STATE OF MICHIGAN

COURT OF APPEALS

PATRICIA WALKER, as Next Friend of JONANEÉ WALKER, a Minor,

Plaintiff-Appellant,

v

CITY OF ECORSE, DAVID JEWEL and LESTER CARTER,

Defendants-Appellees.

UNPUBLISHED
December 2, 1997

No. 199095
Wayne Circuit Court
LC No. 96-606881 NO

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

PER CURIAM.

This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a high school freshman, was injured while trying out for the girls' track team. After being informed by the coaches that she could hope to make the varsity team, if at all, only in the hurdles event, plaintiff was encouraged to demonstrate her speed and prowess on a set of hurdles erected in one of the hallways of the high school building. Because this appeal arises in the summary disposition context, the facts are being viewed in a light most favorable to plaintiff. Plaintiff's request to have the hurdles lowered for her first essay in the discipline was rejected by the coaches, who wanted her to attempt the hurdles as they would be arranged during interscholastic competition. Attempting to surmount the very first hurdle, plaintiff fell and sustained injury to her leg and knee.

Summary disposition was sought and granted under MCR 2.116(C)(7) -- no affidavits of fact by competent witnesses or documentary evidence were adduced in support of or in opposition to the motion, which focused only on the face of plaintiff's complaint. As to the defendant school district, plaintiff's complaint appears to rely on the public building exception to governmental immunity, MCL 691.1406; MSA 3.996(106). Her complaint asserts, however, that the hallways of the high school are normally and properly used only for pedestrian travel to and from dasses, and that a rule prohibits running in the hallways. While it may have been negligent to conduct track and field activities in the hallway, the hallway was not designed for such activities, is not normally used in that fashion, and

therefore plaintiff's claim does not come within the public building exception to governmental immunity, since her claim arises from activities or operations conducted within the building and is not a function of the condition of the building itself. *Dudek v State of Michigan*, 152 Mich App 81; 393 NW2d 572 (1986). Moreover, in this Court at least, plaintiff has not briefed any substantive legal issues concerning the liability of the school district, and that claim must therefore be deemed abandoned. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, summary disposition as to the school district is affirmed.

As to the individual employees who are defendants herein, liability must be predicated, if at all, on "gross negligence" as defined in §7(2)(c) of the Governmental Immunity Act, MCL 691.1407(2)(c); MSA 3.996(107)(2)(c). By the terms of the statute, the previous test concerning the "ministerial-discretionary" nature of a governmental employee's duties has become irrelevant.

Before the issue of "gross negligence" can be addressed, there must first be facts alleged which, if proved, would constitute an actionable tort without respect to governmental immunity principles. *White v Beasley*, 453 Mich 308; 552 NW2d 1 (1996). Since plaintiff's participation on the track and field team was a voluntary extracurricular activity, as a matter of law plaintiff must be deemed to have consented to expose herself to the hazards and risks of injury inherent in the sport. *Overall v Kadella*, 138 Mich App 351, 357 ff; 361 NW2d 352 (1984); *Higgins v Pfeiffer*, 215 Mich App 423, 425; 516 NW2d 645 (1996). Accordingly, summary disposition as to those aspects of plaintiff's complaint which deal with her original injury was properly granted.

Plaintiff's complaint further alleges that, after sustaining her initial injury, the defendant coaches manipulated her leg and knee, concluding that the injury was not serious, and advised her to "walk off" the injury. The complaint asserts that this action exacerbated plaintiff's injuries. Considered in the summary disposition context, the individual defendants, high school coaches neither trained nor licensed as medical practitioners qualified to diagnose injuries or to give medical advice, could be deemed by reasonable persons to have acted in a grossly negligent fashion, that is, by showing a substantial lack of concern for whether further injury might result by assuming such medical expertise in circumstances in which a student under their tutelage would naturally look to them for advice and assistance. On the face of plaintiff's complaint, reasonable minds could differ as to whether the individual defendants acted in a grossly negligent fashion, and accordingly summary disposition in this respect was improperly granted. *Harris v University of Michigan Board of Regents*, 219 Mich App 679, 694; 558 NW2d 225 (1996); *Vermilya v Dunham*, 195 Mich App 79, 83; 489 NW2d 496 (1992). Whether plaintiff will be able to prove the facts alleged in her complaint, or whether such proofs will satisfy a trier of fact that gross negligence has been established, are issues on which this Court expresses no opinion.

Affirmed in part; vacated and remanded in part for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald
/s/ Robert P. Young, Jr.