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Florida Supreme Court Denies School District Immunity Under the Cardiac Arrest Survival Act for Failure to Use or Attempt to Use an Available Automatic Defibrillator

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The Florida Supreme Court recently held that the Lee County School Board was not immune from civil liability under the Cardiac Arrest Survival Act¹ when it failed to deploy an available automated external defibrillator (“AED”) to assist a fifteen year old student athlete that collapsed during a sanctioned interscholastic athletic event.² In denying the district’s immunity, the court reinforced the notion that merely having an AED is insufficient and, had the district actually used the device, it would have been immune from suit arising from an adverse outcome.

In this case, a fifteen year old student athlete collapsed during an interscholastic soccer game. Bystanders and an AED-trained school district employee were on scene within minutes. Although the employee called for the district-owned AED located at the game facility, it was never brought onto the field to assist in reviving the student. First responders and Emergency Medical Services personnel arrived approximately ten minutes later, deployed their own AEDs and revived the student. However, due to the extensive oxygen deprivation, the student was left in a persistent vegetative state with no chance of recovery.

In reaching its decision, the court first evaluated the district’s duty to its student athletes. As a general principle, one does not have a duty to take affirmative action to protect or aid another unless a special relationship exists to create such a duty. When the special relationship exists, the law requires the party act with reasonable care toward the person in need of protection or aid. Florida courts have recognized a special relationship between schools and their students based upon the fact that a school functions at least partially in the place of parents during the school day. This special duty requires a school to reasonably supervise its students during school or school-related activities. This duty to supervise creates specific duties with regard to student athletes: (1) schools must adequately instruct student athletes; (2) schools must provide proper equipment; (3) schools must reasonably match participants; (4) schools must adequately supervise athletic events; and (5) schools must take appropriate measures after a student is injured to prevent aggravation of the injury. Additionally, the Florida Legislature has specifically mandated that high schools that participate in interscholastic athletics acquire an AED and train appropriate personnel in its use.

¹ Section 768.1325, Florida Statutes.

² *Limonis v. School District of Lee County*, 161 So. 3d 384 (Fla. 2015)

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After determining that the district had a duty to the student athlete, the Court turned to the immunity provisions of Florida's Cardiac Arrest Survival Act. The Act provides that, subject to some limited exceptions, one who "uses or attempts to use" an AED on a victim of a perceived medical emergency is immune from civil liability for any harm resulting from the use or attempted use of such device, unless the person upon whom the AED is used raises an objection to its use. The immunity for the use or attempted use of an AED extends to anyone who acquired the device and made it available for use. Although the trial court and Second District Court of Appeal held that the school district was immune from liability, the Supreme Court reversed and rejected the immunity claim. In reaching its decision, the Court focused on the plain language of the statute which required the "use or attempted use" of the AED as a condition of immunity. Merely having it but not using or attempting to use it did not fall within the clearly articulated statutory immunity provisions, and therefore, the district was not immune. The Court reasoned that the immunity exists to encourage people to utilize an AED in perceived medical emergencies without fear of civil liability. "To extend the shield of immunity to those who make no attempt to use an AED would defeat the intended purpose of the statute and discourage the use of AEDs in emergency situations." The case was remanded for trial.

This case is important because it emphasizes not only the need to maintain an AED and provide training when required by law, but it also requires school districts to use or attempt to use the device to resuscitate student athletes, for only then will the immunity attach. Stated another way, school districts should feel free to utilize an AED where a perceived medical emergency exists without fear from future civil liability. They fail to do so at their own risk

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