IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEAN D. PATRICK, in her own right and on behalf of STEVEN A. ROSENBERG, a minor,	**:**	**CIVIL ACTION**
Plaintiff,	**:**	
	:	
v.	**:**	**NO. 04-5934**
	:	
GREAT VALLEY SCHOOL DISTRICT, et al.,	**:**	
Defendants.	**:**	

M E M O R A N D U M

STENGEL, J. **May 31, 2006**

Jean D. Patrick ("Patrick") brings this action under 42 U.S.C. § 1983 both in her individual capacity and as the guardian of Steven A. Rosenberg ("Rosenberg") after he was injured during a junior high wrestling practice. Patrick is suing: (1) The Great Valley School District; (2) Owen Brown, as an employee and/or agent of the School District, and Head Coach of the Great Valley Middle School's wrestling team ("Coach Brown"); (3) Leonard Levi, as an employee and/or agent of the School District, and Assistant Coach of the Great Valley Middle School wrestling team ("Levi"); (4) Chris Trickett, as an employee and/or agent of the School District, and Assistant Coach of the Great Valley wrestling team ("Trickett"); and (5) John McDowell, as an employee and/or agent of the School District, and Athletic Director for the Great Valley Middle School ("McDowell"). The defendants filed for summary judgment claiming Patrick cannot

bring a § 1983 cause of action in her individual capacity because she lacks standing in this case, and Steven A. Rosenberg's claim lacks merit.

I. BACKGROUND

Steven A. Rosenberg was in the eighth grade in 2002 and decided to join the Great Valley Junior High Wrestling team. Wrestling practice began in early December of 2002. At that time, Rosenberg weighed approximately 152 pounds and was qualified to wrestle in the 155 pound class. Although large for his age, Steven was not the largest wrestler on the Great Valley team; a teammate referred to as CP[1] weighed approximately 240 pounds.

On December 27, 2002, towards the end of a holiday-break practice session, Coach Brown paired Rosenberg and CP to practice against each other. While wrestling, Rosenberg became entangled with CP and the two violently collapsed to the padded floor. Rosenberg screamed and was immediately aided by assistant coaches Levi and Trickett. Steven had shattered his right tibia and growth plate.[2]

Patrick now avers that the defendants deprived Rosenberg of his Fourteenth Amendment liberty interest in his bodily integrity by having him wrestle a significantly heavier opponent. The defendants move for summary judgment, arguing that (1) Patrick's claims against the individual defendants are really official capacity claims, and (2) Patrick has failed to present evidence of a custom, policy, or practice promulgated by

[1]CP was fourteen years old at the time of the accident, and was not named in the complaint.

[2]At the time Steven's injury occurred, Patrick was waiting in her car for the practice to end. Patrick then drove Steven to the hospital after two of the coaches carried him to the car.

the School District that allows for a constitutional violation. In the alternative, the defendants allege that Rosenberg's injury was not caused by the weight differential between the two wrestlers, and could have easily occurred had a wrestler of Rosenberg's own weight fallen on the ankle.

II. STANDARD of REVIEW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

In this case, the defendants bear the initial responsibility of informing the court of the basis for their motions and identifying those portions of the record that they believe demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). While Patrick bears the burden of proof on a particular issue at trial, the defendants' initial Celotex burden can be met simply by demonstrating that there is an absence of evidence to support Patrick's case. Id. at 325. After the defendants have met their initial burden, Patrick's response, by affidavits or otherwise as provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. Fed. R.

Civ. P. 56(e). That is, summary judgment is appropriate if Patrick fails to rebut the defendants' assertions by making a factual showing sufficient to establish the existence of an element essential to her case, and on which she will bear the burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. at 322. Under Rule 56, the court must view the evidence presented on the motion in the light most favorable to Patrick. Anderson v. Liberty Lobby, Inc., 477 U.S. at 255. If Patrick has exceeded the mere scintilla of evidence threshold and has offered a genuine issue of material fact, then the court cannot credit the defendants' version of events against Patrick, even if the quantity of the defendants' evidence far outweighs that of Patrick's. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. DISCUSSION

Patrick claims, as both the guardian of Steven Rosenberg and in her individual capacity, that all of the individually named defendants are personally liable under the state created danger theory, and that the school district is liable for creating a custom or policy of violating one's constitutional rights.

A. Jean Patrick's Claims Brought In Her Individual Capacity

"In order to establish a section 1983 claim, a plaintiff 'must demonstrate a violation of a right secured by the Constitution and the laws of the United States [and] that the alleged deprivation was committed by a person acting under color of state law.'" Kneipp v. Tedder, 95 F.3d 1199, 1204 (3d Cir. 1996) (quoting Mark v. Borough of

Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995), *cert. denied*, 516 U.S. 858, 133 L. Ed. 2d 107, 116 S. Ct. 165 (1995)). In this case, Jean Patrick has not alleged a violation of her own constitutional rights. Furthermore, no evidence has been presented that such a violation of Ms. Patrick's rights ever occurred. I will therefore dismiss all claims brought by Ms. Patrick in her individual capacity.[3]

B. Patrick's Claims Brought on Behalf of Steven Rosenberg and Against Defendants Levi, Trickett and McDowell In Their Personal Capacities

Patrick seeks to hold the defendant coaches and athletic director personally liable for actions taken during the December 27, 2002 practice.[4]

> Personal-capacity suits . . . seek to impose individual liability upon a government officer for actions taken under color of state law. Thus, "on the merits, to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." [Kentucky v. Graham, 473 U.S. 159, 166 (1985).] While the plaintiff in a personal-capacity suit need not establish a connection to governmental "policy or custom," officials sued in their personal capacities, unlike those sued in their official capacities, may assert personal immunity defenses such as objectively reasonable reliance on existing law. Id., at 166-167.

Hafer v. Melo, 502 U.S. 21, 25 (1991).

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[3]Although Ms. Patrick's claims filed in her own right could have been dismissed through a 12(b)(6) motion, and despite her arguments to contrary, the claim is still ripe for dismissal through this summary judgment motion.

[4]Although the defendants argue that Patrick's complaint is unclear whether it seeks to hold the defendants liable in their personal or official capacity given that all damages are sought from the defendants collectively, I find that the complaint and response to the motion for summary judgment are consistent in claiming the individual defendants are personally liable.

With the completion of discovery, the defendants' roles and involvement in the wrestling practices have become clear. To begin, coaches Levi and Trickett were both assistants to Coach Brown, and were not responsible for the pairing of wrestlers. There is no dispute that Coach Brown paired Rosenberg and CP close to the end of the team's December 27, 2002 practice session. Neither Levi nor Trickett had any personal involvement in that decision. In order to establish individual liability under section 1983, the state actor must have been personally involved in the violation of civil rights. Rode v. Dellarciprete, 845 F. 2d 1195, 1207 (3d Cir. 1988); Williams v. Pa. State Police - Bureau of Liquor Control Enforcement, 144 F. Supp. 2d 382, 383-84 (E.D. Pa. 2001).

In this case, assistant coaches Levi and Trickett took no part in the pairing of wrestlers and had no authority to override Coach Brown's decisions. Similarly, McDowell was not present at the time the pairing decision occurred. Moreover, McDowell had no personal involvement in the practice in which Rosenberg hurt his ankle. As such, defendants McDowell, Levi, and Trickett may not be held individually liable for the deprivation of Rosenberg's constitutional rights. Although Patrick claims they are liable for not intervening to protect Rosenberg, Patrick has failed to pose a genuine issue of material fact regarding whether defendants Levi, Trickett, and McDowell were: (1) personally involved in the alleged violation of Rosenberg's rights; (2) able to override Coach Brown's decision; or (3) even aware of the pairing prior to the accident.

C. Patrick's Claims Brought on Behalf of Steven Rosenberg and Against the Remaining Individual Defendants in Their Personal Capacities

Patrick avers that all of the defendants are individually liable under the state created danger theory of liability adopted by the Third Circuit in Kneipp v. Tedder, 95 F.3d 1199 (3d Cir. 1996). Liability under the state created danger theory attaches if the following four elements are satisfied: (1) the harm ultimately caused was foreseeable and direct; (2) the state actor acted in wilful disregard for the safety of the plaintiff; (3) there existed some special relationship between the state and the plaintiff; and (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the harm to occur. Id. at 1208 (citing Mark v. Borough of Hatboro, 51 F.3d 1137, 1152 (3d Cir. 1995)). See also Gremo v. Karlin, 363 F. Supp. 2d 771 (E.D. Pa. 2005) (declining to dismiss federal claims against the municipal defendants for ignoring the risk to student safety posed by a gang of around 15 youths who would routinely target innocent students, throw a sweatshirt over the victim's head and beat them in a certain area of the school building); Sciotto v. Marple Newton Sch. Dist., 81 F. Supp. 2d 559 (E.D. Pa. 1999) (denying school district's summary judgment motion as to the wrestling coaches where a student was paralyzed after wrestling with an alumni, collegiate wrestler, who was invited back as part of the wrestling program's tradition).

1. Was the Harm Foreseeable and Direct?

The plaintiff argues the defendants should have been aware that pairing Rosenberg and CP together was an accident waiting to happen. To support this allegation, Patrick

has produced a liability report from former Olympic wrestler Ken Chertow saying that wrestlers should be paired up with partners of similar size, and the practice of having two inexperienced and grossly different sized wrestlers, like Rosenberg and CP, compete with one another was improper. The plaintiff also cites the Pennsylvania Interscholastic Athletic Association's ("PIAA") rules regarding wrestling partners.

Although the rules forbid wrestlers like Rosenberg and CP from ever competing against each other at meets, the rules do not forbid heavier wrestlers from practicing with lighter wrestlers. Given that Patrick has produced some evidence tending to show that the pairing of Rosenberg and CP was improper, and that injuries to the wrestlers may result from such a pairing, I find Patrick has met her Celotex burden by posing a genuine issue of material fact that the injury was a foreseeable result of the pairing.

2. Was the Defendants' Conduct in Wilful Disregard of Rosenberg's Constitutional Rights?

The conduct of Levi, Trickett, and McDowell does not rise to the level of awareness required to hold an individual liable in a 1983 cause of action. Coach Brown's conduct presents a separate issue.

In this case, Coach Brown paired Rosenberg and CP to either drill or "live wrestle" at the end of practice. For purposes of this summary judgment, I will assume that Coach Brown paired the two to "live wrestle."[5] The question becomes whether Patrick has

[5]It is disputed whether the two were paired to practice take downs or "live wrestle", or wrestle as if you are competing in a match.

posed an issue of material fact regarding whether Coach Brown's conduct was in wilful disregard of Rosenberg's constitutional rights.

The Third Circuit has addressed the "wilful disregard" standard. In a recent § 1983 state created danger case where the plaintiff was shot after a deranged woman entered through a normally locked school door that was left open by construction workers, the court stated:

> "The environment created by the state actors must be dangerous; they must know it to be dangerous; and . . . [they] must have been at least deliberately indifferent." Johnson v. Dallas Indep. Sch. Dist., 38 F.3d 198, 201 (5th Cir. 1994), cert. denied, 514 U.S. 1017, 131 L. Ed. 2d 218, 115 S. Ct. 1361 (1995). See also Leffall v. Dallas Indep. Sch. Dist., 28 F.3d 521, 531 (5th Cir. 1994) ("It is not enough to show that the state increased the danger of harm from third persons; the [§] 1983 plaintiff must also show that the state acted with the requisite degree of culpability in failing to protect the plaintiff."). In other words, the state's actions must evince a willingness to ignore a foreseeable danger or risk. Of course, the notion of deliberate indifference contemplates a danger that must at least be foreseeable. In Kneipp, we focused on the police officers' decision to send Samantha Kneipp home alone, despite their awareness of her intoxicated and incapacitated state, as evidence of their deliberate indifference. In Cornelius, the court held the defendants could be liable based on their knowledge of the risk created by the presence of the community work squad inmates. 880 F.2d at 358. These factors are not present here. Defendants could not have been aware of the danger posed by Stovall, nor
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> could they have foreseen it. As a matter of law they cannot have acted with willful disregard for Diane Morse's safety. . .
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> The Restatement (Second) on Torts § 500 reiterates this standard:

> The actor's conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.
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> The Restatement underscores that the test of willful indifference does not require that the state actor "recognize [his conduct] as being extremely dangerous . . . [but that] he knows or has reason to know of circumstances which would bring home to the realization of the ordinary, reasonable man the highly dangerous character of his conduct." Id., comment c. The element of willfulness, however, is not entirely disregarded, and thus "conduct cannot be in reckless disregard of the safety of others unless the act or omission is itself intended." Id., comment b.

Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 910- 912 (3d Cir. 1997).

Although Coach Brown may have known it was dangerous to pair Rosenberg and CP together to live wrestle, the evidence does not show that he was deliberately indifferent to that potential danger. Some risk of injury is inherent in all junior high wrestling.

In this case, Rosenberg and CP were the same age, and were similarly inexperienced. They were paired together at the end of a holiday-break practice in which not all of the team's members were present. Unlike Sciotto, in which the PIAA strictly forbid collegiate wrestlers from live wrestling with high school wrestlers, there is no rule or mandate prohibiting wrestlers of different weights from live wrestling with one another

during team practices. Further, whereas in Sciotto the defendant coaches callously continued to have the collegiate wrestlers live wrestle the high schoolers despite numerous complaints and prior injuries, there is no evidence in this case that Coach Brown so acted in the face of such complaints or injuries.

Viewing all of the evidence in the light most favorable to Patrick, Coach Brown made a conscious decision that he likely knew was not generally accepted, but also not explicitly prohibited that may have resulted in Rosenberg's injuries. It is uncontested that that decision to pair Rosenberg with CP at the end of a sparsely-attended practice was only made to afford all of the team's participants an opportunity to practice. Wilful or deliberate indifference involves a level of callousness to a known and serious risk. See Sciotto 81 F. Supp. 2d at 556. In this case, the evidence presented fails to pose a genuine issue of material fact regarding whether Coach Brown's conduct rose to that requisite level of wilful indifference to Rosenberg's constitutional rights.

Because I find that Patrick has failed to pose a genuine issue of material fact regarding whether any of the individual defendants were wilfully indifferent to violating Rosenberg's constitutional rights, it is not necessary to analyze the remaining two prongs.

D. Patrick's Claims Regarding the School District's Unconstitutional Policy or Custom

Patrick avers that Coach Brown has established a custom of pairing wrestlers, for either live wrestling or for drills, of substantially different weights. The facts of the case show that Coach Brown paired Rosenberg with CP at least three times prior to the

December 27, 2002 practice. Although Patrick contends Coach Brown's actions establish a "custom" of violating one's constitutional rights, this evidence fails to rise to the Monell standard.

A public school district is a municipal entity. See Jett v. Dallas Independent Sch. Dist., 491 U.S. 701 (1989); Lester v. Gilhool, 916 F.2d 865, 870-71 (3d Cir. 1990). In Monell, the Supreme Court held that a municipal entity can only be held liable under § 1983 if (1) one of its employees acted pursuant to a formal governmental policy, (2) when the acting individual had policy making authority, or (3) if an official with policy making authority has ratified the unconstitutional actions. Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978); see also City of St. Louis v. Praprotnik, 485 U.S. 112, 127 (1988).

Accepting Patrick's evidence as true, the unconstitutional pairing of wrestlers involved two students, during a few practices held by one athletic team, at one school located within the Great Valley School District. Unlike Sciotto where the tradition of inviting alumni wrestlers back to practice with the High School students was long standing and openly recognized, no evidence has been presented that a similar tradition of having heavier wrestlers compete and live wrestle lighter ones exits in the Great Valley School district. The defendants submit that the School Board or the Superintendent of Schools are the officials having final discretion to make policy decisions. Patrick neither denies that claim, nor alleges that the board or superintendent even acknowledged, let own acquiesced to, Coach Brown's wrestling practice procedures. Patrick has failed to

pose any genuine issue of material fact tending to establish a municipal custom or policy that could hold the School District liable in this case.

IV. CONCLUSION

Patrick has failed to pose any issues of material fact regarding the individual defendants Levi, Trickett, or McDowell's personal liability for Rosenberg's injuries. Patrick has also failed to pose an issue of material fact regarding whether Coach Brown's conduct rose to the requisite level of wilful disregard of Rosenberg's constitutional rights. Patrick has not alleged sufficient facts to establish a policy or custom by the school district of violating one's constitutional rights. An appropriate order granting defendants' motion for summary judgment follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JEAN D. PATRICK, in her own right and on behalf of STEVEN A. ROSENBERG, a minor,	:	**CIVIL ACTION**
Plaintiff,	:	
	:	
v.	:	**NO. 04-5934**
	:	
GREAT VALLEY SCHOOL DISTRICT, et al.,	:	
Defendants.	:	

ORDER

AND NOW, this 31st day of May, 2006, upon careful consideration of the defendants' Motion for Summary Judgment (Document # 10), it is hereby **ORDERED** that the Motion is **GRANTED**. Plaintiff's case is dismissed.

The Clerk of the Court shall mark this case as closed for all purposes.

BY THE COURT:

s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.