NNH CV23-6132348 S	Judicial District of New Haven SUPERIOR COURT FILED	: SUPERIOR COURT
AMELIA LAUNDER	MAY 02 2024	: JUDICIAL DISTRICT OF : NEW HAVEN
V.	CHIEF CLERK'S OFFICE	: AT NEW HAVEN
BISHOP RINKS, LLC D/B/A SPORTSCENTER OF CONNECTICUT, ET AL		: MAY 2, 2024

MEMORANDUM OF DECISION
ON MOTIONS TO STRIKE Nos. 143.00, 146.00 AND 149.00

The plaintiff, Amelia Launder, claims that, while she was playing in a girls high school hockey game, an opposing player "use[d] her stick as a weapon and [struck] the plaintiff in the back of the head in a tomahawk fashion." Amended Complaint no. 125.00, ¶ 10. She initially sued that opposing player, Ana Decarvalho, and defendants Bishop Rinks, LLC d/b/a Sportscenter of Connecticut and Bishop Rinks, LLC d/b/a The Rinks at Shelton (collectively, "Bishop Rinks"). She has since withdrawn her claim against Decarvalho. Bishop Rinks brought an apportionment complaint no. 107.00 against the two officials, Matthew Jackowicz and Serafim Galatas, a coach, Andrew Townsend, and the National Ice Hockey Officials Association (the "Association"). The plaintiff then filed and served an amended complaint in which she plead over against all of these additional defendants. No. 125.00. One of the officials, Jackowicz, moves to strike the counts against him in both the amended complaint and the apportionment complaint. Nos. 143.00 and 146.00. The Association also moves to strike the counts against it in both the amended complaint and the apportionment complaint. No. 149.00. For the reasons set forth below, the court grants all three of the motions to strike.[1]

[1] The remaining official, Galatas, filed an answer no. 144.00. During oral argument on these motions to strike on March 11, 2024, counsel for the plaintiff stated that if the court granted Jackowicz's motion to strike, he would withdraw his claim against Galatas.

"The purpose of a motion to strike is to contest … the legal sufficiency of the allegations of any complaint … to state a claim upon which relief can be granted." (Citation omitted). *Fort Trumbull Conservancy, LLC* v. *Alves,* 262 Conn. 480, 498, 815 A.2d 1188 (2003). This court must construe the complaint "in the manner most favorable to sustaining its legal sufficiency …. Thus, [i]f facts provable in the complaint would support a cause of action, the motion to strike must be denied. … [A]ll well pleaded facts and those facts necessarily implied from the allegations are admitted." (Citations omitted.) *Coppola Construction Co.* v. *Hoffman Enterprises Ltd. Partnership,* 309 Conn. 342, 350, 71 A.3d 480 (2013). If, however, the plaintiff has failed to allege a valid cause of action, the motion to strike is properly granted. See *Sturm* v. *Harb Dev., LLC*, 298 Conn. 124, 127, 2 A.3d 859 (2010). "In ruling on a motion to strike, the court is limited to the facts alleged in the complaint." (Citation omitted.) *Faulkner* v. *United Technologies Corp.,* 240 Conn. 576, 580, 693 A.2d 293 (1997).

FACTUAL ALLEGATIONS

The claims against Jackowicz sound in negligence, and the claims against the Association sound in vicarious liability for the alleged negligence of Galatas and Jackowicz.

The amended complaint alleges in relevant part in the second count against Jackowicz:

> "9. The game between Masuk and Amity High Schools became extremely physical which participants of both teams being subject to unlawful and unnecessary physical contact. At all times relevant, the referees hired by the Defendants failed to properly supervise game action now call the required penalties to prevent further escalation of the physical contact.
>
> 10. As Plaintiff played in the game according to the rules, Ana Decarvalho proceeded to use her stick as a weapon and strike the plaintiff in the back of the head in a tomahawk fashion. As a result of the assault, the Plaintiff was caused to fall to the ice due to the trauma to the head.

11. At all times relevant, Defendant Matthew Jackowicz was acting as an official for the hockey game in which the Plaintiff sustained her injuries.

12. The aforementioned incident and the injuries and damages sustained by Plaintiff which resulted therefrom were a direct and proximate result of the negligence and carelessness of the Defendants in one or more of the following ways:

a. was inattentive;
b. failed to reasonably and properly maintain control of the subject hockey game;
c. failed to enforce the rules of the game or penalize players for excessively rough play;
d. failed to remove players from the game for unnecessarily rough play;
e. failed to properly officiate and/or supervise the game to prevent injuries to players;
f. failed to notice and/or remedy the excessively rough play exhibited during the game prior to the subject incident, so as to prevent further excessive contact between the players;
g. knew or reasonably should have known of the potential of serious injuries as a result of their actions, yet failed to make any remedial measures;
h. failed to take any preventative measures to protect Plaintiff;
i. failed to keep and maintain the subject hockey game under reasonable and proper control and/or protect players from excessive force."

The count goes on in paragraphs 12 through 16 to allege various injuries suffered by the plaintiff "as a direct and proximate result of the negligence and carelessness" of Jackowicz. The fifth count sets forth the same allegations of negligence against the Association.

Bishop Rinks' apportionment complaint alleges in the first count that any injuries suffered by the plaintiff were "caused by the negligence and carelessness of the apportionment defendant, Jackowicz, in one or more of the following ways:

a. In that he failed to reasonably and properly maintain control of the subject hockey game, enforce the rules of the game, penalize players for excessively rough play and/or incidents on the ice, and/or remove players from the game for unnecessarily rough play and/or major penalties.

b. In that he failed to keep and maintain the subject hockey game under reasonable and proper control and/or protect the players from excessive contact with other players;

c. In that he failed to notice and/or remedy the excessively rough play exhibited during the game prior to the subject incident, so as to prevent further excessive contact between players, including the subject incident;

d. In that he failed to otherwise properly officiate and/or supervise the game so as to prevent injury to the players, despite knowledge of prior excessively rough play exhibited during the game;

e. In that he failed to properly learn and/or enforce the applicable rules of the game."

These same allegations of negligence are repeated in counts two and four against the Association.

LEGAL ANALYSIS

Both defendants move to strike the claims against them for two reasons: (1) hockey officials do not owe a negligence duty of care to players during a game, and (2) the amended complaint and the apportionment complaint fail to allege a causal nexus between any alleged breach of the duty of care and the plaintiff's injuries.

I. DUTY

"The essential elements of a cause of action in negligence are well established: duty; breach of that duty; causation; and actual injury." *RK Constructors, Inc.* v. *Fusco Corp.*, 231 Conn. 381, 384, 650 A.2d 153 (1994). "The existence of a duty is a question of law and [o]nly if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand." (Internal quotation marks omitted.) Id., 384.

"The test for the existence of a legal duty of care entails (1) a determination of whether an ordinary person in the defendant's position, knowing what the defendant knew or should have known, would anticipate that harm of the general nature of that suffered was likely to result, and (2) a determination, on the basis of a public policy analysis, of whether the defendant's responsibility for its negligent conduct should extend to the particular consequences or particular plaintiff in the case .... The first part of the test invokes the question of foreseeability, and the second part of the test invokes the question of policy." (Internal quotation marks omitted.) *Gazo* v. *Stamford,* 255 Conn. 245, 250, 765 A.2d 505 (2001).

Our Supreme Court has held that, "during team athletic contests involving contact as part of the game," participants "owe a duty to refrain only from reckless or intentional conduct toward other participants." *Jaworski* v. *Kiernan*, 241 Conn. 399, 402, 412, 696 A.2d 332 (1997). It specifically rejected the argument that a negligence standard of care applied, after applying the foreseeability and public policy analysis set forth above. The court quickly concluded that when two people are vying for the ball in a soccer game, an injury to one of the players is foreseeable. Id. at 406-07. It then turned to public policy, and it applied the four factors that the court continues to apply[2]: "(1) the normal expectations of participants in the sport in which the plaintiff and the defendant were engaged; (2) the public policy of encouraging continued vigorous participation in recreational sporting activities while weighing the safety of the participants; (3) the avoidance of increased litigation; and (4) the decisions of other jurisdictions." Id. at 407. The court found that each of these four factors supported a conclusion that a reckless or intentional standard of care, rather than a negligence standard of care, should apply to a claim brought against a team sports

[2] As recently as 2021, our Supreme Court relied upon *Jaworski v. Kiernan*, when it applied this public policy analysis in *Raspberry Junction Holding, LLC* v. *Southeastern Connecticut Water Authority*, 340 Conn. 200, 206-07, 263 A.3d 796 (2021).

participant. Id. at 407-11. After concluding that the defendant participant did not owe the plaintiff a duty to act with reasonable care, the court held that "proof of mere negligence is insufficient to create liability." Id. at 412. The court remanded with direction to strike the plaintiff's negligence claim.

Since *Jaworski* v. *Kiernan* was decided, superior courts have continued to apply the "contact sports exception" to bar negligence claims brought by participants against other participants in contact team sports, including ice hockey, on the basis that the standard of care is recklessness, not negligence. See, e.g., *Morrissey* v. *Kampf*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV13-6013597-S (March 31, 2015, *Stevens, J.*) (60 Conn. L. Rptr. 65) (granting opposing softball player's motion for summary judgment as to negligence claim); *Rubbo* v. *Guilford Board of Education*, Superior Court, judicial district of New Haven, Docket No. CV11-6017699-S (July 20, 2011, *Woods, J.*) (52 Conn. L. Rptr. 292) (granting motion to strike negligence claim against sixth grade boy and his parents for his swinging hockey stick at another player).

The plaintiff argues that this court should disregard these cases and apply a negligence standard based on premises liability. In support, she cites *Lopez v. Chelsea Piers Conn, LLC*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV20-6046348-S (May 9, 2023, *Povodator, J.T.R.*). However, that case did not apply the contact sports exception because the plaintiff was injured in a sidelines fight with a person who was not a participant.

The Connecticut appellate courts have not determined the extent of a duty owed by other parties involved in team contact sports – coaches, officials or their associations. The year before *Jaworski* v. *Kiernan* was decided, our Supreme Court considered a negligence claim that a spectator who was injured by an intentionally thrown bat brought against the umpires.

Santopietro v. *New Haven*, 239 Conn. 207, 682 A.2d 106 (1996). The court affirmed a directed verdict in favor of the umpires. After noting that no other jurisdiction had explicitly considered whether to impose or how to define an umpire's legal duty, our Supreme Court elected not to decide in that case whether the umpires owed spectators a duty to "maintain control of a game so as to prevent an unreasonable risk of injury to others." Id. at 228-29. Instead, the court held the standard of care and any breach of that standard of care required knowledge that is beyond the experience of an ordinary fact finder and that therefore, expert testimony was necessary to establish that breach. Id. at 225-26. Because the plaintiff did not provide that expert testimony, it was appropriate to grant a directed verdict. Id. at 225.

Connecticut's federal and state trial courts have considered what standard to apply to a coach. The United States District Court has twice granted Rule 12(b)(6) motions to dismiss negligence claims by injured players against coaches. In each of those decisions, the court concluded that our Supreme Court would find that the appropriate standard of care imposed on a coach for player injuries would be reckless or intentional conduct. *Mercier* v. *Greenwich Academy, Inc.*, slip op., Civil Action No. 3:13-CV-4 (JCH) (D. Conn. July 25, 2013) (2013 WL 3874511) (applying recklessness standard to claim against player's own coach); *Trujillo* v. *Yeager*, 642 F. Supp. 2d 86 (D. Conn. 2009) (applying recklessness standard to claim against opposing coach). But see *Hendry* v. *Fratus*, Superior Court, Docket No. 558176 (August 23, 2002, *Hurley, J.*) (32 Conn. L. Rptr. 733) (denying motion to strike negligence claim where plaintiff was minor who was injured by coach during practice). The district court also held that a sports entertainment company would only be liable for reckless or intentional conduct, not negligent conduct, in professional wrestling matches. *McCullough* v. *World Wrestling Entertainment, Inc.*, 172 F. Supp. 3d 528, 559 (D. Conn. 2016).

Assuming for purposes of this duty analysis that it is foreseeable that a player could be injured by an opposing player during an ice hockey game, the court will analyze the four factors for public policy. Even though the defendants here are game officials rather than participants, the Supreme Court's analysis in *Jaworski* v. *Kiernan* of the first three factors also applies here. The fourth factor, decisions from other jurisdictions, also favors a higher standard of care than mere negligence. The Supreme Court of Illinois extended the contact sports exception to governing organization of the hockey officials who refereed the game. *Karas* v. *Strevell*, 884 N.E.2d 122 (Ill. 2008). The claim was that the officials failed to adequately enforce the rule against bodychecking from behind in an organized amateur league game. Id. at 137. The court considered out-of-state authority that had extended the exception to coaches and determined that the reasoning in those cases was consistent with its holding in an earlier case that had recognized the exception for players. Id. The court went on:

> "[R]ules violations are inevitable in contact sports and are generally considered an inherent risk of playing the game. … Further, in an organized contact sport, such as the one at issue here, the enforcement of the rules directly affects the way in which the sport is played. Imposing too strict a standard of liability on the enforcement of those rules would have a chilling effect on vigorous participation in the sport. Finally, as the organizational defendants point out, coaching and officiating decisions involve subjective decisionmaking that often occurs in the middle of a fast moving game. It is difficult to observe all the contact that takes place during an ice hockey game, and it is difficult to imagine activities more prone to second-guessing than coaching and officiating. Applying an ordinary negligence standard to these decisions would open the door to a surfeit of litigation and would impose an unfair burden on organizational defendants such as those in the case at bar. Accordingly, we conclude that, under the facts alleged here, the contact sports exception applies to the organizational defendants."

(Citation omitted.) Id. The court concluded: "[t]o successfully plead a cause of action for failing to adequately enforce the rules in an organized full-contact sport, plaintiff must allege that the defendant acted with intent to cause the injury or that the defendant engaged in conduct 'totally

outside the range of the ordinary activity' ... involved with coaching or officiating the sport." (Citation omitted.) Id. See also *Al-Jahmi* v. *Ohio Athletic Commission*, 2022 WL 2373589 at ¶¶ 111, 112 (Ohio Ct. Appeals June 30, 2002) (holding that there were disputed issues of material fact as to whether boxing referee acted recklessly by not assessing boxer to determine if he could continue the bout).

Based on this authority from other jurisdictions and the fact that the other three factors favor a reckless standard rather than a negligence standard, this court concludes that the officials, and by extension, the Association, only owed the plaintiff a duty not to engage in reckless or intentional conduct. Because the allegations listed above all sound in negligence, the court grants the motions to strike on this basis.

II. CAUSATION

Jackowicz and the Association also argue that the court should strike the claims against them because the complaint does not adequately allege a causal connection between their alleged acts or failures to act and the plaintiff's injuries. Causation has two components: cause in fact and proximate cause. *Ruiz* v. *Victory Properties, LLC*, 315 Conn. 320, 329, 107 A.3d 381 (2015). The test for causation in fact is "whether the injury would have occurred but for the actor's conduct." Id. "The test for proximate cause is whether the defendant's conduct was a substantial factor in producing the plaintiff's injury. ... This substantial factor test reflects the inquiry fundamental to all proximate cause questions, namely, whether the harm [that] occurred was of the same general nature as the foreseeable risk created by the defendant's negligence." (Internal quotation marks omitted.) Id. Our Supreme Court has recognized that "whether the injury is reasonably foreseeable ordinarily gives rise to a question of fact for the finder of fact, and this

issue may be decided by the court only if no reasonable fact finder could conclude that the injury was within the foreseeable scope of the risk such that the defendant should have recognized the risk and taken precautions to prevent it. … In other words, foreseeability 'becomes a conclusion of law only when the mind of a fair and reasonable [person] could reach only one conclusion; if there is room for reasonable disagreement the question is one to be determined by the trier as a matter of fact.'" (Citations omitted; internal quotation marks omitted.) Id. at 330.

In support of their argument that causation is not adequately alleged here, the defendants rely upon an Appellate Court decision, *Vaillancourt* v. *Latifi*, 81 Conn. App. 541, 840 A.2d 1209 (2004). That decision held that the Waterbury YMCA, the organizer of a recreational softball league, was not responsible for the injuries to the plaintiff catcher when an opposing player ran into him at home plate. Id. at 549. Although the trial court had granted summary judgment in favor of the YMCA on the basis of duty, the Appellate Court declined to address the issue of duty, and instead affirmed on the basis that the negligent acts alleged were not the proximate cause of the plaintiff's injury. Id. at 548. The court observed that "[i]n negligence cases such as the present one, in which a tortfeasor's conduct is not the direct cause of the harm, the question of legal causation is practically indistinguishable from an analysis of the extent of the tortfeasor's duty." (Citation omitted.) Id.

The plaintiff in *Vaillancourt* v. *Latifi* had alleged that the YMCA breached its duties to the plaintiff by failing to select, employ and train its umpires and that the umpire had failed to prevent the runner from running into the catcher plaintiff. 81 Conn. App. at 548-49. This allegation was predicated on the assumption that the runner had engaged in unsportsmanlike behavior prior to the collision. Id. at 549. However, there was no evidence that he did anything to warrant being removed from the game. The Appellate Court stated: "Individuals who serve as officials at

athletic competitions are not clairvoyant, and we do not presume that they can foresee a malicious and intentional act of bad sportsmanship such as that alleged by the plaintiff. As a matter of law, the umpire's failure to eject [the runner] from the game prior to the time he ran into the plaintiff was not the proximate cause of the plaintiff's injuries." Id. See also *Hearl* v. *Waterbury Young Men's Christian Association*, 187 Conn. 1, 444 A.2d 211 (1982) (affirming a trial court that set aside a verdict on the grounds that the YMCA's failure to supervise a volleyball game was not the proximate cause of the plaintiff's injuries); *Sullivan v. Quiceno*, Superior Court, judicial district of New Haven, Docket No. CV05-4003173-S (October 5, 2007, *Holzberg, J.*) (44 Conn. L. Rptr. 338) (granting summary judgment for failure to establish causation).

The Massachusetts Appellate Court also affirmed a summary judgment in favor of various parties, including the officials, because there was no evidence of a causal nexus. *Borella* v. *Renfro*, 96 Mass. App. Ct. 617, 137 N.E.3d 431 (2019). Although the court declined to conduct a duty analysis for the officials, it acknowledged that Massachusetts, like Connecticut, recognizes an exception to negligence for players in contact sports. Id. at 618. In the high school ice hockey game at issue, an opposing player checked the plaintiff from behind, pushed him into the boards, and took the puck away. Id. at 620. The plaintiff fell to the floor, and his wrist was sliced by the opposing player's blade, causing permanent injury. Id. at 621. Although there was some evidence from fans that the referees missed calls and that the game was not controlled, the court held that there was no evidence that any action or inaction by the referees caused the injuries. Id. at 627.

All three of the cases discussed above involved motions for summary judgment or a motion for directed verdict. Therefore, the courts in each case had evidence they could review. Here, the court must decide this issue based solely on the allegations of the amended complaint and the apportionment complaint. The amended complaint alleges that the game had become

physical, including unlawful and unnecessary physical contact. It also alleges that the officials failed to properly supervise the game and call the required penalties to prevent further escalation. Both the amended complaint and the apportionment complaint allege various failures to take steps that could have prevented the plaintiff from being injured. On this record, the court cannot hold that the plaintiff and the apportionment plaintiff have not alleged a causal connection. Therefore, the motion to strike is denied on this basis.

CONCLUSION

For the foregoing reasons, the motions to strike the second count and the fifth count of the amended complaint no. 125.00 and counts one, two and four of the apportionment complaint no. 107.00 are granted.

BY THE COURT,

Stewart, J.

Hon. Elizabeth J. Stewart