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BOOGAARD V. NATIONAL HOCKEY LEAGUE

By: Logan P. Desmond[*] and Leeann M. Lower[**]

ABSTRACT

Former National Hockey League ("NHL") player Derek Boogaard passed away on May 13, 2011 of a drug overdose. On Boogaard's behalf, his parents brought action against the NHL, its Board of Governors, and league Commissioner Gary Bettman, alleging the NHL acted negligently by allowing Boogaard to become addicted to pain killers, breached their voluntarily undertaken duty to monitor his addiction, negligently failed to protect him from brain trauma, and breached their voluntarily undertaken duty to protect his health. In response, the NHL moved to dismiss the case, which was later converted to a motion for summary judgment. Stating preemption by Section 301(a) of the Labor Management Relations Act ("LMRA")[1] and a need to interpret the Collective Bargaining Agreement, the district court granted summary judgement in favor of the NHL.[2]

FACTS OF THE CASE

Players in the NHL are represented by the National Hockey League Players' Association ("NHLPA"). The NHLPA negotiated a Collective Bargaining Agreement ("CBA") with the league in 1996 and again in 2005. The 1996 CBA established a Substance Abuse and Behavioral Health ("SABH") Program that was made available to all players in the league, including Derek Boogaard (the "Plaintiff"). Plaintiff played in the NHL from 2005 to 2011 where his primary job was as an "enforcer." A player assuming this role commonly engages in fights with opposing players during games, a characteristic unique to the sport of hockey. These fights often left Plaintiff with various injuries which team staff subsequently treated with painkillers

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[1] Labor Management Relations (Taft-Harley) Act § 301(a), 29 U.S.C. § 185(a) (2012) provides: Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

[2] Boogaard v. Nat'l Hockey League, 126 F.Supp.3d 1010 (N.D. Ill. 2015).

and sleeping pills. Plaintiff eventually became addicted to opioids, a painkiller, and was placed into the SABH Program in 2009. He was subsequently admitted to a rehabilitation facility where he completed the treatment program and was released. Plaintiff then suffered a setback and was admitted to another rehab facility, Authentic Rehabilitation Center ("ARC"). While the therapists at ARC reported to the NHL that Plaintiff did not want to comply with his treatment program, the NHL allowed him to be temporarily released on two occasions. Upon his second release, Plaintiff took Percocet, a painkiller, and was found dead the next morning due to an accidental drug overdose. Posthumous tests revealed that Plaintiff suffered from Chronic Traumatic Encephalopathy ("CTE"), a degenerative brain disease, which most likely occurred from the injuries he sustained from fighting during his hockey career. The CTE caused Plaintiff's brain to deteriorate in areas that controlled behavior, inhibition, impulse control, judgment, and mood. After his death, Plaintiff's parents, on behalf of their son, filed a complaint against the NHL, its Board of Governors, and NHL Commissioner, Gary Bettman (the "Defendants").

COURT ANALYSIS

The complaint was initially filed at the Circuit Court of Cook County, Illinois. Defendants removed the suit to district court as they believed Plaintiff's allegations were preempted by LMRA Section 301. Removal to district court was upheld, as two of the claims were found to be completely preempted by Section 301, upon which Plaintiff filed an amended complaint. In the amended complaint, Plaintiff presented the following eight complaints: Counts I and II alleged negligence by Defendants for allowing Plaintiff to become addicted to opioids and sleeping pills; Counts III and IV claimed Defendants' breached their voluntarily undertaken duty to monitor Plaintiff's drug addiction while he was enrolled in the SABH Program; Counts V and VI alleged negligence by Defendants for breaching their duty to protect Plaintiff's health and protect him from brain injury; and Counts VII and VIII claimed Defendants violated their voluntarily undertaken duty to protect Plaintiff's health by not barring team doctors from injecting him with Toradol, an intramuscular analgesic that may make concussions more likely. Defendants subsequently moved to dismiss the case in its entirety, asserting that Plaintiff's amended complaint was fully preempted by Section 301 of the LMRA. This motion was converted into a request for summary judgement.

The main argument utilized by Defendants was that the LMRA preempted Plaintiff's claims. Section 301 of the LMRA preempts state law claims "founded directly on rights created by collective-bargaining agreements,

and also claims substantially dependent on analysis of a collective-bargaining agreement",[3] as well as those "masquerading as a state-law claim that nevertheless is deemed 'really' to be a claim under labor contract".[4] Therefore, courts must evaluate all claims based on their substance, for which Section 301 preempts any state law claim whose resolution would require interpretation of a CBA. A court has jurisdiction to read a CBA and use this material to justify a ruling only when there is no dispute as to the CBA's meaning.

Counts I and II stated Defendants owed Plaintiff a duty to keep him reasonably safe and to protect him from addiction. Defendants would owe this duty if a special relationship existed under the voluntary custodian-protectee classification. For this classification to exist, Defendants would need to be able to control Plaintiff's behavior and have power over their welfare.[5] Defendants disputed the amount of control they had over Plaintiff's welfare, claiming the CBA did not allow them to control medical treatments, control a player once they had entered rehabilitation under the SABH Program, or change rules to prevent fighting.

Counts III-VIII differed from Counts I and II as they discussed voluntarily assumed duties by Defendants. Specifically, Counts III and IV alleged Defendants voluntarily assumed the duty of monitoring Plaintiff's addiction within the terms of the SABH Program. Defendants claimed that once Plaintiff was checked into the rehabilitation clinic, they no longer bore this duty.

Counts V and VI alleged negligence by Defendants for failing to protect Plaintiff from brain injury and for breaching their duty to protect his health. Plaintiff noted that Defendants had taken steps to make the game safer, such as the establishment of rules banning tripping and high-sticking. However, Plaintiff claimed Defendants should have established a concussion protocol, to monitor players who had concussion-like symptoms, or banned fighting altogether. Conversely, the defendants argued the CBA gave them no power over the specific procedures team doctors used to diagnose concussions and prohibited them from changing the rules of play without first consulting the NHLPA.

Counts VII and VIII claimed the NHL violated their voluntarily undertaken duty to protect Boogaard's health by allowing team doctors to inject him

[3] Caterpillar Inc. v. Williams, 482 U.S. 386, 394 (1987).
[4] Crosby v. Cooper B-Line, 725 F.3d 795, 797 (7th Cir. 2013).
[5] *See* Donaldson v. Young Women's Christian Ass'n of Duluth, 539 N.W.2d 789, 792 (Minn. 1995).

with Toradol. Plaintiff looked to Illinois and Minnesota state tort law that imposed a duty to protect others from harm known as the voluntary undertaking doctrine[6]. Defendants argued the CBA barred them from interfering with medical decisions of players, thus there was no way they could have stopped a team doctor from injecting Plaintiff with Toradol and they had not breached a voluntarily assumed duty.

COURT DECISION

The district court granted summary judgement to Defendants on all counts (I-VIII) of Plaintiff's amended complaint. More specifically, Plaintiff's state law claims were found completely preempted by Section 301 of the LMRA. Regarding Counts I and II, the court would have needed to interpret the CBA to discover the extent of the duty Defendants owed Plaintiff to keep him reasonably safe and away from addiction. While Plaintiff cited similar cases as support that his claims were not preempted, those cases did not require the court to interpret the respective CBAs. Therefore, both counts were preempted by the LMRA. Similarly, counts III and IV were completely preempted by the LMRA, as determining if Defendants had voluntarily assumed the duty of monitoring Plaintiff's addiction would require an interpretation of the CBA. In regard to Counts V and VI, Defendant's interpretation of the CBA led them to believe they had no control over team medical staffs or changing the league rules to ban fighting. As an interpretation of the CBA would have been required to resolve these issues, Counts V and VI were completely preempted as well. Finally, Counts VII and VIII were also found preempted, as an interpretation of the CBA was required to determine if Defendants assumed the duty to protect Plaintiff's health. The district court permitted Plaintiff to file a second amended complaint in which the claims are not all completely preempted by Section 301 of the LMRA.

This particular case is unique as most CBA disagreements first go through an arbitration process rather than federal court. In fact, Article 17 of the 2005 NHL CBA[7] required all interpretation disputes to be decided through arbitration. However, Plaintiff argued throughout the case that Defendants had not presented any actual CBA interpretation disputes. The district court ruled that there was at least general disagreement on the CBA's meaning and, therefore, interpretation would be required. This follows precedent, as

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[6] *See* Walsh v. Pagra Air Taxi, 282 N.W.2d 567, 571 (Minn. 1979).

[7] COLLECTIVE BARGAINING AGREEMENT BETWEEN NAT'L HOCKEY LEAGUE & NAT'L HOCKEY LEAGUE PLAYERS' ASS'N art. 17 (July 22, 2005), *available at* http://www.letsgopens.com/NHL-2005-CBA.pdf.

Wisconsin Central, Ltd. v. Shannon found that only interpretative disagreement leads to preemption.[8]

[8] Wisconsin Central, Ltd. v. Shannon, 539 F.3d 751, 758-60 (7th Cir. 2008).