

Bevelo v. Carter

447 F.3d 979 (7th Cir. 2006)

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Thomas Bevelo filed suit against Alan Carter for injuries he sustained during a demonstration by Carter at a martial arts banquet. The district court struck down Bevelo's expert affidavit holding that the expert was not disclosed before the court's deadline. The court then granted summary judgment in favor of Carter, which Bevelo now appeals. The Court of Appeals for the Seventh Circuit affirmed the district court's decision.

While attending a martial arts banquet, Bevelo met Carter, a martial arts expert and eighth degree black belt who apparently possessed an ability to "move people with his mind." Prior to the dinner, the class warmed up and sparred with one another with Bevelo warming up alone. Following dinner, Bevelo asked Carter to demonstrate his unusual ability. While a group of banquet attendees looked on, including Bevelo's family, Carter demonstrated his ability using his hands, as well as his mind. After showing Bevelo and the crowd several of his moves, Carter hit Bevelo on the neck. Bevelo suffered serious injury that required a cadaver bone and titanium plate surgically to be inserted into his neck.

Bevelo had an expert's affidavit which he planned to file with the district court; however, he missed the filing deadline by five days. Although the court extended some of the deadlines, neither the expert witness disclosure deadline nor the deadline for taking expert witness depositions were changed. The appellate court noted that not only did Bevelo never mention any problem with those deadlines remaining the same he never even requested their extension. In fact, the court did not know Bevelo planned to file the expert's affidavit until he attempted to include it with his response to Carter's motion for summary judgment. The district court held that this action was too late and struck down the affidavit. Bevelo argued this was an abuse of the court's discretion and appealed the order to strike; however, the court found no sympathy for Bevelo since he did not disclose his expert until ten months after his deadline to disclose, and a month after close of discovery.

Bevelo's personal injury claim was examined based on Illinois law, which has established a "contact sports exception" to negligence claims. Under this exception, individuals who voluntarily participate in contact sports may be held liable for injuries to co-participants caused by willful and wanton or intentional misconduct, but are not liable for injuries caused by ordinary negligence. Even though, as Bevelo contended, he did not expect to be struck by Carter since he was inquiring into Carter's ability to move people with his mind the court held that a reasonable person could expect physical contact given the context of the demonstration. Bevelo was attending a banquet held for martial arts students at which they warmed up and sparred before dinner; thus, it would not be unusual for a reasonable person to understand these actions inherently involved physical contact. Bevelo also tried to portray to the court that he stood in front of Carter with no defensive stance when Carter essentially attacked him. However, the court pointed to the record which showed that Bevelo never asked Carter to stop his demonstration, he did not attempt to walk away from the demonstration, and he did not look to anyone in the audience to help him. In fact, his family was laughing and snapping photographs during the demonstration. Based on these facts and Bevelo's deposition testimony, the court held Bevelo was a willing participant in the demonstration.

The court found the district court was correct in applying the contact sports exception to this case, and Carter could only be held liable for Bevelo's injuries if he acted willfully and wantonly in his conduct. Bevelo's claim of recklessness was analyzed just as the personal injury claim was, and the court found that there was no evidence that Carter behaved recklessly during his demonstration.

Therefore, the Seventh Circuit Court of Appeals affirmed the district court's decision, holding that this type of physical contact is inherent in martial arts training and there was no evidence Carter evinced an utter indifference to or conscious disregard for Bevelo's safety.