

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MATTHEW ONYSHKO AND JESSICA	:	IN THE SUPERIOR COURT OF
ONYSHKO, HIS WIFE	:	PENNSYLVANIA
	:	
Appellants	:	
	:	
v.	:	
	:	
	:	No. 1611 WDA 2019
NATIONAL COLLEGIATE ATHLETIC	:	
ASSOCIATION	:	

Appeal from the Judgment Entered October 21, 2019
In the Court of Common Pleas of Washington County Civil Division at
No(s): 2014-3620

BEFORE: BOWES, J., OLSON, J., and MUSMANNO, J.

MEMORANDUM BY OLSON, J.: FILED JANUARY 08, 2021

Appellants, Matthew Onyshko and Jessica Onyshko, appeal from the judgment entered on October 21, 2019, in favor of the defendant, the National Collegiate Athletic Association (“the NCAA”). We affirm.

On June 27, 2014, Appellants filed a complaint against the NCAA. The complaint, which sounded in negligence, alleged and averred the following.

“Plaintiff Matthew Onyshko was a student at California University of Pennsylvania and played college football from 1999-2003. During his [five-year] collegiate football career, he experienced numerous repeated blows to the head. On three specific occasions, he lost consciousness for at least [30] seconds.” Appellants’ Complaint, 6/27/14, at ¶ 13. “After graduation, Mr. Onyshko progressively experienced frequent severe headaches, numbness, twitching, muscle atrophy, fatigue, loss of mobility,

slurred speech, difficulty swallowing, weakness and other neurological symptoms.” *Id.* “Mr. Onyshko was recently diagnosed with a progressive brain and spinal cord injury with ALS-like symptoms caused by repeated head trauma during his college football career in the NCAA.” *Id.*

“The NCAA has known or should have known for many years . . . that football players who sustain repetitive head impacts while playing the game have suffered and continue to suffer brain injuries that result in any one or more of the following conditions: early-onset Alzheimer’s Disease, ALS [], dementia, depression, deficits in cognitive functioning, reduced processing speed, attention, and reasoning, loss of memory, sleeplessness, mood swings, personality changes, and the debilitating and latent disease known as Chronic Traumatic Encephalopathy (‘CTE’).” *Id.* at ¶ 36. “Despite this knowledge, the NCAA failed to act reasonably by developing appropriate means to identify at-risk players and guidelines or rules regarding return to play criteria. The NCAA’s inaction prior to 2003 increased the risk of long-term injury and illness in student-athletes, including” Mr. Onyshko. *Id.* at ¶ 40. Further, the NCAA has repeatedly recognized that it has “a duty to care and protect the well-being of” student-athletes such as Mr. Onyshko – and Mr. Onyshko “relied on the NCAA to disclose relevant risk information and protect his health and safety.” *Id.* at ¶¶ 26 and 38.

Appellants’ first count alleged that the NCAA breached its duty of care to Mr. Onyshko by doing such things as: “failing to educate [Mr. Onyshko] concerning symptoms that may indicate a concussion has occurred;” “failing

to warn [Mr. Onyshko] of the risk of unreasonable harm resulting from repeated concussions;" "failing to disclose to [Mr. Onyshko] the special risks of long-term complications from repeated concussions and return to play;" "failing to disclose to [Mr. Onyshko] the role of repeated concussions in causing chronic life-long cognitive and neurological decline;" "failing to promulgate rules and regulations to adequately address the dangers of [Mr. Onyshko] of repeated concussions and failing to implement a return-to-play policy to minimize long-term chronic cognitive and neurological problems for which [he] was at an increased risk;" "misrepresenting pertinent facts that [Mr. Onyshko] needed to be aware of to make determinations of the safety of return to play;" "concealing pertinent facts necessary for [Mr. Onyshko] to make an informed decision about participating in football;" "failing to adopt rules and reasonably enforce those rules to minimize the risk of [Mr. Onyshko] suffering debilitating concussions;" and, "increasing the risk of harm to [Mr. Onyshko]." *Id.* at ¶ 63 (some capitalization omitted). Appellants' second count claimed that Plaintiff Jessica Onyshko suffered loss of consortium due to the NCAA's negligent conduct. *Id.* at ¶¶ 68-69.

The case proceeded to a jury trial on May 3, 2019. On May 23, 2019, the jury returned its verdict in favor of the NCAA. Specifically, the jury concluded that the NCAA was not negligent. N.T. Trial, 5/23/19, at 2851. The trial court denied Appellants' post-trial motion on October 1, 2019 and, on October 21, 2019, judgment was entered on the verdict. Appellants filed a timely notice of appeal and now raise four claims to this Court:

1. Whether the trial court erred by not complying with Washington County Local Rule 221 in relation to the parties' exercise of peremptory challenges?
2. Whether the trial court erred in precluding expert opinion evidence in relation to CTE-ALS and/or CTME, their etiology, and state-of-the-art knowledge concerning these conditions?
3. Whether the trial court erred in admitting the testimony of Dr. William Biddington when his testimony was not based on personal knowledge?
4. Whether the trial court erred in admitting evidence relating to the actions of California University of Pennsylvania?

Appellants' Brief at 4 (some capitalization omitted).

We have reviewed the briefs of the parties, the relevant law, the certified record, the notes of testimony, and the opinion of the able trial court judge, the Honorable Michael J. Lucas. We conclude that Appellants are not entitled to relief in this case, for the reasons expressed in Judge Lucas' October 1, 2019 opinion. Therefore, we affirm on the basis of Judge Lucas' thorough opinion and adopt it as our own. In any future filing with this or any other court addressing this ruling, the filing party shall attach a copy of Judge Lucas' October 1, 2019 opinion.

Judgment affirmed. Jurisdiction relinquished.

J-A20019-20

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style with a large initial 'J'.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/08/2021