State of New York
Court of Appeals

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To be argued Wednesday, March 12, 2025, in Binghamton

No. 33 Katleski v Cazenovia Golf Club

While playing in a golf tournament at the Cazenovia Golf Club in June 2020, David Katleski was seriously injured when he was struck in the left eye by a ball. Katleski was riding in a cart on the seventh fairway when the accident occurred and the ball that struck him had been shanked by a player at "tee A" on the adjacent third fairway. Katleski filed this personal injury action against the Golf Club, alleging that it negligently operated a dangerously designed golf course that increased the risk of being struck by a ball. The Club moved for summary judgment dismissing the suit, arguing that Katleski, by engaging in the sport, had voluntarily assumed the risk of being struck by a mis-hit ball.

Supreme Court denied the Club's motion. It found "Katleski assumed the risk" of being hit by a ball, which is "a foreseeable injury in the sport of golf." But it said his expert evidence – that the proximity of the third and seventh holes, the placement of tee A where it was obscured by a lightening shed, and the lack of barriers created unusual risks -- raised a triable issue of fact "as to whether [the Club] created a danger over and above the inherent dangers of the sport."

The Appellate Division, Third Department reversed and dismissed the complaint on a 3-2 vote. The majority said "the determinative fact is that plaintiff, a highly experienced golfer, knew of the risks involved in playing in the tournament and made an informed decision to keep doing so despite the lack of protective barriers and his asserted concern during the first round about the tee A location at hole three. The risk posed by playing under such suboptimal conditions – i.e., getting hit by a shanked shot – is inherent to the sport of golf and was readily apparent to plaintiff, who acknowledged his appreciation of the dangers involved.... Accordingly, plaintiff assumed the risk of injury, as a matter of law, when he continued to play despite his awareness and appreciation of the danger involved...."

The dissenters argued the suit should not be dismissed because, under this Court's precedents, "if the risks inherent in a sport are either concealed or unreasonably enhanced by the defendant, then the case is not barred by the primary assumption of risk doctrine.... [A] question of fact has been presented here as to whether defendant unreasonably enhanced the risks inherent in the game of golf." They said, "The majority goes astray when it decides that, even if defendant did unreasonably increase the risks inherent in the game of golf, plaintiff's claim is barred by the primary assumption of risk doctrine because plaintiff was aware of the increased risks.... [T]he majority changes the 'or' in the rule ... to an 'and,' requiring plaintiff to establish both that defendant unreasonably enhanced the risks inherent in golf and that the risks were unknown to him."

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For respondent Cazenovia Golf Club: W. Bradley Hunt, Syracuse (315) 474-7571

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No. 34 Maharaj v City of New York

Parnand Maharaj, a player in the Queens Cricket League, brought this personal injury action against New York City to recover damages for a broken leg he allegedly suffered while playing cricket on the asphalt tennis courts of a Brooklyn park in August 2015. He claimed that as he ran to catch a ball, he stumbled and fell when he stepped in a hole that was two to four inches deep and fractured his lower leg. He said the hole was concealed in a large crack, about seven feet long and three to eight inches wide, in the playing surface. The City moved for summary judgment dismissing the suit on the ground that Maharaj had assumed the risk of his injury by playing in the game. Supreme Court granted the motion to dismiss without opinion.

The Appellate Division, Second Department affirmed, with two justices saying the City's submissions, including Maharaj's deposition "and photographs allegedly depicting the accident site, reveal that the crack in the surface of the subject tennis courts, which allegedly caused the plaintiff's accident, was clearly visible.... In opposition, the plaintiff failed to raise a triable issue of fact as to whether the open and obvious crack concealed the depth and extent of the alleged hole...." They said the suit was properly dismissed based on the assumption of risk doctrine.

Two justices concurred in result under constraint of Second Department precedent, which "compels dismissal of the complaint," but they argued that "Court of Appeals precedent dictates a contrary result." They said, "The doctrine of primary assumption of risk was never intended to allow a landowner to permit a recreational facility to fall into a neglectful state of disrepair, completely relieving it of any duty to sports participants.... In the case at bar, the outdoor tennis court contained cracks that were long-persisting and readily apparent." They said "'the doctrine of assumption of risk does not exculpate a landowner from liability for ordinary negligence in maintaining a premises'," citing Sykes v County of Erie (94 NY2d 912).... "The cracked condition of the tennis court was not a risk inherent in the sport of tennis or cricket. 'Rather, it may qualify as and constitute an allegedly negligent condition occurring in the ordinary course of any property's maintenance[,] ... implicat[ing] typical comparative negligence principles' (Morgan v State of New York [90 NY2d 471])."

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To be argued Wednesday, March 12, 2025, in Binghamton

No. 29 Flanders v Goodfellow

Rebecca Flanders was a rural mail carrier for the U.S. Postal Service in December 2018, when she was attacked by a dog owned by Stephen and Michelle Goodfellow as she was delivering packages to their house in the Town of Manlius, Onondaga County. As Flanders approached the porch, Stephen Goodfellow opened the door with a small dog standing beside him. A much larger dog named Murdock, weighing 70 to 75 pounds, then lunged through the doorway and bit her twice on the shoulder, remaining latched on until Goodfellow pulled the dog away. Flanders filed this action against the Goodfellows to recover for her injuries, alleging they were strictly liable because they knew or should have known of Murdock's vicious propensities. She also alleged they were negligent in failing to restrain the dog or warn of the risk he posed.

The Goodfellows moved for summary judgment dismissing the suit, saying they had no reason to know Murdock had vicious propensities and that New York law does not allow negligence claims for injuries caused by domestic animals. They cited Flanders' deposition testimony that the Postal Service system for warning about dangerous dogs contained no warning about Murdock. They said they had received no complaints about Murdock nor seen him growl, bare his teeth, or snap at anyone prior to the incident with Flanders. Flanders submitted affidavits from two fellow mail carriers, one of whom said Murdock was "the most aggressive dog [he had] ever encountered" and would "actually bite the window, as though [he] was trying to bite you." He said Murdock "barked, snarled, and growled" and, "if the dog's owners were home..., they knew or should have known the dog was aggressive and dangerous before the attack." The other carrier testified similarly that Murdock was "different" than other dogs because he "appeared to be attempting to attack me through the glass.... The dog's behavior was extremely loud and created a huge ruckus such that anybody home would have known of it."

Supreme Court dismissed the suit, saying the evidence "established that Defendants had never known Murdock to exhibit aggressive behavior, nor had anyone ever advised them or complained to them about Murdock's behavior.... Further, the fact that the Defendant would open the door ... and not bar the dogs from exiting seems to demonstrate that he 'did not conceive of the possibility that the dog would attack.'" The court said Flanders failed to meet her burden of raising a material question of fact regarding the Goodfellows' prior knowledge of Murdock's propensities. Her fellow mail carriers described the dog "trying to attack them through the glass," but "neither of them reported this dangerous behavior to either the post office, or the defendant homeowners."

The Appellate Division, Fourth Department affirmed, saying the defendants demonstrated "that they neither knew nor had reason to know of the dog's allegedly vicious propensities ... and plaintiff failed to raise a triable issue of fact in opposition." It said the negligence claim was properly dismissed because dog bite cases "may proceed only under a theory of strict liability...."

Flanders argues that her evidence, particularly the affidavits of her fellow mail carriers, raise material question as to whether the defendants had actual or constructive notice of their dog's aggressive behavior. "Over a three-year period, Murdock tried to attack mailpersons outside the front door as they delivered packages. The dog snarled and growled as he tried to bite through the window" so loudly "'that anybody home would have known of it'.... Under these circumstances, a reasonable factfinder could conclude that Murdock's threatening and menacing behavior existed for such a period of time that a reasonably prudent person would have discovered it." She says the defendants' denial of prior knowledge "merely raises credibility questions" for a factfinder to resolve. She also argues the Court should allow negligence claims for injuries caused by domestic animals, overruling Bard v Jahnke (6 NY3d 592), and require the owners to "exercise reasonable care to prevent foreseeable injury."

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For respondent Goodfellows: Michael F. Perley, Buffalo (716) 849=8900

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No. 36 People v Kevin Cleveland

Two police officers were on patrol in Rochester in June 2016 when they saw a woman on a sidewalk throw a glass bottle at a sedan, shattering it against the side. The car stopped and the driver, Kevin Cleveland, stepped out and approached the woman, shouting at her with his fists clenched. The officers exited their vehicle and intervened, ordering Cleveland to stop. One of them later testified that Cleveland looked toward them, "began to back away, and then quickly turned and began digging in the front of his waistband and running" away. He left his car in the street with the driver's door open. As the officers chased him he discarded what appeared to be a small plastic bag. After detaining him they recovered the bag, which contained crack cocaine.

Cleveland moved to suppress the cocaine on the ground that the officers chased and detained him without a reasonable suspicion that he was about to commit a crime. Supreme Court denied his motion and a jury found him guilty of fourth degree criminal possession of a controlled substance and second degree aggravated unlicensed operation of a motor vehicle. He was sentenced to 4 ½ years in prison.

The Appellate Division, Fourth Department affirmed in a 4-1 decision, saying that early in the encounter, "it was reasonable for the officers to suspect that defendant was about to commit a crime because he approached the woman in an aggressive manner with clenched fists while yelling at her. The officers thus properly ordered defendant to stop and could have lawfully frisked him had he not run away. Because the stop was supported by reasonable suspicion, we conclude that the subsequent pursuit was also supported by reasonable suspicion, especially considering that, immediately following the stop, defendant turned his back to the officers, grabbed at his waistband, and then fled on foot, leaving his vehicle in the middle of the street with its driver's door open.... The officers' reasonable suspicion justifying the detention of defendant did not cease to exist when defendant turned and ran."

The dissenter said, "It was certainly reasonable for the officers to suspect that defendant was about to commit a crime as he approached the woman in an 'aggressive manner.' However, once officers directed defendant to stop and he stopped approaching the woman, the reasonable suspicion that defendant was about to commit a crime ceased to exist at that point. Although the majority concludes the reasonable suspicion that existed earlier continued after defendant turned and ran, the majority does not identify any specific circumstances indicative of criminal activity justifying that conclusion...."

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