

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

|              |   |                          |
|--------------|---|--------------------------|
| DEVIN WOODS, | ) |                          |
|              | ) |                          |
| Plaintiff,   | ) |                          |
|              | ) |                          |
| v.           | ) | Case Number 1216-CV13345 |
|              | ) | Division 4               |
| CARL WARE,   | ) |                          |
|              | ) |                          |
| Defendant.   | ) |                          |

**JUDGMENT/ORDER**

Now on September 8, 2014, the Court takes up *Defendant Carl Ware's Motion for Summary Judgment*, filed on June 11, 2014; *Defendant's Memorandum in Support of Defendant's Motion for Summary Judgment*, filed on June 11, 2014; *Plaintiff's Suggestions in Opposition to Defendant Carl Ware's Motion for Summary Judgment*, filed on July 21, 2014; *Plaintiff's Motion to Strike Defendant's Statement of Uncontroverted Facts in Support of Defendant's Motion for Summary Judgment*, filed on July 21, 2014; *Defendant's Suggestions in Opposition to Plaintiff's Motion to Strike Defendant's Statement of Uncontroverted Facts in Support of Defendant's Motion for Summary Judgment*, filed on July 31, 2014; and *Defendant's Reply Memorandum in Support of his Motion for Summary Judgment*, filed on August 5, 2014. These matters were argued before the Court on August 22, 2014, by Eryn Peddicord, counsel for Plaintiff, and Paul Gordon, counsel for Defendant. After careful consideration and being fully apprised in the premises;

**IT IS HEREBY ORDERED** that *Plaintiff's Motion to Strike Defendant's Statement of Uncontroverted Facts in Support of Defendant's Motion for Summary* is **DENIED** as moot. The Court did not take into consideration the affidavits in question when rendering this decision.

**IT IS FURTHER ORDERED** that *Defendant Carl Ware's Motion for Summary Judgment* is **GRANTED**.

**MEMORANDUM**

Plaintiff's First Amended Petition was filed on June 10, 2014, claiming that in 2008, Plaintiff, a Junior High School student, was injured, and alleging that Defendant "owed Plaintiff a ministerial duty to provide for [Plaintiff's] safety and welfare by ensuring that Plaintiff be properly supervised and instructed while engaged in school activities, specifically wrestling practice." See First Amended Petition, page 4 (emphasis added). Plaintiff's First Amended Petition alleges that Defendant breached a duty owed, "by instructing [Plaintiff] to

wrestle a much more experienced and larger High School wrestler.” See First Amended Petition, page 4.

In oral argument, Plaintiff conceded that Defendant has official immunity. Plaintiff, however, argued that Defendant violated a ministerial duty by failing to properly supervise by allowing a larger and more experienced student to engage in an exercise with Plaintiff during a practice, which resulted in injury to Plaintiff.

“The function of official immunity is to protect individual government actors who, despite limited resources and imperfect information, must exercise judgment in the performance of their duties.” *Davis v. Lambert-St. Louis Int’l Airport*, 193 S.W.3d 760, 765 (Mo. banc 2006) (emphasis added). “A finding that a public employee is entitled to official immunity does not preclude a finding that he or she committed a negligent act—because official immunity does not deny the existence of a tort of negligence, but instead provides that an [employee] will not be liable for damages caused by his negligence.” *Southers v. City of Farmington*, 263 S.W.3d 603, 611 (Mo. banc 2008) (emphasis added). “A government employer may still be liable for actions of its employee even if the employee is entitled to official immunity because the doctrine protects the employee from liability, but it does not erase the existence of the underlying ‘tortious conduct’ for which the government employer can be derivatively liable.” *Id.*

“Official immunity protects public officials from liability for alleged acts of negligence committed during the course of their official duties for the performance of discretionary acts.” *Davis*, 193 S.W.3d at 763, citing *Kanagawa v. State By and Through Freeman*, 685 S.W.2d 831, 835 (Mo. banc 1985). “The determination of whether an act is discretionary, ‘is made on a case-by-case basis, considering (1) the nature of the public employee’s duties; (2) the extent to which an act involves policymaking or exercise of professional judgment; and (3) the consequences of not applying official immunity.’” *Nguyen v. Grain Valley R-5 Sch. Dist.*, 353 S.W.3d 725, 730 (Mo. Ct. App. 2011), citing *Southers*, 263 S.W.3d at 610. The Court, applying this case by case analysis, makes the following findings:

It is undisputed that Defendant was the head wrestling coach at the time in question and that Plaintiff’s injury occurred during a wrestling practice.<sup>1</sup> Grandview policy states:

- a. Grandview CSD #4-Safety Program- EB-C.GNV: including but not limited to, the following: Proper supervision of students and other citizens using the school facilities will be required.
- b. Grandview CSD #4- Staff Conduct and Ethics-GBCB-C.GNV: Including, but not limited to, the following (8) Supervise all students at all times during the school day; and during any school activity. (21) Recognize the difference among students and seek to meet individual needs.

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<sup>1</sup> “Defendant...as head Grandview Middle School wrestling coach...owed Plaintiff a ministerial duty to provide for Plaintiff Devin Woods’ safety and welfare by ensuring that Plaintiff be properly supervised and instructed while engaged in school activities, specifically wrestling practices.” Plaintiff’s First Amended Petition, page 4.

- c. Grandview CSD #4- District-Sponsored Extracurricular Activities and Groups-IGD-C.GNV: Included but not limited to the following: All extracurricular activities must have an appointed sponsor, advisor, or coach. It shall be the duty of each individual to attend all meetings, functions, or practices of the relevant group, advise and supervise students and keep the appropriate principal informed regarding activities.

(emphasis added)

The MSHSAA Wrestling Manual states:

MSHSAA Responsibility for Supervision: Including, but not limited to, the following: No individual student, team, or activities group shall be permitted to participate in interscholastic events without being accompanied and supervised by a member of the school faculty or administrative staff of the applicable member school.

(emphasis added)

The Grandview policies do not specifically define what it means to properly supervise or attend practices, leaving it to the coach to exercise his or her discretion and/or professional judgment in supervising and conducting practices. The policies referenced above do not mention terms such as “safety” and “welfare,” as alleged in Plaintiff’s First Amended Petition. Neither Plaintiff nor Defendant reference any section in the Grandview policies that speak to weight restrictions during practices or that provide specific rules or regulations as to how a practice is to be conducted. Nothing in the MSHSAA Wrestling Manual speaks to weight restrictions during practices. Weight restrictions are mentioned only in the context of wrestling competitions.

Plaintiff, in his response to *Defendant Carl Ware’s Motion for Summary Judgment*, mentions for the first time the MSHSAA By-Laws section 301.0.a, specifically the provision allowing practices, “only with teams of the school where he/she is properly enrolled,” arguing that this provision creates a ministerial duty which Defendant violated. Section 301.0 is titled “DEFINITIONS,” and this sentence is found at the end of the definition for word “Practice.” Section 301.0 reads as follows:

### **301.0 DEFINITIONS**

**a. Practice-** Any attempt of a coach or teacher to teach any phase of a game or activity to any squad or part of a squad or to have any squad or part of a squad engage in drills under the supervision of a coach, or from directions provided by the coach, involving what has already been taught. Try-outs, so-called “skull drills,” “orientation meetings,” etc., are considered practices. Except as provided for in By- Laws 232.0-c and 238.2-a, a junior or senior high school student shall be permitted to participate in school practices only with teams of the school where he/she is properly enrolled.<sup>2</sup>

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<sup>2</sup> Junior and Senior High Schools are allowed to join in one membership. The MSHSAA Handbook, under Article II: Membership, Section 2: Classification of Membership, provides that, “[s]eventh, eight, and/or ninth

**b. Conditioning-** Any attempt by the coach to engage the student in specific physical activity, drills, and/or instruction involving physical activity designed to elevate the student's level of physical condition for a specific sport.

**c. Scrimmage-** Practice of two teams of the same squad under partial game conditions.

**d. Game-** A game is any organized play between teams not of the same school. Whether or not officials are hired, admissions charged, etc., are not factors in determining whether the play constitutes a game. So-called "scrimmage games" cannot be played before the date of the first allowable game, must be counted as a game on the school's schedule, and only if the school has not scheduled the maximum number of games allowed.

**e. Preseason Interschool Football Scrimmage-** A football practice event conducted on the Friday or Saturday of Week 8 of the Standardized Calendar involving three or four teams. Play occurs only under partial game conditions as defined in By-Law 350.

**f. Athletic Jamboree-** An event in which each school competes 4 quarters or less. This shall be counted as a game of the school's schedule.

#### **RELATED QUESTION(S) AND ANSWER(S) BELOW**

**Q1:** *Our basketball coach wishes to "scrimmage" a neighboring school team. Is this permissible and will this count against our game limit?*

**A1:** Yes. However, anytime a so-called scrimmage involves students from more than one high school, it is viewed to be an interscholastic contest. An interschool scrimmage cannot be played before the date of the first allowable game for the season, must be counted as a game on the school's schedule, and may be played only if the school has not scheduled the maximum number of games allowed.

**Q2:** *Our school will have an open gym on Saturday afternoon following our boys basketball team practice. Our coach has advised our players they can stay and scrimmage against people in our community. Is this acceptable?*

**A1:** No. During the school sport season a team may only practice with the school's teams.

(emphasis added)

When read in context with all the other words defined, along with the 'questions and answers' found below the definitions, it is clear that the MSHSAA Handbook intended to prevent interscholastic competitions from occurring during practices, which could result in a practice being counted as a game, and then forcing the team to sit out on a game.

Plaintiff has taken this sentence regarding practices between students of different teams out of context in an attempt to create a ministerial duty. This definitional section was not written with the intent to dictate how a coach should "properly supervise" or ensure the "safety and welfare" of the students engaged in a sport activity, but rather to avoid

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grades under the supervision of a school principal may hold an individual membership, or they may be included with the high school membership by listing the enrollment in these grades on the high school membership form."

competitive practices between teams, so as not to have a practice counted as a game. This alleged ministerial duty is not found in the MSHSAA Wrestling Manual.<sup>3</sup>

The word "Practice," as referenced herein above, is broadly defined and does not provide with any specificity the manner in which practices are to be conducted. There are no references to the phrases "properly supervised" or "safety and welfare" in the MSHSAA Handbook.

The Court concludes that the duty of Defendant as head coach to properly supervise and attend practices as stated in the Grandview policy and the MSHSAA Wrestling Manual is discretionary. The Court further finds that no ministerial duty in any policy, manual or handbook exists, and therefore no ministerial duty was breached.

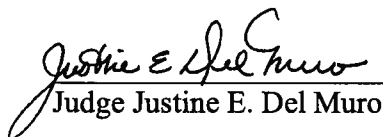
Finally, the consequence of not applying official immunity is one of public policy. Official immunity provided only "to the employee and not the employer is a conclusion consistent with the policy purposes of the doctrine of official immunity, which are intended to protect judgment decisions by public employees." *Southers v. City of Farmington*, 263 S.W.3d 603, 611 (Mo. banc 2008). While the practice which led to Plaintiff's injury may give rise to a negligence claim, a suit against a coach in his individual capacity would only serve to stigmatize the recruitment of coaches for sporting activities in our public schools, and that stigma is against public policy.

For the reasons stated herein, summary judgment is granted.

**IT IS SO ORDERED.**

08-Sep-2014

Date

  
Judge Justine E. Del Muro

Certificate of Service

This is to certify that a copy of the foregoing was sent through the eFiling system to the following on 9/8/14.



Copies to:

<sup>3</sup> There is a MSHSAA Wrestling Manual which is separate and apart from the MSHSAA Official Handbook. The MSHSAA Official Handbook, unlike the Wrestling Manual, is for all activities of the Missouri State High School Activities Association, and consists, among other sections, of a constitution, by-laws, history, calendar, philosophy, membership directory, and information about the board of directors.

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