

## **Brandon West v. Sundown Little League of Stockton, Inc.**

96 Cal. App. 4<sup>th</sup> 351 (2002)

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Plaintiff and Appellant Brandon West ("West") appeals the trial court's grant of summary judgment in favor of Defendants and Respondents Sundown Little League of Stockton, Little League Inc., and his coaches ("Defendants"). West brought a negligence action against Defendants when he suffered permanent injury to his eye when he was hit by a fly ball during pregame practice while the setting sun obscured his ability to see the ball. The court granted Defendants summary judgment based on the doctrine of primary assumption of the risk.

Ten-year old West was warming up with a few teammates in the outfield while the opposing team was in the dugout waiting to bat. West's coach was throwing the outfielders fly balls to simulate game conditions. West was either the second or third boy in line for this drill. One of the first two caught the ball thrown from the coach; the other boy lost the ball in the sun. As the coach threw the ball to West, he initially saw the release but lost the ball in the sun while it was still ascending. The ball came down and struck West in the left eye, causing permanent injury to his eye. West filed a complaint alleging a single cause of action for negligence claiming the Defendants were negligent because their action increased the risk of harm to him. The Defendants answered the complaint and asserted the affirmative defense of assumption of the risk.

Primary assumption of the risk arises where a plaintiff voluntarily participates in an activity or sport involving certain inherent risks. Primary assumption of the risk bars recovery because no duty of care is owed as to such risks. Whether, in a given case, the doctrine will be applied is a legal question which turns on the nature of the sport or the activity. The court decided in earlier decisions that being hit by a baseball while playing the game is an inherent risk in the sport.

West further argues that Little League increased the risks inherent in the sport by throwing the ball into the sun. However, an instructor is not an insurer of the player's safety. Under primary assumption of risk, the defendant has a duty not to increase the risks inherent in the sport, not a duty to decrease the risks. West failed in raising a triable issue of material fact as to whether the Defendants increased the risks over and above those inherent in the sport because losing sight of a pop fly in the sun is a risk inherent in baseball, and placing baseball players in practice or warm up situations that replicate game conditions does not, as a matter of law, increase the risk over and above that inherent in the sport.

The court granted summary judgment based on the simple fact that the three inherent components of baseball are the ball, the player and the sun. These three components mix frequently and lining up the players for the drill did not create extraordinarily dangerous conditions for which the Defendants are liable.