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Minnesota Appellate Court Enforces Release Signed By Parent

By Alexander "Sandie" Pendleton

The Court of Appeals of Minnesota recently decided that the parents of a boy who had been injured at baseball camp were not entitled to sue the camp, since the mother had signed a release and assumption-of-risk agreement. *Moore v. Minnesota Baseball Instructional School*, 2009 WL 818738 (Minn. Ct. App.) (unpublished decision; petition for further review denied).

The boy sustained a permanent eye injury when struck by a woodchip thrown by another camper during a lunch break. The boy's father sued the camp on behalf of the boy, and the camp moved for summary judgment, arguing that a waiver clause in the camp's registration materials, signed by the child's mother upon enrollment of the child, protected the camp from liability for the incident. Summary judgment was granted to the camp.

The parents appealed, arguing that summary judgment ought to have been precluded on the grounds that material facts were in dispute—specifically that there were factual issues regarding (1) whether or not the child's mother had actually "signed" the form in question, (2) whether the form actually contained the specific waiver clause that the camp claimed it did, and, (3) even if it had been contained in the form, whether the waiver clause covered the specific injury suffered by the child in this case.

The camp allows parents to register their children for camp attendance online. The camp director testified that the injured boy's mother had used this process to enroll her son. However, the camp does not receive the actual form that is completed online, and therefore was only able to produce a document based on the electronic confirmation that is sent to the camp indicating that such a form has been completed. The camp was also unable to produce a copy of the version of the online enrollment form in use in 2005, when the boy was enrolled, but did produce a copy of the 2007 version, and the camp's director testified that the two forms were identical. The child's mother testified that she did not remember having filled out the online form, but that she could not deny having done so.

The Court of Appeals found that, since the mother did not claim that she did *not* fill out the form—only that she could not remember having done so—and since the camp director testified that she *had* filled it out, there was no dispute that she had, in fact, filled it out, even though the actual signed form could not be produced. The Court of Appeals further found that there was no dispute as to the language contained in the form that had been signed by the injured boy's mother, because the camp director had testified that the 2005 version that had been signed, and the 2007 version the camp had produced, were the same, and the parents were unable to present any evidence that the 2005 version was actually different.

The parents also argued that the waiver clause protected the baseball camp only from liability for injuries suffered during activities directly related to baseball, and only when such injuries were suffered in the part of the camp's premises that was directly related to baseball. The Court of Appeals found that the clause was not limited to the camp's baseball-related activities or premises, but to "all activities encompassed" by the camp, including the lunch-break activities, and the part of the camp's premises where the lunch-break activities had occurred, and that the camp was thus insulated from liability for the injury.

Of interest is that in the *Moore* case, the Court of Appeals enforces the waiver agreement signed by the mother, without directly addressing the arguments that have led courts in other states (such as Michigan recently, and also Illinois) to hold that such parental releases of a *minor's* claim (as opposed to a claim by the *parents* for medical damages or loss of consortium) are not enforceable on public policy grounds.

Note: while some lower courts in Wisconsin have addressed the issue, the Wisconsin Supreme Court has not yet weighed in on whether waivers signed by parents on behalf of injured minors will be enforced in Wisconsin (at least 10 states have held such waivers will not be enforced). Surprisingly, there are approximately 20 other states where courts have not yet weighed in on this issue. If you rely on releases in Wisconsin, you should know that, given the different rules that courts in Wisconsin apply

when determining the enforceability of releases in Wisconsin, it is highly unlikely that a court in Wisconsin considering a case like *Moore* would have come to the same conclusion as the Court of Appeals in Minnesota.

If your organization or event involves minors, especially in Wisconsin, we suggest that you have your registration and waiver forms reviewed (or drafted) by a lawyer who is familiar with the “landmines” and opportunities that exist relating to such agreements.

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(The information and views discussed in this article are for general information purposes only. An organization that has specific questions as to the effect the above development may have for it should discuss such with its attorney, or with an attorney who is familiar with this area of the law and the organization’s specific operations or concerns.)

About Pendleton: Alexander “Sandie” Pendleton is a shareholder with the Milwaukee law firm of Pendleton Legal, S.C. Sandie has over twenty years of experience counseling clients involved in sports and recreational activities, including power sports activities, and is a frequent speaker and writer on recreational liability issues.

About Pendleton Legal, S.C.: At Pendleton Legal, S.C., we continue to believe the right to the “Pursuit of Happiness” is a right worth preserving. Our S/F/R Team (Sports, Fitness & Recreation Team) guides and fights for businesses and organizations that provide recreational opportunities and products, so that our clients are not overwhelmed by liability that might otherwise threaten their continued success (or even existence). Preserving the right is often not an easy or simple task, but we know this mission is an important one to our clients, and to the future of a free society. In addition to our S/F/R services, we provide legal expertise across the numerous areas of law encountered by businesses and organizations in the normal course of their day-to-day operations and growth. If you would like to explore whether we can help your organization achieve its mission, contact us.