misgivings. If the State is able to prove at trial what Ms. Cox states in her affidavit, it in all likelihood will prevail. However, under either the *Hannan v. Alltel* methodology or the standard now found in Tenn. Code Ann. § 20-16-101, we cannot get around the fact that there is a very materially disputed issue of fact in this case, i.e.- whether Ms. Cox ever

told Mr. Eggers and others that use of eyeguards was required while playing racquetball during class time.

Following the filing of our earlier Order, the State of Tennessee filed a Motion to Revise Order Denying State's Motion for Summary Judgment to which Mr. Eggers replied with the filing of his "Response To Defendant's Motion To Revise Order Denying State's Motion For Summary Judgment". Additionally, following an order from the Commission, Mr. Eggers has filed a Response to Defendant's Statement of Undisputed Facts and Plaintiff's Statement of Material Facts.

Of course, it has long been the case, as most recently discussed in *Smith v. UHS of Lakeside, Inc.*, 439 S.W.3d 303 (Tenn. 2014), that when ruling on a motion for summary judgment, we are required to make findings of fact as well as conclusions of law. In our previous Order in this case, we discussed at some length the methodology used in addressing motions for summary judgment. Because Mr. Eggers' injuries occurred on March 12, 2013, we are required to analyze the State's motion under the provisions of Tenn. Code Ann. § 20-16-101. Inter alia, that statutory provision initially requires the moving party to negate an essential element of the nonmoving party's claim; or alternatively, demonstrate to the commission that the nonmoving party's evidence is insufficient to establish an essential element of his claim.

This is a negligence claim and at page 6 of our earlier Order, we discussed the elements of such a claim. At pages 7 thru 9, we discussed duty and what it actually means. In particular, we quoted language from several leading cases which elucidate what duty actually means.

To that discussion we would add language from the Supreme Court's 2005 decision in *West v. East Tennessee Pioneer Oil, Co.*, 172 S.W.3d 545 (Tenn. 2005):

Thus, legal duty has been defined as the legal obligation owed by a defendant to a plaintiff to conform to a reasonable person standard of care for the protection against unreasonable risks of harm. *Burroughs*,

118 S.W.3d at 329; *Staples*, 15 S.W.3d at 89; *McCall*, 913 S.W.2d at 153; *see also* Keeton, *supra*, § 53.

The risk involved must be one which is foreseeable; “a risk is foreseeable if a reasonable person could foresee the probability of its occurrence or if the person was on notice that the likelihood of danger to the party to whom is owed a duty is probable.” *Linder Const. Co.*, 845 S.W.2d at 178. “The plaintiff must show that the injury was a reasonably foreseeable probability, not just a remote possibility, and that some action within the [defendant's] power more probably than not would have prevented the injury.” *Tedder v. Raskin*, 728 S.W.2d 343, 348 (Tenn.Ct.App.1987)

We employ a balancing approach to assess whether the risk to the plaintiff is unreasonable and thus gives rise to a duty to act with due care. *Burroughs*, 118 S.W.3d at 329; *Staples*, 15 S.W.3d at 89. This Court has held that a risk is unreasonable, “ ‘if the foreseeable probability and gravity of harm posed by defendant's conduct outweigh the burden upon defendant to engage in alternative conduct that would have prevented the harm.’ ” *Burroughs*, 118 S.W.3d at 329 (quoting *McCall*, 913 S.W.2d at 153).

The wording and concepts which continuously appear in all of the cited cases is reasonable care to avoid unreasonable risks of harm caused by foreseeable circumstances.

It goes without saying that in order to be successful with a claim, the claimant must prove that the State's actions breached the duty incumbent on it of exercising reasonable care to avoid a foreseeable risk.

We also find useful in deciding the State's motion former Justice Koch's language while sitting on the Middle Section Court of Appeals in *Kelley v. Johnson*, 796 S.W.2d 155 (Tenn. Ct. App. 1990), perm. app. d'nd. Sept. 24, 1990:

The determination of negligence claims involves mixed questions of law and fact. The existence and scope of the defendant's duty is exclusively within the court's domain. *Dill v. Gamble Asphalt Materials*, 594 S.W.2d 719, 721 (Tenn.Ct.App.1979). However, whether the defendant breached its duty and whether the breach proximately caused the injury are generally questions decided by the trier of fact. *Fradley v. Smith*, 519 S.W.2d 584, 586 (Tenn.1974); *Senters v. Tull*, 640 S.W.2d 579, 582 (Tenn.Ct.App.1982). These questions become questions of law only

when the facts and inferences drawn from the facts permit reasonable persons to reach only one conclusion. *Evridge v. American Honda Motor Co.*, 685 S.W.2d 632, 635 (Tenn.1985); *Haga v. Blanc & West Lumber Co.*, 666 S.W.2d 61, 65 (Tenn.1984).

Triers of fact decide negligence cases in light of their knowledge of how reasonable persons act in the same or similar circumstances. *Nashville, C. & St. L. Ry. v. Wade*, 127 Tenn. 154, 158–59, 153 S.W. 1120, 1121 (1913). Their decisions are not only based on factual matters but also on mixed considerations of logic, common sense, public policy, and precedent. *Wyatt v. Winnebago Indus., Inc.*, 566 S.W.2d 276, 280 (Tenn.Ct.App.1977); *Mullins v. Seaboard Coastline Ry.*, 517 S.W.2d 198, 201 (Tenn.Ct.App.1974); *Carney v. Goodman*, 38 Tenn.App. 55, 61–62, 270 S.W.2d 572, 575 (1954). See also *Young v. First Bank of Tennessee*, No. E2010-01434-COA-R3-CV, 2011 WL 332700 *4 (Tenn. Ct. App. 2011); and *Holland v. K-VA-T Food Stores, Inc., et. al.*, No. E2013-02798-COA-R3-CV, Jan. 13, 2015, 2015 WL 151373 (Tenn. Ct. App. 2015). (Emphasis supplied).

At pages 14-15 of our earlier Order, the Commission noted that based on the affidavits provided by the parties, the following facts were undisputed:

- 1) that Mr. Eggers was a student at the University of Tennessee;
- 2) that Mr. Eggers had been involved in the Racquetball I class for two months prior to his injury;
- 3) that during the first meeting of the racquetball class, Ms. Cox related to all of her students the requirement of wearing eye protection set out in The University of Tennessee Rec Center Policy Handbook and Racquetball I course syllabus. (Cox Aff. at ¶ 3);
- 4) that protective eyeguards are required per the course syllabus. (Cox. Aff. at ¶ 4);
- 5) that the warnings regarding use of eye protection were related to the students in the course syllabus (posted online) which the students were instructed to review prior to the first day of class when the contents of the syllabus, including the requirement that protective eyeguards with lenses were necessary for participation in the class were discussed; in the second class meeting safety requirements, including the use of protective eyewear, were covered before the students were allowed to participate; and finally that there was signage placed immediately outside the racquetball courts including the one where Mr. Eggers was injured. (Cox Aff. ¶ 5);
- 6) that Mr. Eggers claims that Ms. Cox never told the class to wear eyeguards during racquetball practice and that “[m]ost of the other students did not wear eyeguards”. (Eggers Aff. ¶ 5)

- 7) that the instructor, Ms. Cox, asked the class not to sue her if an injury occurred. (Eggers Aff. ¶ 5)

To these factual findings, the Commission would also add that Mr. Eggers is studying business analytics. This is not surprising since at the second hearing in this matter Mr. Eggers advised the Commission that his long-term professional goal is to become a professional sports scout. The Commission noted, at page 11-12 of our earlier Order, that Mr. Eggers worked as a baseball umpire. Accordingly, we take judicial notice of the fact that when working behind home plate, umpires always wear facemasks in order to avoid injury to their head and eyes caused by a hard ball traveling at great speeds. The Commission believes that this is a pertinent factor in our decision since sports minded individuals such as Claimant, we find, would certainly be aware of the implicit risks involved when working or playing around baseballs or racquetballs traveling at high speeds.

Mr. Eggers' argument as to why the Commission should not grant the State's Motion for Summary Judgment is two-fold.

First, Claimant seems to argue that the State owed an enhanced duty to him since he was only eighteen years old at the time of his injury. Secondly, in his affidavit filed in March of 2014 and also in his Statement of Material Facts filed in November of 2014, Mr. Eggers contends that at the second actual class meeting, the teacher, Ms. Cox, "[m]ade no statements with regard to reminding the Plaintiff or other students in the class of the requirement to wear eye protection" [Plaintiff's Statement of Material Facts, paragraph 2]. In his previously filed affidavit, Mr. Eggers, in paragraph 5, states that "I was not told by Ms. Cox to wear eyeguards during racquetball practice. Most of the other students did not wear eyeguards".

Here, the Commission notes a small, but important variance between what is stated in the first Affidavit and the later statement of material facts. In the Affidavit, Mr. Eggers swore that

the instructor did not advise wearing eyeguards during racquetball practice while in the Statement of Material Facts, he seems to indicate that warnings were made up to the second actual classroom meeting, but not at that meeting or thereafter.

Viewing the facts and evidence established by the parties through their respective affidavits and statements of material facts, the Commission simply cannot and does not find that the State of Tennessee through the University failed to meet the reasonable care standard discussed in both our earlier decision and in the cases quoted above.

In the course syllabus, protective eyeguards with lenses are listed as required equipment. The word required is bolded and in upper case letters. Additionally, there are extremely explicit signs in the passageway leading to the courts where racquetball is played “strongly recommend[ing]” the use of goggles. In his own Statement of Material Facts, paragraph 2, Mr. Eggers seems to confirm that at least up to the second actual class meeting, Ms. Cox had discussed the requirement of protective eyewear while actually playing racquetball.

Mr. Eggers argues vigorously that he was only eighteen years old at the time of his injury and that somehow his youthful age necessitated enhanced vigilance on the part of the University during the course of his matriculation there, while enrolled in the Racquetball 1 class.

The State responds convincingly that under the Constitution of the State of Tennessee, when Claimant reached his eighteenth birthday, he became an adult with the right to vote, serve in the military and even serve as a member of a jury with the power to make life and death decisions in capital cases. See Tenn. Code Ann. § 1-3-105.

The State’s argument in this connection is well taken. Mr. Eggers, based on the Commission’s interactions with him, on January 15, 2015, quite obviously is an intelligent and polite individual. He makes an excellent appearance and is still studying at the University of

Tennessee in a difficult academic area, Business Analytics. He is now twenty years old, and in every respect an adult, capable of making serious life decisions on his own.

Therefore, we hold that the State has negated an essential element of Mr. Eggers' claim, i.e. proving that the State breached a duty of reasonable care owed to an adult person, who has a sports background, because of the manner in which the Racquetball 1 course in which he was enrolled was conducted. Thus, the State has met and the Claimant has not rebutted the requirements of both subsections (1) and (2) of Tenn. Code Ann. § 20-16-101 and is entitled to summary judgment pursuant to Tenn. R. Civ. P. 56.04 since we find there are no issues with regard to the material facts in this case and the State is therefore entitled to judgment as a matter of law.

Although we conclude that the State did not breach any duty owed to Mr. Eggers in connection with the conduct of the Racquetball I course, assuming for purposes of argument that it had, we find that the principles of comparative negligence or fault would inevitably preclude an award in favor of Mr. Eggers in this case. In its Answer to Mr. Eggers' Complaint, the State raised the affirmative defense of comparative negligence or comparative fault. As we discussed in our earlier Order in this case, at page 14, issues of comparative fault are reserved for ultimate disposition by the trier of fact. However, Judge Susano, in *Norris v. Pruitte*, No. 01A01-9709-CV-00506, 1998 WL 1988563 (Tenn. Ct. App. Aug. 24, 1998), wrote that summary judgment should be granted in circumstances where reasonable minds could only conclude that the fault of the claimant was at least equal to that of the defendant. *Id.* at *3.

That is precisely the sort of situation we now have before us.

Perhaps it is a homely analogy but if we were to view the facts in this situation as the lady of justice balancing her scales, the inescapable conclusion would be that the State's

arguable failure to enforce the wearing of goggles by Ms. Cox after the second actual in-class training period results in a percentage of fault far less than Mr. Eggers' own culpability in ignoring the mandatory requirement set out in the course syllabus that protective eyewear be used as well as the suggestion for protective eyewear placed on at least two signs in the hallway leading to the racquet ball courts. Claimant's failures must also be considered in light of the fact that Mr. Eggers has a serious interest in athletics and has worked as a baseball umpire which requires the use of equipment which prevents injury to the head and eyes while working behind home plate.

Under the most favorable analysis of the facts in this case, we could never reach the conclusion that the State's alleged comparative negligence exceeded that of the Claimant himself. The State has cited two cases, *Easley*, M2003-02752-COA-R3-CV, 2005 W.L. 697525 (Tenn. Ct. App. March 24, 2005) and *Berry v. Houchens Market of Tenn. Inc.*, 253 S.W.3d 141, Tenn. Ct. App. 2007) (perm. app. d'nd 2008). *Easley v. Baker* dealt with a fact pattern involving a plaintiff who fell in the bathroom of a bar in Davidson County which had been flooded. *Berry v. Houchens Market of Tenn. Inc.*, involved injuries to a plaintiff who slipped in a puddle of oil outside a market in Nashville. Both decisions concluded that the negligence of the plaintiffs exceeded the percentage of fault which could be assigned to the defendant. Under the best of circumstances, we cannot conceive of any possibility, based upon the materials now before us, in which we would find that Claimant's own comparative negligence was less than any blame which might be assessed against the State.

Therefore, using the discretion available to us in situations such as this, as discussed in Judge Susano's opinion in *Norris v. Pruitte*, we conclude that this case must be ended now by our granting of the State's Motion for Summary Judgment. Granting Summary Judgment now,

in our view, fulfills the purpose for which such motion are designed to accomplish, *i.e.* putting an end to the expenditure of time and expense into matters that ultimately will be unsuccessful.

The Commission had an opportunity to meet Mr. Eggers on January 15, 2015. As stated above, he is obviously an intelligent and well-motivated individual. The damage to his eyesight is without question extremely unfortunate. As the Commission expressed to Mr. Eggers, the undersigned has undergone a significant amount of surgery involving the retinas of both eye. We understand Mr. Eggers' plight.

However, for the reasons just set out, we must and do GRANT the State's Motion for Summary Judgment. The findings and legal arguments contained in our first Order are included herein by reference as fully as copied verbatim.

Entered this 26th day of January, 2015.


WILLIAM O. SHULTS, COMMISSIONER
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CERTIFICATE

I certify that a true and exact copy of the foregoing Order has been transmitted to the following:

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This the 2nd day of ^{February} January, 2015.

Paula Swanson

Paula Swanson, Claims Commission Clerk