

IN THE SUPREME COURT OF THE STATE OF FLORIDA

DEAN DYESS,

Petitioner,

CASE NO.: SC07-1741

LT Case No.: 4D06-1486

-vs-

**JORDAN FIELDS, as Personal
Representative of the Estate of
CHRISTOPHER JONES,**

Respondent.

**BRIEF OF AMICUS CURIAE,
THE AMERICAN MOTORCYCLIST ASSOCIATION
SUPPORTING PETITIONER, DEAN DYESS**

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**BRIEF OF AMICUS CURIAE
THE AMERICAN MOTORCYCLIST ASSOCIATION**

SUMMARY OF THE ARGUMENT

Courts have long recognized the due process rights of parents to raise their children as they choose. The United States Supreme Court has recognized this fundamental right of personal choice under the Due Process Clause of the United States Constitution. See *Meyer v. Nebraska* (1923), 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042; *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599. The right of parents to sign an enforceable exculpatory agreement waiving potential future claims in order to allow their children to participate in their chosen recreational or sporting activities falls within this parental right long recognized by our country's judicial system.

Further, the enforcement of such exculpatory agreements will serve the public policy interests of the State of Florida by providing its citizens with greater choice in the types of recreational and sporting activities that will be available to them locally; recreational and sporting activities that also provide measurable economic benefits to other citizens of Florida who provide services and supplies that support participation in such activities.

INTEREST OF THE AMA

The American Motorcycle Association d/b/a the American Motorcyclist Association (the “AMA”), founded in 1924, is an Ohio not for profit membership corporation located in Pickerington, Ohio, a suburb of Columbus, Ohio. Nationally, the AMA has over 290,000 members; approximately 10,750 of whom reside in Florida. The AMA has been recognized by the Internal Revenue Service as a Section 501(c)(4) tax-exempt organization.

In its more than eighty years of existence, the AMA has been the leading advocate of motorcyclists’ rights within the United States. Its mission is to protect the rights of its members (many of whom are children)¹, as well as to promote the availability of their riding and racing opportunities.

The AMA is also the largest motorcycle sport sanctioning body in the world, sanctioning over 4000 amateur competition and recreational riding events within the United States on an annual basis.² In 2007, Florida hosted ninety (90) AMA sanctioned amateur events including one of its largest and

¹ For purposes of this brief, the terms “child” or “children” shall mean that individual or those individuals who have not yet reached the age of majority in their respective state of residence.

² The AMA also sanctions professional motorcycle competition including such prestigious events as the Daytona 200 Road Race, the Daytona Supercross and the Daytona Flat Track motorcycle races held annually in Daytona Beach, Florida in March.

most prestigious amateur motocross events, the Florida Winter National Olympics (the “Winter Olympics”). The Winter Olympics is held in Gainesville, Florida each year during Thanksgiving week. In November of 2007, more than thirty-three hundred (3300) amateur racers and their families came from both within and without the United States to compete in the 36th annual Winter Olympics. This attendance represented a ten per cent growth in participation over the 2006 Winter Olympics.

All AMA members who choose to participate in AMA sanctioned recreational or competition riding events are required to sign a release, waiver of liability, and assumption of risk agreement (an “Exculpatory Agreement”) for each event in which they choose to participate. AMA members who are minors must have the Exculpatory Agreement signed by their parents or legal guardians and notarized. The AMA’s general liability insurance program for itself and its sanctioned organizers is predicated upon the Exculpatory Agreement system. Without such insurance, neither the AMA nor its sanctioned event organizers could provide both children and adults with the opportunity to participate in organized motorcycle recreation and competition riding activities.

AMA members as young as 4 years of age may participate in AMA sanctioned competition or recreational riding events against other members

of their same age on equipment (i.e., minibikes) that are appropriate for their age and ability. AMA members who reach the age of 16 may be granted a professional license to pursue a career in AMA sanctioned professional motorcycle competition. Professional racers are also required to sign an annual Exculpatory Agreement. If the professional racer is a minor, the Exculpatory Agreement also requires the notarized signature of that rider's parents or legal guardians.

Professional motorcycle racers typically have careers that start and end at younger ages than those of most other professional athletes. For example, Ryan Villopoto, currently nineteen (19) years of age³, won both the 2006 and 2007 AMA Motocross Lites National Championship, a twelve race series throughout the United States that constitutes the AMA's national professional motocross championship. Mr. Villopoto won the 2006 championship within one month of having turned eighteen years of age. This AMA championship is recognized on a worldwide basis as the AMA and the United States are recognized as having some of the finest riders in the world compete in this championship series.

Mr. Villopoto won the championships on a factory Kawasaki supported race team, a position that he obtained, in large part, due to his

³ Mr. Villopoto's date of birth is August 13, 1988.

achievements in AMA sanctioned amateur motocross competition events while he was a minor. As a member of a factory supported team, Mr. Villopoto has reached the pinnacle of his profession and has earned a substantial amount of money in salary, endorsements and purse money. Had Mr. Villopoto, and many others like him, not had the opportunity and benefit of competing in AMA sanctioned amateur racing and recreational riding activities as a minor, he would not have had the opportunity to participate and succeed in his chosen sport on a professional level.

ARGUMENT

I. PARENTS RECOGNIZED LEGAL AUTHORITY IN RAISING THEIR CHILDREN MANDATE THAT THEY SHOULD BE ALLOWED TO WAIVE THEIR CHILDREN'S RIGHT TO SUE IN CONSIDERATION OF THEIR BEING ABLE TO PARTICIPATE IN VOLUNTARY RECREATIONAL ACTIVITY

Courts have been reluctant to assert authority over decisions that fall within the purview of parental authority in raising their children. For example, the Ohio Supreme Court, in *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St. 3d 367, 696 N.E.2d 201, 207 (Ohio 1998), held that parents have the authority to bind their minor children to Exculpatory Agreements related to injuries suffered in nonprofit sports activities where the cause of action sounds in negligence. In so doing, the Ohio Supreme Court determined that:

... the right of a parent to raise his or her child is a natural right subject to the protections of due process. Additionally, parents have a fundamental liberty interest in the care, custody, and management of their offspring. Further, the existence of a fundamental, privacy-oriented right of personal choice in family matters has been recognized under the Due Process Clause by the United States Supreme Court. See *Meyer v. Nebraska* (1923), 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042; *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599.

Based upon these protections, [*the Court*] believes that many decisions made by parents “fall within the penumbra of parental authority, *e.g.*, the school that the child will attend, the religion that the child will practice, the medical care that the child will receive, and the manner in which the child will be disciplined.” ...[citations omitted]. ***Thus, [the Court] believes that invalidating the release as to the minor's claim is inconsistent with conferring other powers on parents to make important life choices for their children.*** (emphasis supplied).

Id. at pp. 372-373.

Viewing the rights of parents *vis-à-vis* their children in the context of a parents' determination to sign an Exculpatory Agreement releasing a potential future claim prior to their child participating in a recreational athletic activity, as opposed to an existing claim where damages already existed, the Court noted that the parents were making an entirely voluntary decision that was without financial motivation in the belief that their child would be allowed to participate in an activity that would be fun or

educational. More specifically, the Court reasoned that in such circumstances the parents would be free of any of the emotional trauma or financial pressures that would undoubtedly exist if the parents were considering the release of an existing claim. Thus, parents signing the release of a potential future claim are better able to assess the possible consequences of waiving the right to sue. *Id.* Consequently, such a release should be binding as it was made knowingly, voluntarily and without any intrinsic or extrinsic coercive influences.

II. PUBLIC POLICY CONSIDERATIONS SUPPORT THE ENFORCEMENT OF EXCULPATORY AGREEMENTS EXECUTED BY PARENTS ON BEHALF OF THEIR CHILDREN

In the absence of enforceable Exculpatory Agreements in which parents voluntarily waive their own rights and those of their children to sue to recover for injuries sustained during voluntary recreational activities, and the concomitant lack of liability insurance when Exculpatory Agreements are not enforceable, children will have far fewer recreational activities in which to participate because not for profit sports sanctioning organizations like the AMA will stop organizing such activities. The exposure to liability inherently involved in organizing such activities, and the concomitant litigation expenses related thereto, will make it economically untenable for

such organized events to continue to take place. Enforceable Exculpatory Agreements, however, allow the not for profit sanctioning organizations to obtain the liability insurance upon which their risk management programs are predicated, thus allowing the recreational opportunities to continue to be available to children and their parents.

Every year the AMA provides its more than 290,000 members, many of whom are children, with the opportunity to participate in over 4000 amateur competition and recreational riding events throughout the United States. Approximately ninety of those events, including the prestigious Thanksgiving week Winter Olympics, are held in Florida on an annual basis. These events provide families with the opportunity to spend a weekend or more together enjoying an activity in which they choose to participate. More importantly, in today's increasingly sedentary society, it provides children and their families with a physically challenging outdoor activity that helps to develop the participants' physical conditioning, coordination, strength and good sportsmanship.

Due to the large number of people who participate in AMA events, economic opportunities are created for motorcycle dealers, mechanics, aftermarket and parts supply companies and related businesses at both the national and local levels. Even more economic benefits are created for the

local travel related industries that support the areas close to the AMA events (e.g., hotels and motels, restaurants, etc.). Similar national and local economic opportunities are also created by other recreational sports activities in which children participate such as soccer, gymnastics, baseball, basketball, football, skiing, bicycling, scuba diving and the myriad of other recreational activities that children, with the support of their families, pursue today.

Almost every recreational activity in which children and adults choose to participate entails some risk.⁴ Consequently, for these recreational activities to continue to exist in today's litigious society, the exculpatory agreement at issue in this matter must be enforced such that parents may exercise their recognized legal right to raise their children, a right that includes, *inter alia*, the right to choose in which recreational activities their children are allowed to participate. Otherwise, the numerous positive personal and economic benefits associated with such recreational activities will be lost to Florida and its residents.

⁴ Except perhaps for "Nerf" Tiddlywinks. See King, Exculpatory Agreements for Volunteers in Youth Activities-The Alternative to "Nerf" Tiddlywinks (1992), 53 Ohio St.L.J. 683.

CONCLUSION

For all of the reasons set forth above, parents should be allowed to exercise their recognized legal authority to choose how to raise their minor children, including the authority to sign enforceable Exculpatory Agreements on behalf of such children.

Dated this 4th day of February, 2008.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that, pursuant to the Florida Rules of Appellate Procedure, this Brief complies with the font requirements.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail to Guy Bennett Rubin, Esquire and Laurence C. Huttman, Esquire, Rubin & Rubin, P.O. Box 395, Stuart, Florida 34995, William Wallace, Esquire, 115 NW 11 Avenue, Okeechobee, Florida 34972, Alan C. Espy, Esquire, 3300 PGA Boulevard, Palm Beach Gardens, Florida 33410 and to Bard D. Rockenbach, Burlington & Rockenbach, P.A., 2001 Professional Building/Suite 410 2001, Palm Beach Lakes Blvd., West Palm Beach, Florida 33409 this 4th day of February, 2008.

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