

Introduction

IN A PLEA OF THE CASE for that on or about January 15, 1996 the plaintiff, Kevin Dunn, was a member of the Concord Chuggers, a semipro hockey team. On that date, the defendant, Linda LePuck, was member of the United States Olympic Women's Ice Hockey team. The two teams were engaged in an exhibition hockey game on that date at the Everett Arena in Concord, New Hampshire. The defendant had a duty to use proper care in the use of her hockey stick and to avoid using it in such a manner as to cause injury to other persons. The defendant breached that duty during the course of that game by causing her hockey stick to strike the head of the plaintiff causing the plaintiff to suffer numerous injuries including, but not limited to, a fractured skull, subdural hematoma, partial paralysis, partial loss of vision, and other physical, mental and emotional trauma. The defendant was not privileged to cause such contact to the plaintiff. The plaintiff did not consent to the contact by the defendant. As a direct and proximate cause of such contact the plaintiff has suffered damages within the minimum and maximum jurisdictional limits of this court.

List of Witnesses

Plaintiff

Kevin Dunn

L.O. Worsley, M.D.

Jacque(line) Plante

Defendant

Linda L. LePuck

Terry Sawchuk

Toni(y) Esposito

THE STATE OF NEW HAMPSHIRE

COUNTY OF MERRIMACK

SUPERIOR COURT

Kevin Dunn

v.

Linda LePuck

#96-C-00123

AFFIDAVIT OF LINDA L. LePUCK

I, Linda Laurie LePuck, hereby state, under oath, as follows:

I live in Colorado Springs, Colorado. I was born on May 31, 1975 in Manitowoc, Wisconsin. I began playing hockey when I was six years old as a Mini-Mite, progressed through the levels of youth hockey and eventually played for Manitowoc High School where I was the captain of the team. I was named to the All-State team in my senior year, which was the year we won the State Championship. I should note that there was not a girl's team and that all of my teammates were boys. I went to the University of Wisconsin in Madison on a hockey scholarship and played left wing on the women's team for four years. I was chosen to play for the United States Olympic Women's Ice Hockey team in 1995. After my college graduation I concentrated full-time on training for the 1998 Olympics.

The Olympic team has been touring around the United States and the world both raising money and gaining experience. The other aspect to this series of games is that it will determine who makes the final cut for the team. Currently there are twenty-five women on the team but only eighteen will make the trip to Nagano, Japan next year.

On January 15, 1996 we were on our tour through New England when we played in Concord, New Hampshire. We played against a semi-pro team of men that night. In the second period I was on the ice skating down the left side trying to angle in for a pass from center when I was tripped by Kevin Dunn, a defenseman. I had never met Dunn before. Dunn had deliberately tripped me with his stick as I was getting around him. I could see that the referee and the linesmen had not seen the trip. While lying on the ice I reached out with my stick and pulled Dunn's feet out from under him. When I got up I found that Dunn had already gotten up. He came right at me and punched me in the face with his hockey glove

on. He hit me so hard that my helmet came right off. A hockey glove is a big, heavy padded glove and it felt like he broke my jaw. I thought that he was going to come at me again and I instinctively swung my stick at him. I realized after I hit him that my stick had hit him in the head and that he was bleeding. I knew he wasn't wearing a helmet but I did not know why not. I didn't mean to hurt him but I felt that I had to protect myself.

Linda L. LePuck

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, the undersigned officer, by Linda L LePuck on this
__ day of _____, 199__.

Notary Public / Justice of the Peace

THE STATE OF NEW HAMPSHIRE

COUNTY OF MERRIMACK

SUPERIOR COURT

Kevin Dunn

v.

Linda LePuck

#96-C-00123

AFFIDAVIT OF KEVIN DUNN

I, Kevin Paul Dunn, hereby state, under oath, as follows:

I currently reside at 88 North Main Street in Concord, New Hampshire. I was born on March 4, 1958 in Nashua, New Hampshire. At the time of the incident I was employed by Capital Beer Wholesalers as a delivery truck driver. I am currently disabled and I receive Social Security Disability in the amount of \$635.00 per month. I am married and have twin boys, Gordie and Gump, age 12.

I was educated in the Concord school system and graduated from Concord High School in 1976. I played hockey for the high school and was good enough to get a scholarship to Northeastern University in Boston where I played for four years. I played minor league hockey for two years before retiring from professional hockey and entering the business world. I joined the Concord Chuggers, a semipro team sponsored by my employer, ten years ago.

I haven't worn a helmet since I played in college. Our semipro league doesn't have a rule requiring helmets so I don't wear one. I think they're uncomfortable and that you can't see as well. It cuts down your peripheral vision. I know that some people think it's foolish not to wear one but I'm a good skater and I've never banged my head on the ice. Nobody said anything to me on the night of the game about helmets.

On January 15, 1996 I was playing defenseman in a game against the women's Olympic team at the Everett Arena in Concord. In the second period, I was skating on the right side when I see this hot shot girl flying down on my side of the ice. She was really steaming. I tried to catch up with her and in skating towards her, I accidentally got my stick tangled in her skates. She went down in a heap. I was waiting a whistle, expecting a penalty, when all of a sudden I get my feet pulled out from under me. She deliberately tripped me. Well, you can't let a girl take advantage of you like that; otherwise everyone in

the league will push you around. Without thinking I punched her in the mouth. I saw her raise her stick and the next thing I know I was in Concord Hospital and they told me I'd been out for three days. Now they're telling me I may never drive a truck again let alone play hockey again. I don't know what I'm going to do. I don't know how to do anything else.

Kevin Paul Dunn

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, the undersigned officer, by Kevin Paul Dunn on this _____
day of _____, 199__.

Notary Public / Justice of the Peace

Kevin Dunn
v.
Linda LePuck

#96-C-00123

AFFIDAVIT OF JACQUE(LINE) PLANTE

I, Jacque (Jacqueline) Plante hereby state, under oath, as follows:

I was officiating the exhibition game between the U.S. Olympic Women’s Ice Hockey Team and the Concord Chuggers on January 15, 1996 in Concord, New Hampshire. As head referee, I am responsible for the calling of the game both on my part and the other two officials assisting me. I have been officiating hockey games for the past thirteen years; the last six in the National Collegiate Athletic Association.

During the second period of the game, a stick fight broke out between Linda LePuck of the Olympic team and Kevin Dunn of the Chuggers. The Olympic players claim that Dunn tripped LePuck away from the play. This I did not see. The first thing I saw happening between the two was Dunn throwing a punch at LePuck. It really amounted to a minor retaliation. If Dunn wanted to hurt her, he would have dropped his gloves and started punching with his bare fists. Hockey gloves are like boxing gloves. They offer protection to the hands. They are very well padded. There was no need for LePuck to resort to her stick. It was uncalled for. As I raised my hand to charge Dunn with a penalty for roughing, LePuck retaliated and hit Dunn over the head with her stick. In my opinion LePuck’s use of the stick was extreme, but Dunn had punched her with a gloved hand. Both acts are against the rules of hockey. The game was played under rules in effect for the NCAA.

After Dunn was removed from the ice, I gave the Chuggers a minor penalty for roughing and LePuck a major penalty for fighting plus a game misconduct for using her stick in a fight. This incident is now being investigated by the U.S. Olympic Committee.

Jacque(line) Plante

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, the undersigned officer, by Jacque (line) Plante on this day of _____, 199__.

Notary Public / Justice of the Peace

L. O. Worsley, M.D.
259 Pleasant Street
Concord, New Hampshire 02910

January 22, 1997


Attorneys at Law
27 Court Street
Concord, N.H. 02910

Re: Kevin Dunn d.o.b. 3/4/58

Dear Sir/Ms.,

This letter is in reply to your request for information concerning my examination of your client and my patient, Kevin Dunn.

I examined Mr. Dunn at Concord Hospital on January 16, 1996. I noted that the x-rays revealed that he had suffered a fracture of the left front area of the skull which also caused a subdural hematoma. This caused damage to the frontal lobe and the precentral gyrus. The precentral gyrus or motor cortex controls many of the motor functions of the body. Mr. Dunn probably will suffer a permanent loss of some of his motor skills due to this injury. He may also suffer some loss of memory and have difficulty reading and speaking as a result of the damage to the frontal lobe. At this stage, it is too early to tell what the full extent of his injuries will be.

I am a board certified neurologist in the State of New Hampshire. I graduated from Harvard Medical School in 1973 and did my residency at Mary Hitchcock Hospital in Hanover, N.H. I began my practice in Concord in 1979. I have treated more than a thousand cases of brain injury.

If I can be of any further assistance in this matter please don't hesitate to call. As always, my hourly rate for depositions or testimony in court is \$300.00 with a minimum retainer of \$1,000.00.

Sincerely,

Lorne(a) Worsley, M.D.

Kevin Dunn
v.
Linda LePuck

#96-C-00123

AFFIDAVIT OF TERRY SAWCHUK

I, Terry Sawchuk hereby state, under oath, as follows:

I am the head coach of the United States Women’s Olympic Ice Hockey Team. It is my job to conduct practices, organize training and game strategy, decide who is to be included on the roster, set up a scouting network and supervise the team during each game. I have been associated with the game of hockey as a player, scout, and coach for twenty-five years.

On January 15, 1996, the Olympic team was playing an exhibition game with the Concord Chuggers at the Everett Arena in Concord, New Hampshire. We had set up this game as part of our training in preparation for the 1998 Winter Olympics. The game also served as a fund raiser in part for the team and for some local charity. I was performing my duties as head coach in the bench area the second period when the altercation occurred. Linda LePuck, in my opinion, was an excellent hockey prospect who probably could have played for this team in the Olympics. Since this incident we have had to drop her from the roster. There was a question as to whether she could have made the team this year because of her youth and inexperience so I was giving her a regular shift on the ice to get a good look at her before making a final decision regarding her status with the club.

Linda was skating on left wing when Kevin Dunn tripped her. Since Linda was not carrying the puck, the referee probably didn’t call the penalty just to keep the play going. I saw Linda reach out with her stick to try and get back on her feet. It looked to me like she accidentally tripped Dunn. He then hauled off and hit her with his gloved hand. Hockey players are never supposed to hit with a gloved hand. It’s almost like using brass knuckles. Also, in women’s hockey there’s no fighting like there is in men’s professional hockey. There, fighting is part of the game. Our players are not used to fights so they don’t have the experience. This is Dunn’s fault for instigating the fight.

Terry Sawchuck

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, the undersigned officer, by Terry Sawchuk on this _____ day of _____, 199__.

Notary Public / Justice of the Peace

Kevin Dunn
v.
Linda LePuck

#96-C-00123

EXCERPT FROM DEPOSITION OF TONI(Y) ESPOSITO

Q. Would you state your full name please.

A. Toni (Tony) Esposito

Q. What is your education and work experience.

A. I earned a Bachelor of Science degree from Franklin and Marshall College in 1980, a Masters degree in sociology from Antioch - New England in 1982 and a Ph.D. in sociology from Texas Tech in 1986. I am currently an associate professor of sociology at E.S.U.

Q. Do you have any area of specialty?

A. My special area of study is sports in American life. I have written many professional journal articles on this topic and my most recent book, *The Professional Athlete: Gladiator of the Twentieth Century*, seems to have caught the interest of the public.

Q. You have been asked here to give your expert opinion concerning the injury sustained by Kevin Dunn on the night of January 15, 1996. Is that correct?

A. Well, actually my opinion will not focus specifically on the events of the Everett Arena that night. Rather, I will focus on the social environment in which these events occurred and the impact of that environment on the individuals directly involved in this case.

Q. What is the social environment to which you refer?

A. Historically, sports, competition and entertainment have been natural partners in most societies. Over the years, they have been joined by other less natural associates. The transfer of wealth has often depended on the outcome of sports and, in Roman times, contests or "circuses" were used for political purposes. There are those who feel that elements of this latter practice exist in the world today.

Q. Is this the same with American sports?

A. I would say so. American sports, especially professional sports, have additional partners. Consider, for example, the stratospheric costs of air time for Monday night football commercials. Political sports heroes are other examples of the social and economic importance of professional sports.

Q. Doctor, how does all this relate to the case at hand?

A. Simply stated, the events at the Everett Arena were greatly influenced by the powerful and pervasive influence of what I call the “gladiator sports” of America.

Q. What exactly do you mean by “gladiator sport?”

A. In the interest of profit, perhaps greed, these “sports” emphasize the sensational, the attractiveness of brutality, the excess of power, and the concept- alien to our democratic teachings- that fairness is not important and that winning is all that counts. Not only are the sports events staged with these attitudes in mind; the actors on that stage read and follow the script very closely. Thus, while the bodies and the image of American sports heroes may be damaged by substance abuse, the “hard hitting hatchet man” is rarely condemned and often admired and imitated.

Q. Do you think that is what happened at Everett Arena between Linda LePuck and Kevin Dunn?

A. Certainly. Is it any wonder that these two young people, rewarded and nurtured by this system found themselves involved in seemingly unsportsmanlike and brutal actions? They are, I suggest, merely victims of a misguided and misanthropic element of contemporary life where the focus on entertainment and profit far outweighs the practice of fair play and the search for learning, through sports, about ourselves and others.

Q. Doctor Esposito, one last question. Do you have any opinion as to who was at fault for the incident at the Everett Arena?

A. If there is guilt to be assigned, let those who have been involved in any way in establishing and maintaining the system share in that guilt. That will probably be most Americans.

Applicable Laws and Jury Instruction

6.1 Negligence Defined

Negligence is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under the same or similar circumstances. This is the standard of care that all persons are expected to live up to. If a person fails to live up to that standard, the person is said to be negligent. Negligence may consist of either doing something that a reasonably careful person would not do under the same or similar circumstances or failing to do something that a reasonably careful person would do under the same or similar circumstances. Failure to exercise due care amounts to legal fault if you find it caused or contributed to cause the injury or damage suffered by the plaintiff.

6.3 Foreseeability

A person is not responsible for the consequences of his/her act unless the risk of the injury sustained is reasonably foreseeable. The exact occurrence or the precise injuries need not to be foreseen, but the results of an act must not be merely possible, but probable. In terms of foreseeability, we are talking about reasonable foreseeability and not some sort of prophetic vision as to what might conceivably happen.

6.10 Instinctive Action

If the person is faced with a situation, created through no fault of his/her own, which leaves him/her absolutely no time for thought, so that he/she must act instinctively or by pure reflex, he/she may not be held liable for his/her actions.

6.14 Last Clear Chance

Contributory fault on the part of the plaintiff will not affect his right to recover if you find that the evidence establishes that it is more likely than not that:

1. The plaintiff placed himself or herself in a situation of peril from which he/she was physically unable to remove herself or himself or able to move but ignorant of his/her peril;
2. The defendant saw or should have seen the plaintiff and realized or should have realized the peril; and
3. Thereafter, the defendant could have avoided the accident by using ordinary care.

8.1 Comparative Fault

This case has been tried under the law of comparative fault. Under this law, you may find that the plaintiff's injuries were the result of the legal fault of the defendant, the legal fault of the plaintiff, or to some degree the legal fault of each of them.

Under this law, a plaintiff who is more than fifty percent (50%) legally at fault for an accident cannot recover damages arising out of the accident. To the extent that a plaintiff is fifty percent (50%) or less legally at fault, he/she can recover damages but only in proportion to the amount of legal fault attributable to the defendant.

Every person has the obligation to exercise due care; no party is entitled to presume that other persons will exercise due care and thereby absolve the party from his/her own duty of due care toward himself/herself or his/her own safety.

With respect to the plaintiff's claim of legal fault against the defendant, the plaintiff has the burden of proof. If you find legal fault on the part of the defendant, you should go on to determine whether the plaintiff was himself/herself also legally at fault. In this latter claim, the defendant has the burden of proof.

New Hampshire Bar Association

Mock Trial Competition Calendar

- February 1, 1998 Deadline for entry in the 1998 Mock Trial Competition
- March 2, 1998 Deadline for video submissions at the elementary school level
- March 17, 1998 Announcement of elementary school finalists

Tentative Schedule:

- March 18, 1998 Regional Competition-
 District Court of Northern Carroll County,
 North Conway
- March 19, 1998 Snow Date- District Court of Northern Carroll County,
 North Conway
- March 20, 1998 Regional Competition-
 Franklin District Court, Franklin
- March 21, 1998 Regional Competitions-
 Concord District or other court house in Concord
 Hillsborough County Superior Court- North, Manchester
 Hillsborough County Superior Court- South, Nashua
- April 4, 1998 State Final Competition-central location TBA
- May 8, 1998 -
May 11, 1998 National Mock Trial Competition-Albuquerque, NM

NHBA Law-Related Education Program
1998 Mock Trial Competition

Team Entry Form

one form per team

Teacher _____ Home Telephone _____

Complete Name of School _____

School Mailing Address _____

City _____ NH Zip Code+4 _____

School Telephone _____ County _____

Level of Competition (circle one): Elementary Middle/ Junior High High School

Number of students on the team _____ Number of students/ parents observing practices _____

Our lawyer-coach will be: _____

Please assist our team in recruiting a lawyer-coach: _____

Deadline to enter is February 1, 1998.

As a team, we understand that sending in this entry form is our commitment to participate in the Competition. Team cancellations create scheduling difficulties. Your cooperation is greatly appreciated!

Return this form to: Mock Trial Competition
New Hampshire Bar Association
112 Pleasant Street
Concord, NH 03301

For more information about this or other LRE programs, call the NHBA at 224-6942.

The New Hampshire Bar Association
Law-Related Education Program

presents the

1998 Mock Trial Competition

Kevin Dunn v. Linda L. LePuck

A case of negligence and liability.

A teaching tool for elementary, middle and high school students

Funded in part by a grant from the
New Hampshire Bar Foundation's
Interest on Lawyers Trust Accounts Program
and the U.S. Department of Education
Grant Award #S123A40116-95.

The New Hampshire Bar Association gratefully acknowledges the assistance of attorney Martin J. Bender in the authorship of this case, and the assistance of attorney Peter D. Goldsmith, attorney Lorne M. Fienberg, David Goldsmith, attorney Andrew A. Prolman, attorney Melissa Z. Murrin, attorney Eric R. Gardner, attorney Amy K. Kanyuk and Holly B. Fazzino in the administration of the Mock Trial Program.

October 1997

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The Mock Trial Instruction Manual (revised 10/97) is available from the
New Hampshire Bar Association.

To order, call the Law-Related Education Program at (603) 224-6942.