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SPORTS FACILITIES and the LAW

How the law affects the sports facilities industry

Lawsuit Challenging FC Cincinnati Stadium Development Dismissed

By Jeff Birren, Senior Writer

Introduction

The City of Cincinnati and FC Cincinnati agreed to create a new stadium. One local resident was sufficiently incensed by the undertaking that she sued the United States, the City, Club, and their respective officials, claiming that the project violated various laws, including the U.S. Constitution, and several Civil Rights' Acts. Recently, the U.S. District Court dismissed the lawsuit, finding it frivolous because the plaintiff had previously made virtually identical claims in a prior dismissed case (Epps v. Carl Linder III, et al, 2022 U.S. Dist. LEXIS 230222, (12-21-2022)).

Background

FC Cincinnati began playing in the second division United Soccer League in 2016. The team played at the University of Cincinnati. Carl Linder III is the controlling owner. The team did well and set attendance records. In 2018, the MLS announced that the Club had been awarded an MSL expansion franchise to enter the MSL the following year. FC Cincinnati subsequently turned to building a new stadium.

The team focused on the City's west end and agreed with Cincinnati to build a new privately funded soccer stadium costing over $250 million. The planned stadium would have 26,000 seats and 53

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Pennsylvania Appeals Court Reverses Trial Court in Negligence Case Involving a Zipline

A Pennsylvania court of appeals reversed a lower court, giving new life to the claim of a plaintiff, who sued a resort after she was injured on a zipline.

Specifically, the Superior Court of Pennsylvania found that the plaintiff, Aisha Monroe, "produced sufficient evidence that the defendant consciously engaged in conduct that created an unreasonable risk of physical harm to her that was substantially greater than mere negligence" to defeat the defendant's motion for summary judgment.

Monroe initiated this negligence action against Camelback Ski Resort, alleging that she was injured on the zipline as the result of Camelback's failure "to use reasonable prudence and care to take care of the customers' safety complaints" and its "acting in disregard of the rights of safety of [Monroe] and others similarly situated."

Camelback moved for summary judgment, arguing not against the "more specific pleading regarding the factual underpinnings of the allegations of recklessness Complaint," but rather that the allegations were "improper, broad and vague." It also did not object in "the nature of a demurrer by contending that the allegations of recklessness were legally

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NBA Bans Unnamed Associates of Superstar Ja Morant from Games After Laser Incident

In interviews, Memphis Grizzlies guard Ja Morant comes off as unassuming and friendly.

Not so much for some of his friends.

Morant tweeted Sunday that one of his friends has been banned from games at FedExForum for a year after a confrontation took place on January 29 between his supporters and members of the Indiana Pacers team.

Specifically, several Pacers, while standing outside the arena, witnessed a red dot pointed at them. The red dot was a laser, which in some cases can be attached to a weapon.

"NBA Security and league investigators conducted an investigation interviewing numerous eyewitnesses and reviewing video surveillance following allegations made by the Indiana Pacers organization regarding a postgame incident on Jan. 29. While we substantiated that a postgame situation arose that was confrontational, based on interviews and other evidence gathered, we could not corroborate that any individual threatened others with a

weapon," NBA spokesman Mike Bass said in an emailed statement to the media.

"Certain individuals involved in the postgame situation and a related matter during the game that night have been subsequently banned from attending games in the arena. If additional information becomes available related to the postgame situation, the league office will conduct a further review," Bass' statement continued.

This was not the first time Morant's friends were in the news.

Morant's friend, Trent Forrest, was banned from NBA games because of his actions during a game between the Grizzlies and the Los Angeles Lakers on January 15. Forrest, who was sitting courtside, got into a verbal altercation with Lakers player Kentavious Caldwell-Pope, and it escalated into a physical altercation that involved pushing and shoving. The NBA conducted an investigation and deemed Forrest's actions to be "unacceptable" resulting in a ban from attending NBA games.

SPORTS FACILITIES and the LAW

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Lawsuit Could Lead to the Question: What Is the Burden of Proving Knowledge of and Responsibility for Third Party Criminal Actions?

By Gil Fried, University of West Florida,

Eric Johnson, Jr., was shot and killed while backstage at a concert produced by Live Nation Worldwide, Inc. (hereafter Live Nation). Johnson's decedents filed a complaint for wrongful death alleging defendant Live Nation's negligence caused the death.

The complaint alleges, "On Friday August 22, 2014, 38-year-old Eric Johnson . . . attended the 'Under the Influence Music Tour Concert' . . . held at the Shoreline Amphitheatre in Mountain View, California. Live Nation . . . had an exclusive lease agreement to operate, manage and provide security services at the Amphitheatre for the concert. Defendants promoted the concert and selected, hired and invited rap artists such as Wiz Khalifa, Young Jeezy, and others to perform at the concert.

At approximately 11:00 p.m., Johnson was backstage and a verbal altercation ensued. According to the complaint, Defendants' security personnel failed to prevent, intervene and/or stop the altercation. Sometime thereafter, Johnson was fatally shot at the venue. No guns were supposed to be in the venue, which had screening for fans, but no real screening for those in the backstage area.

When the police searched Young Jeezy's tour bus they discovered automatic assault weapons, and they arrested the rapper along with five members of his entourage for unlawful possession of the firearms. Neither the rapper nor any members of his entourage were charged in relation to the shooting.

The complaint alleged, "Defendants knew or should have known that many of the rap artists they selected, invited, and hired to perform are known to attract violent and unruly crowds at their concerts and shows. Defendants knew or should have known that many of the rap artists they selected, hired and invited to perform at the concert have themselves been investigated, detained, arrested and/or convicted of committing violent criminal acts. For example, on information and belief plaintiffs state that on March 1, 2012 a brawl erupted at a Young Jeezy concert in Orlando, Florida; on April 5, 2012 one person was shot multiple times while attending a Young Jeezy concert in Toronto, Ontario; on April 6, 2012 another person was shot while attending a Young Jeezy concert."

Some of the claims included that Defendants failed to employ reasonable security measures to prevent guns from being brought into the venue. Furthermore, Plaintiffs claimed Defendants failed to employ adequate security measures at the Amphitheatre's entrances or backstage. For example, they did not use metal detectors to screen guests, rap artists or their entourage prior to entering the concert or the backstage area. Defendants also failed to pat search or check the personal belongings and vehicles of persons permitted to enter the backstage area.

Live Nation filed a motion for summary judgment on the ground that it owed no duty to ensure Johnson's safety against "the unprecedented and unforeseeable homicidal acts of an unknown assailant." Live Nation submitted a declaration by the head of security at Shoreline Amphitheater stating that there had been no prior homicides "or similar acts of violence" at Shoreline "including backstage" since at least 2001.

The trial court held, "Defendants have met their initial burden to establish through admissible evidence that the shooting of [Johnson] in the backstage area of the Shoreline Amphitheatre was not reasonably foreseeable and they therefore owed no duty to prevent the third-party criminal attack on [Johnson]." The granting of summary judgement motion was appealed.

The appellate court concluded that the record did not support the existence of a special relationship between Live Nation and the artists and their guests. In particular, the court focused on the fact that the artists had their own security protocols which Live Nation reviewed and incorporated prior to an event. For example, the headliner requested that the backstage area be cleared of any police presence for his performance unless specifically requested by his security to respond to a situation. He also detailed the number and location of security guards to be stationed backstage. Finally, the headliner indicated that his production team, rather than the venue, would be responsible for issuing backstage passes. The court concluded that given this evidence, the artists and their guests would not reasonably anticipate that Live Nation would be providing protection from criminal activity by and between the artists and their guests. The court differentiated this from cases where Live Nation is responsible for all security and guests would be counting on the company to provide a relatively safe environment based on known threats/concerns.

In conclusion the appellate court concluded that it was not reasonably foreseeable and too much of a burden to impose requiring Live Nation to un-

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dertake more advanced security efforts backstage without specific foreseeable threat. The court wrote that "a violent attack by and between artists and their guests in the backstage area of a performance is not a foreseeable occurrence against which Live Nation should have provided preventative measures."

I am a bit biased in this case as I was the Plaintiffs' expert witness. I have not heard anything about the case for several years and did not even know the case had been appealed. I think the court was parsing the facts. Yes, the artists want to be in control of the backstage area and to do what they want? But is that appropriate for a venue or event promoter? There have been multiple shooting between artists in and around venues, especially rap artists (as was the case here). Using the court's logic, a venue, concert promoter, and/or sporting event promoter can contractually push security to another party, even with significant known risks, and then try to avoid potential responsibility for possible criminal conduct of third parties. For example, how many assaults in and around a stadium should prompt an entity to provide additional security to protect fans? Should this be based on just injuries in one area of a venue? Should industry trends and incidents play a role? Should security and safety be a global strategy involving the venue, promoters, artists, police, etc…? These are the types of questions that are still relevant and unanswered by the court. Some defendants are too remote to have responsibility for event safety, but others are a critical partner in the risk management process and maybe venue/promoters should not relinquish carte blanche responsibility to an artist simply because they demand that in a contract. For example, would a promoter allow artists to engage in illegal activity backstage, such as knowing and allowing underage women to engage in sex with artists on the property, simply because the artist tells the venue/promoter they should not interfere with anything the artists is doing backstage? Couldn't that be examined as aiding and abetting in sex trafficking?

The opinion can be found at: https://www.digitalmusicnews.com/wp-content/uploads/2023/01/Dennis-v-Live-Nation-Drakeo-case-jan-2023.pdf.

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Court Rules Premises Liability Claim Involving Outdoor Basketball Court Can Continue

A federal judge from the Central District of California denied a hotelier's motion for summary judgment in a case in which it was sued by a patron who suffered an injury involving a bench next to its basketball court. In so ruling, the court found that defendant, Marriott Resorts Hospitality Corporation, was aware of the risk and that the plaintiff should be given the benefit of the doubt in the summary judgment phase.

In November 2020, the May family—parents Melinda and Jeffrey May and their minor children, including Plaintiffs S.M. and M.M.—were staying at the Marriott Newport Coast Villas (hereafter "Resort") in Newport Coast, California.

At the 77-acre Resort, there is an outdoor area with a basketball court and putting green, known as Pacific Park. One side of the basketball court is at the bottom of a grassy slope, below the putting green. At the basketball court there were also two portable benches, which had been at the Resort since at least 2005.

On the evening of November 22, 2020, Melinda May, S.M., and M.M. were at Pacific Park. Melinda and the children walked down the grassy slope to the basketball court. The grass was wet and slippery. S.M., who was six years old at the time, slipped and grabbed one of the portable benches to break his fall. However, the bench fell and landed on S.M.'s head. The bench weighed approximately 109 pounds. The plaintiffs alleged that S.M. sustained a fractured skull and had to undergo emergency surgery to have plates and screws inserted following the incident.

The plaintiffs sued in Orange County Superior Court before Marriott removed the case to federal court. The plaintiffs alleged claims for negligence and premises liability as to S.M. and negligent infliction of emotional distress as to Melinda May and M.M. This led to Marriott's motion for summary judgment.

Marriott argued that (1) it maintained Pacific Park in a reasonably safe condition, so the plaintiffs' negligence and premises liability claims fail as a matter of law, and (2) Melinda May and M.M.'s claims must fail because the negligence and premises liability claims fail.

The court noted that "to prevail on a premises liability claim, a plaintiff must establish that the defendant owned or controlled the property, that the defendant was negligent in the use or maintenance of the property, that the plaintiff was harmed, and that the defendant's negligence was a substantial factor in causing the harm." Carter v. AMTRAK., 63 F. Supp. 3d 1118, 1144 (N.D. Cal. 2014).

Furthermore, the court noted, hoteliers have an enhanced responsibility to protect patrons.

Marriott did not contest the duty that it owed to the plaintiffs. Rather, it argued that "there was no dangerous condition, and that the plaintiffs have failed to meet their burden to show that it was aware or constructively aware of the dangerous condition." Central to its argument was the fact there had been no previous incidents involving the bench.

The instant court noted that the "question of whether the bench constituted an unreasonably dangerous condition is one for a jury to decide."

Elaborating, the court wrote: "Whether, in light of all of the evidence, including that there were never any other incidents with the portable benches, it was reasonably foreseeable that the unsecured benches created a risk of injury is a question of fact. The court cannot say that no reasonable jury could find that a 109-pound unsecured bench near a basketball court and wet grass constitutes an unreasonably dangerous condition."

The court favored the plaintiffs' argument that "the bench's placement at the time of S.M.'s injury, given the condition of the grass, was itself a dangerous condition. Once the dangerous condition is properly identified, Marriott's argument regarding knowledge or constructive knowledge collapses, as Marriott does not point to undisputed facts showing that its employees did not have actual or constructive knowledge of where the bench was or that the grass was or could be wet."

This contrasts with the "crux of Marriott's argument [which was] that the moveable bench/wet grass combination was simply not a dangerous condition."

"However, if a jury concludes that the bench's placement was unreasonably dangerous, they could find that Marriott either had actual notice, because employees walking through the park saw the bench and failed to move it, or constructive notice, because the unsecured bench sat near wet grass by the basketball court for a long enough period of time that Marriott reasonably should have discovered the danger it posed."

Melinda May et al. v. Marriott Resorts Hospitality Corporation; C.D. Cal.; CASE NO. 8:21-CV-01667-JLS-DFM; 12/5/22

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Florida Lawmakers Introduce Bill that Could Lead to Jail Time for Field Storming

Two Florida lawmakers are proposing a bill that would publish those who storm athletics fields with jail time and other punishment measures.

Freshman Republican Senator Corey Simon of Tallahassee introduced a bill, "Interference with Sporting or Entertainment Events," that would make field storming a first-degree misdemeanor. Meanwhile, Republican Representative Taylor Yarkosky of Montverde introduced a similar bill in the House of Representatives.

SB 764, which was introduced on February 14, reads as follows:

An act relating to interference with sporting or entertainment events; creating s. 871.05, F.S.; defining terms; prohibiting certain actions during covered sporting and entertainment events; providing criminal penalties; prohibiting a person from profiting or benefitting from violations; providing for forfeiture and distribution of profits from a violation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 871.05, Florida Statutes, is created to read:

871.05 Interference with a sporting or entertainment event.

DEFINITIONS

As used in this section, the term:

(a) "**Covered area**" means any area designated for use by players, coaches, officials, performers, or personnel administering a covered event that is on, or adjacent to, the area of performance or play during the period from the opening of the venue's gates to the public to the closing of the gates after the event.

(b) "**Covered event**" means an athletic competition or practice, including one conducted in a public venue or a live artistic, theatrical, or other entertainment performance event. The duration of such event includes the period from the opening of the venue's gates to the public to the closing of the gates after the event.

(c) "**Covered participant**" means an umpire, officiating crew member, player, coach, manager, groundskeeper, or any other sanctioned participant in a covered event or any artistic or theatrical performer. The term includes event operations and security employees working at a covered event.

(d) "**Dangerous instrument**" means any object, article, or substance that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or other serious physical injury.

(e) "**Substance**" includes, but is not limited to, any liquid or saliva.

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PROHIBITED CONDUCT

(a) A person, other than a covered participant, may not:

1. Knowingly enter or remain unlawfully upon the covered area of a sporting or entertainment event.

2. Recklessly, intentionally, negligently, or knowingly subject a covered participant to contact by means of any substance, object, or dangerous instrument during a covered event, or attempt to do so.

3. Recklessly, intentionally, negligently, or knowingly place, drop, toss, or hurl any substance, object, or dangerous instrument onto the covered area of an event, or attempt to do so.

4. Recklessly, intentionally, negligently, or knowingly strike, slap, kick, or otherwise subject a covered participant to physical contact during a covered event, or to attempt to do so.

(b) A person may not attempt, aid, abet, or conspire with an individual to commit a violation of paragraph (a).

VIOLATIONS

A person who violates subsection (2):

(a) Commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than $2,500.

(b)

1. May not realize any profit or benefit, directly or indirectly, from the violation, from the actions found to be in violation, or from notoriety or other circumstances arising from the violation. Additionally, no person shall collude with the violator of this section with the intention of benefitting or profiting from the violation or attempted violation.

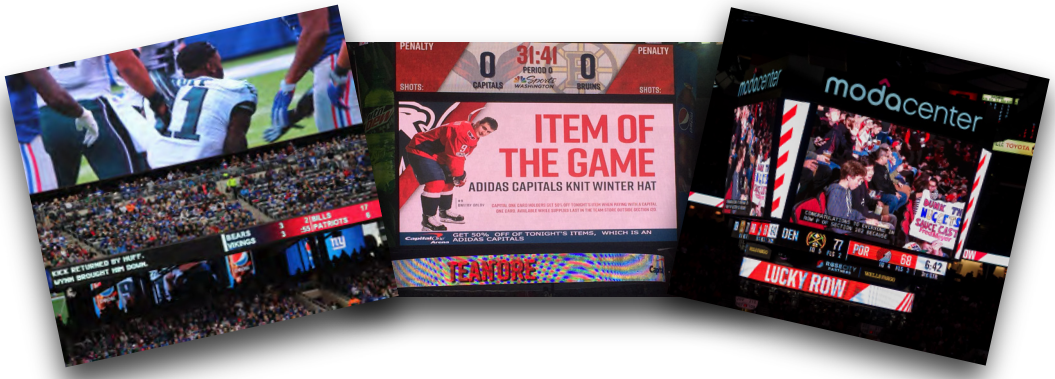
2. Any profit or benefit, financial or otherwise, realized from the violation shall be forfeited and distributed in the manner provided in s. 944.512 as if the violator or person colluding with the violator was a convicted felon for purposes of that section.

Section 2. This act shall take effect October 1, 2023.

Aramark Survives Revocation of Alcohol License

The City of Knoxville (Tenn) has reached an agreement Aramark that will allow the Food & Beverage vendor to continue to sell alcohol at Neyland Stadium next season. The contract had been at risk after Aramark faced citations for underage alcohol sales in September and October of last fall. As part of the agreement, Aramark will pay another fine, make a $30,000 donation to Knoxville-based nonprofit Metro Drug Coalition, and institute training for new employees and retraining of existing employees.

Keep Everybody in the Game



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Sports Law Expert Podcast Highlights Lawyers with Sports Facilities Expertise - John Tyrrell and Carla Varriale-Barker

Hackney Publications has announced that it has published recent recordings of Sports Law Expert Podcast, featuring sports lawyers John E. Tyrrell, a founding Member of Ricci Tyrrell Johnson & Grey and the firm's Managing Member, and Carla Varriale-Barker, a sports law pioneer who heads the sports law practice at Segal McCambridge.

Interviews with the attorneys, who have deep experience in the law as it relates to sports facilities, can be heard here: https://anchor.fm/holt-hackney/episodes/

"I have known John for almost a decade," said Holt Hackney, the founder and publisher of Hackney Publications. "In that time, I have been privileged to witness his extraordinary work across the sports law landscape. It's no surprise that his skills are highly coveted by clients across the country.

"Carla, who I have known for 20 years, is a rarity in the sports law community. All her legal work involves sports law. What's more, she has been a powerful leader in terms of helping female attorneys break into the industry."

Going forward, those interested in being notified when a segment goes live can subscribe by visiting the following link.

About John E. Tyrrell

Tyrrell's practice is focused on three major areas. First, he has decades of experience in the representation of operators and managers of stadiums, arenas, entertainment and recreational facilities, including professional and collegiate sports teams; golf courses; ice rinks; gymnastics facilities; rowing associations; paintball facilities; and concert and entertainment venues. Mr. Tyrrell is trial counsel to such entities, and also provides risk management and liability prevention consultation to these clients. He has developed a particular expertise in prosecuting and defending contractual indemnity and insurance claims, both at trial and through declaratory judgment proceedings. Mr. Tyrrell has lectured at training sessions for the event staff of his clients. He has also authored information guides, ticket and pass disclaimers, prospective releases, patron signage and other communication devices used at facilities.

Second, Mr. Tyrrell is trial counsel to several global product manufacturers, defending products liability lawsuits throughout Pennsylvania and New Jersey. He has been admitted Pro Hac Vice at his client's request to defend litigation in other states as well. The products at issue have included skid-steer loaders; excavators; backhoes; construction vehicles including haulers, cranes and dump trucks; hand tools; bicycles; motorcycles; forklifts; hoists; benzene; automotive and other lifts; tire changers; chairs and other furniture; and toys and children's products of various types. Mr. Tyrrell has litigated numerous catastrophic injury cases and tried dozens of cases in state and federal courts. He has successfully presented multiple expert-related legal challenges to opposing experts in products liability cases, resulting in dispositive defenses for his clients. The relationships Mr. Tyrrell has with product liability clients include acting as national trial and national monitoring counsel.

Mr. Tyrrell also represents his clients in commercial litigation and other business matters. He has handled cases involving vendor, dealer and franchise agreements, restrictive covenants and other forms of breach of contract claims. He successfully represented the operator of a multi-use stadium in a claim against the provider of a beverage line system resulting in the replacement and remediation of the entire system. He has secured defense verdicts in trials involving alleged commercial damages in the tens of millions of dollars. Mr. Tyrrell and his team also provide business consulting services on various concerns, including insurance coverage, product regulation and compliance, warranty language and interpretation and general drafting and enforcement of any contractual provision relating to liability and risk prevention.

About Carla Varriale-Barker

Varriale-Barker is an accomplished litigator who is at home in a courtroom, board room or classroom. She represents a portfolio of clients in the sports, recreation, amusement, and hospitality industries with a client-centered practice focusing on tort, discrimination, contract, insurance, and premises liability matters, including the defense of claims arising from alcohol service, security lapses, discrimination in places of public accommodation, sexual abuse, and molestation.

She is chair of the firm's Sports, Recreation & Entertainment practice group.

Varriale-Barker counsels clients involved with the U.S. Center for SafeSport, an organization established by Congress to address sexual abuse, bullying and other misconduct, and the U.S. Olympic and Paralympic Movements. She is an adjunct instructor at Columbia University's School of Professional Studies where she has taught in the Sports Management Program since 2008.

Prior to joining Segal McCambridge, Varriale-Barker was a founding partner of a women-owned law firm. She has also written for the American Bar Association about diversity and inclusion and the importance of mentorship and sponsorship.

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ChampionWomen: Access to Female Athletes' Locker Rooms Should Be Restricted to Female Athletes

ChampionWomen, a non-profit organization that provides legal advocacy for girls and women in sports, issued the following position paper last month:

Girls' and women's locker rooms have been designed exclusively for people who have female[1] bodies, and for good reasons. Those reasons include biological differences between women and men; women's right to privacy; and protection from male violence against women in such forms as sexual harassment, assault, and rape. These reasons remain valid. Therefore, access to female athletes' locker rooms should be restricted to female athletes.

The goal of including those with transgender identities must not be accomplished at the expense of female athletes' rights to safety, privacy, and dignity.

This position statement is respectfully based on the fact that people who were born with male bodies, but believe themselves to be women, are not biologically female. Males have a right to identify as women, present as women, and ask others to refer to them as women. Males can modify their bodies via puberty blockers, estrogen, and "gender-affirming" surgeries. Still, transwomen cannot transform themselves into females.[2]

Therefore, a male's gender identity should be irrelevant when it comes to separate women's spaces; the only relevant factor must be biological sex. The inclusion of males who want to shower, change clothes, and use the toilet in girls' and women's athletic spaces would have an extremely negative impact on girls and women in these spaces. The definition of women – the sorts of people who are eligible to use these separate women's spaces – should remain based on common sense, longstanding tradition, and biological reality, not belief or identity. Equitable accommodations should be made for athletes with male bodies who identify as women or girls and choose not to join the men in their locker rooms.

Rationale:

- Separating women and men in locker rooms is a nearly universal phenomenon, a custom that female athletes have come to expect and rely upon.
- Women's locker rooms are designed to provide female athletes with a separate, safe, private place to shower, change clothes, and use the toilet.
- Even co-ed sports teams that train together (swimming and track, for example) separate by sex when it comes to locker room facilities.
- Males do not now, and never have had, a right to enter all-female spaces.
- Specifically, sex-segregated changing

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spaces provide girls and women with privacy and protection from:

- undressing and showering in front of males;
- revealing such intimate details as when they are menstruating;
- displaying vulnerable rituals such as when swimmers help each other squeeze into tight, competitive swimsuits;
- seeing naked male bodies; and
- hearing male commentary about their bodies.

Women's locker rooms thus provide female athletes with a rare respite from having to be on the lookout for lewd or criminal conduct and from calculating the potential threat of male violence including criminal voyeurism, flashing, and assault.[3]

Women are vulnerable when undressing. Because women know that men are far more likely than women to commit sexual assault, the presence of males can feel inherently threatening, even traumatic, to women as they are undressing or showering.

Naked men also make women feel vulnerable.[4] In particular, the presence of naked or near-naked men can feel threatening and traumatic to women who have been harassed or sexually assaulted. Twenty-six percent of college-age women report having been sexually assaulted while attending college.[5]

Fears of locker-room assaults are not unfounded. According to one recent investigation of complaints of sexual assaults, voyeurism, and harassment at public fitness centers and swimming pools in London, almost 90 percent took place in unisex changing rooms.[6]

When males are banned from women's locker rooms, it becomes fairly obvious that a male who enters, disrobes, or looks at naked girls or women in such a space is likely motivated by a desire to commit sexual offenses such as flashing, voyeurism, assault, rape, or statutory rape. According to the United States Department of Justice, about 91 percent of victims of rape and sexual assault are female; almost 99 percent of perpetrators are men.[7] If males were to become normalized in women's locker rooms, it would become impossible for girls and women to distinguish between innocent transwomen simply seeking a place to change clothes and men who intend to injure or assault girls or women.

Given that some coaches, religious leaders, police officers and physicians use their profession to gain access to females in order to abuse them, it is likely that those intent on harming females would also use self-proclaimed gender identity as a way to get access to and harm girls and women.

A longitudinal, quantitative study by Swedish researchers found that post-operative transwomen[8] had criminal-conviction rates that were comparable to male controls. In other words, sex reassignment did not decrease men's risk for criminal convictions.[9]

Females could be liable for "gender identity discrimination" in civil litigation if changing spaces are not formally sex-segregated. If policymakers allow males to who identify as transwomen into women's locker rooms, those spaces will no longer be single sex. When a male enters the women's locker room, not only would women now be powerless to use the criminal laws meant to protect them from predatory men, the business or individual could be sued for gender-identity discrimination.[10]

If trans-identified males are allowed in locker rooms, women will need to conduct their own threat assessments each time a male enters a previously women-only space—and monitor or modify her behavior accordingly. Often, the result will be that women will opt out of participation, thus losing access to myriad sports benefits.

Some denominations of Islam, Orthodox Judaism, and other conservative religious groups forbid women to expose their hair or skin to men who are not their husbands. Allowing males into female locker rooms would result in some religious athletes opting out of using the women's locker room or opting out of sports participation altogether.

When sports teams travel overnight, athletes are usually paired in hotel rooms. The same rationales noted above also apply to these spaces: female athletes should not be forced to share a hotel room with males, regardless of those athletes' gender identity. Forcing girls and women to share hotel rooms with males would place an unfair burden on many female athletes: increasing their anxiety, decreasing their sense of privacy and safety – and interfering with their preparation for their competition. Asking for volunteers to room with males who identify as women would not solve the issue, since by virtue of their position, coaches exert an undue influence on team members that can, whether intentionally or not, persuade athletes to agree to activities despite their own discomfort.

Even if some female athletes do not mind sharing locker facilities with trans identified males, those opinions should not override other female athletes' discomfort, nor influence policy decisions.

Historically, in response to inadequate or nonexistent facilities for women, female athletes have had to improvise private spaces to change their clothes. Similarly, males who identify as women may find that locker room facilities were not de-

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signed with them in mind. But there are creative ways to accommodate transwomen athletes who do not want to use men's locker rooms. They could be provided with "third spaces" elsewhere. They could respectfully announce their presence and request permission before entering, the way male coaches of women's teams do, to give female teammates an opportunity to finish dressing or leave. They could brainstorm possibilities with teammates, coaches, and other staff – thus contributing to a solution to this new problem. However, in all cases, every individual female should retain veto power if she would rather keep males out of women's locker rooms.

For a more detailed story, visit https://sportslawexpert.com/2023/01/24/championwomen-access-to-female-athletes-locker-rooms-should-be-restricted-to-female-athletes/

Cedar Fair Announces Development for Esports Facility

Cedar Fair Entertainment Company, a leader in regional amusement parks, water parks and immersive entertainment, has announced details for the first phase of a planned competitive gaming development at the Cedar Point Sports Center in Sandusky.

The first phase of what will be known as Cedar Point Esports will be a 1,000-square-foot space that will house a state-of-the-art, full-service gaming area with the capability to broadcast and produce livestreams and content. Centralized within the venue will be 32 competitive gaming setups against the backdrop of multimedia video displays that have the flexibility to connect for larger events. Top-tier professional gaming stations and equipment will be utilized throughout the first phase for practice, competition, and extra-curricular play.

The vision for this first phase of development, which will open in May, is to create Northern Ohio's premier immersive gaming experience for leagues, camps and clinics. The facility also can serve as a practice venue for local high school and collegiate esports teams. This initial phase will eventually serve as the gateway from the existing Cedar Point Sports Center to the upcoming larger Phase II expansion. Future plans for the development are likely to include food, beverage and a larger competitive space.

Lawsuit

Continued from page 1

suites. As part of the process, the space for the stadium had to be cleared.

Groundbreaking began in December 2018, and the project successfully met its construction timetable. The first game in the new stadium took place on May 16, 2021. During construction, it was called the West End Stadium. Now, it is known as TQL Stadium. Many construction jobs went to union members. However, not all the city's resident were pleased with the project.

On November 13, 2019, Alicia Epps filed a complaint and a request for a temporary restraining order in the local federal district court. She sued FC Cincinnati, Linder, and the City's government including the mayor and city council. Her complaint had 441 paragraphs. It included claims for discrimination, conspiracy, and corruption by denying low-income families the benefits of federal housing programs and conspiring to profit off the public land by selling that land to build the soccer stadium. Epps asserted the project violated the U.S. Constitution, the Ohio Constitution, the National Recovery Action of 1933, the Federal Housing Act of 1937, and the Civil Rights Acts of 1866, 1937 and 1964.

The case was filed pro se, that is without counsel, so federal law requires a magistrate judge to conduct its own review of the complaint to determine if the action is frivolous or malicious; fails to state a viable claim; or seeks monetary relief against a defendant who is immune from such relief. While this was pending, Epps filed a motion for a preliminary injunction, a motion to amend her complaint, and a motion to proceed in forma pauperis. The Magistrate concluded that dismissal was warranted, and the case went before the District Court Judge. That Court ordered the case dismissed, denied the other motions, held that an appeal would not be "in good faith" and that the "case shall remain closed on the docket of this Court" (Epps v. Linder III, Case No. 1:19-cv-968, USDC, S.D. Ohio, Western Division, (12-22-2020)). Epps' appeal to the Sixth Circuit was dismissed for want of prosecution in October 2021. Ordinarily, that would be the end of the matter.

Epps Tries Again

Yet, Epps is apparently determined. The following year, she sued again. This complaint "essentially realleges the claims in her original and amended complaint previously filed against the same defendants, and names the United States of America as a new defendant." Epps admitted that she previously filed the same claims against the defendants, though not against the United States. The Magistrate noted that the first lawsuit was dismissed sua sponte (i.e., on its own accord) upon "screening of the original and amended complaints."

An "in forma pauperis complaint that merely repeats pending or previously litigated claims may be considered abusive of the judicial process and may be dismissed as abusive." The complaints do not need to be identical, but the focus is on the substance of the complaints. Accordingly, the new case "is duplicative of her previously filed complaints against the same defendants and must be dismissed. Both complaints stem from the alleged demolition of public

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housing in the West End of Cincinnati to build a soccer stadium." The "complaint, which is based entirely on her previously litigated claims, should be dismissed" as "frivolous or malicious."

The claims against the United States fared no better. The United States is immune from lawsuit unless immunity has been waived by statute. That waiver must be express and cannot be implied. In the absence an express waiver, "suits against the government or its agents must be dismissed." Epps did not provide the Court with the requisite "statutory authority provision that unambiguously waives the government's sovereign immunity" and consequently the "Court is without jurisdiction over plaintiff's claims against the United States." Thus, the Court dismissed the claims, ruled that an appeal to the District Court "would not be taken in good faith" and denied Epps' "leave to appeal in forma pauperis." Epps is free to appeal.

Conclusion

Soccer's popularity in the U.S. continues to grow. Here, Cincinnati got a $250 million privately funded soccer stadium that provided many union construction jobs. FC Cincinnati has a new home in a stadium built primarily for soccer. But both the City and FC Cincinnati also got litigation that was intended to either stop the project, seek damages or both. Those seeking to create stadiums should understand that litigation may be a consequence of such undertakings, including delay and attorney's fees. For those contemplating litigation to stop such projects, they need to understand that filing such lawsuits also can have consequences, including having the Court publicly call one's efforts "frivolous" or "malicious", and possibly worse consequences, such as paying the defendants' court costs.

Pennsylvania

Continued from page 1

insufficient."

Monroe responded with an amended complaint, "raising a single count of negligence. Therein, she repeated the averment, to which Camelback had stated no prior objection, that Camelback 'knew that there was a high risk of injury during the landing process,' and that her injury was 'a direct and proximate result of [Camelback] consciously disregarding [her] safety." She also amended the offending paragraph to state that Camelback's "recklessness, carelessness and negligence" included, inter alia: (a) "Failing to properly monitor the speed of the zip-line, in disregard of the safety

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of [Monroe]; (b) Failing to use reasonable prudence and care by leaving [Monroe] to land with no help, in disregard of the safety of [Monroe]; (c) [Left blank]; (d) Failing to use reasonable prudence and care to respond to [Monroe]'s safety concerns during the ziplining, specifically when [Monroe] ask[ed] [Camelback] to slow down the ziplining machine, in disregard of the safety of [Monroe]; and, (e) Failing to inspect and/or properly monitor the zip[-] lining machine engine, in disregard of the safety of [Monroe]."

Camelback, again, did not object to the specificity or legal sufficiency of Monroe's allegations of reckless conduct, opting instead to argue that her claim was barred by a release she signed. That document indicated that Monroe acknowledged that she assumed those risks "of which the ordinary prudent person is or should be aware" created by Camelback's amusement activities, including "injury or even death."

The release further reflected that, in consideration for the privilege of being allowed to use Camelback's facilities, Monroe agreed not to sue Camelback for any injury sustained, "even if [she] contended that such injuries [were] the result of negligence, gross negligence, or any other improper conduct for which a release is not contrary to public policy." In fact, Camelback argued that it was entitled to damages based upon Monroe's breach of the release agreement.

After a Common Pleas court sided with the defendants, the plaintiff appealed.

The appeals court sided with the plaintiff, basing its decision on Rule 1019 of the Pennsylvania Rules of Civil Procedure.

According to the court on appeal, the plaintiff's "facts do not suggest mere negligence. These allegations, viewed in the light most favorable to Monroe, sufficiently contend that Camelback engaged in intentional acts, knowing, or having reason to know facts which would lead a reasonable person to realize that it thereby created an unreasonable risk of physical harm that was substantially greater than incompetence or unskillfulness." The court cites Bourgeois v. Snow Time, Inc., 242 A.3d 637, 657-58 (Pa. 2020) which similarly held that a summary judgment on a claim of injury caused by recklessness was improper because, viewing expert reports in the light most favorable to the plaintiff, the ski resort defendant had a duty to bring snow-tubing patrons to a safe stop, failed to protect against unreasonable risks, and "instead increased the risk of harm to its patrons through a number of conscious acts, including using folded deceleration mats in an inadequate run-out area under fast conditions."

Finally, the court concluded, "Monroe's complaint sufficiently pled the state of mind of recklessness to defeat Camelback's motion for judgment on the pleadings, and the evidence of [the] record created genuine issues of material fact precluding the entry of summary judgment."

Aisha Monroe v. CBH20, LP, D/B/A Camelback Ski Resort D/B/A Camelback Ski Corporation; Superior Court of Pennsylvania; No. 1862 EDA 2019; 11/21/22

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