

Greer v. Davis

921 S.W.2d 325 (Tex. App. 1996)

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Kenneth and Virginia Greer ("Greer") filed suit alleging Martin Davis, a baserunner in a municipally-sponsored softball game, negligently, or recklessly and intentionally collided with Kenneth Greer, a player making a tag at home plate. The appellee, Davis, filed a motion for summary judgment, and the trial court, determining the Greers had not stated a claim for which relief could be granted, granted Davis's motion. The Greers appealed the trial court's ruling and in 1996, the Texas Court of Appeals reversed and remanded the trial court's decision, stating there was a question of fact as to whether Davis intentionally and recklessly collided with Greer during a softball game.

Summary judgment is appropriate where a party establishes there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. In addition, a defendant who moves for summary judgment has the burden of showing as a matter of law that no material issue of fact exists for the plaintiff's cause of action. Davis raised three issues in his motion for summary judgment. First, Davis's mere negligence was not sufficient to impose liability because he and Greer were voluntary participants in a contact sport event. Second, Davis did not act intentionally or recklessly as required by Texas state law in a cause of action arising from injuries sustained in a competitive contact sport. Third, Greer, as a voluntary participant in the softball game, assumed the risk that he would be struck in a collision such as occurred in this instance.

Because the Greers failed to address Davis' issue as to whether Davis' negligence was sufficient to bring this claim, the Appellate court did not address this issue. Therefore, the court reviewed the remaining two issues on appeal.

In order to prevail on a cause of action for injuries sustained while participating in a competitive contact sport, a claimant must prove that the defendant acted intentionally or with reckless disregard of the rights and welfare of the claimant. Davis provided an affidavit testifying that he did not intend to cause harm or injury to Greer, and he did not have any reason to harm him. Davis also provided testimony from the home plate umpire, Mr. Amel Sahadi, indicating the umpire did not see Davis running toward Greer with the intent to hurt Greer. However, Greer also provided an affidavit with his testimony indicating Davis had sufficient time to slide into home base or run to the right of Greer instead of colliding with him. In addition, Greer indicated in his affidavit that he heard Davis talking with his teammates about how he intended to run into Greer as he was "aiming for him." Greer also provided testimony from another umpire, Mr. Roel Canales indicating if he was making the call on the collision he would have ejected Davis for intentionally running over Greer. Based on the facts provided in the affidavits, the Court of Appeals concluded there was a question of fact that a jury must address as to whether Davis intentionally collided with Greer.

Davis also relied on dicta in *Connell v. Payne* suggesting that because Greer was participating in a dangerous contact sport, he assumed the risk of injury. However, the court in *Connell* did not recognize the assumption of risk defense, and the Texas Supreme Court later abolished voluntary assumption of risk as a defense to actions based on negligence. Therefore, the court rejected Davis' defense as a valid basis for summary judgment.

After providing an analysis of all issues raised in Davis's motion for summary judgment, the court ruled that there was a question as to Greer's allegation of Davis's intentional and reckless conduct. Therefore, the court reversed the trial court's decision and remanded for a trial on the merits.