**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

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| **BENJAMIN E. JENSEN,**<br><br>**Plaintiff,**<br><br>**vs.**<br><br>**GRAND VIEW UNIVERSITY and LOU YACINICH, SR.,**<br><br>**Defendants.** | **CASE NO. LACL149594**<br><br>**RULING ON MOTION FOR SUMMARY JUDGMENT** |

A contested hearing on the defendants' motion for summary judgment was held before the undersigned on October 12, 2022 as previously scheduled. Upon consideration of the arguments made at the hearing, and having reviewed the file and being otherwise duly advised in the premises, the court rules as follows:

This is a negligence action arising out of injuries sustained by the plaintiff while participating in batting practice while a student-athlete at Grand View University. The basis for the present motion is that a release executed by the plaintiff bars any and all claims against the defendants.[1] The standards for considering a motion for summary judgment are well settled under Iowa law:

> Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. An issue is genuine if the evidence in the record is such that a reasonable jury could return a verdict for the nonmoving party. We view the record in the light most favorable to the nonmoving party and will grant that party all reasonable inferences that can be drawn from the record. Summary judgment is appropriate if the only conflict concerns the legal consequences of undisputed facts.

[1] Defendant Yacinich is named in his capacity as the Grand View baseball coach.

> Honomichl v. Valley View Swine, L.L.C., 914 N.W.2d 223, 230 (Iowa 2018) (internal citations, parentheticals, quotation marks and ellipses omitted). Summary judgment is inappropriate if reasonable minds can differ on how the issue should be resolved, even when the facts are undisputed. Hedlund v. State, 930 N.W.2d 707, 715 (Iowa 2019).

From a review of the record, the following facts can be considered undisputed: the plaintiff played baseball for Grand View University from the fall of 2014 through 2019. One of the conditions of his playing baseball was that he review and sign a document entitled, "Full Acceptance of Risk/Athletic Release Form," which was provided to him prior to his arrival in the fall of 2014. That document reads in pertinent part as follows:

> Participation in the athletics at Grand View University requires an acceptance of risk of injury and could result in the need for medical treatment.
>
> Participation in your sport could result in death or serious neck and spinal injuries which may result in complete or partial paralysis, brain damage, serious injury to all internal organs, serious injury to all bones, joints, ligaments, muscles, tendons, and other aspects of the musculoskeletal system, and serious injury or impairment to other aspects of your body, general health, and well-being.
>
> ….
>
> - I have read the preceding and certify that I am physically fit to participate in athletics at Grand View University. I fully KNOW, UNDERSTAND, and APPRECIATE the risks inherent in this sport, and I VOLUNTARILY participate in this activity. I hereby release all Grand View University coaches and school officials of negligence resulting in injury and liability for any injury I sustain while participating in this extracurricular activity

Exhibit 2 to Motion (emphasis in original). The plaintiff was provided access to this document through his university login credentials; he accepted the terms of the release

form by clicking on the "read and accept" button utilized to confirm that the document had been read and reviewed. The plaintiff acknowledged that he read and accepted this document using these procedures. Records maintained by Grand View University show that he read and accepted this document on July 22. 2014. This process was repeated each ensuing academic year in a similar fashion; returning student-athletes were notified by email that they would be required to electronically review and sign a number of forms, including the "Full Acceptance of Risk Form;" in addition, student-athletes were required to review and accept the terms of the Student Athlete Handbook; that handbook was provided in hard copy until the 2018-19 academic year, when it was provided electronically. The handbook also advised student-athletes like the plaintiff that the "Assumption of Risk & Release Form must be completed prior to the first year of participation in Grand View University athletics." The plaintiff acknowledged that he electronically reviewed and accepted the terms of the Student Athlete Handbook for the 2018-2019 academic year on August 25, 2018.

On January 26, 2019, the plaintiff was participating in a baseball practice by pitching for batting practice. He was throwing behind an 'L-screen;" a batter hit a ball directly back to the plaintiff, which either went through a hole in the L-screen or broke a zip tie that was holding the net together. The plaintiff was struck in the head and sustained injuries. The present action was filed on January 12, 2021; it seeks damages against the defendants claiming that the university and Coach Yacinich were negligent for failing to fabricate, maintain or inspect the L-screen, by failing to warn the plaintiff and for failing to properly supervise practice. The plaintiff testified in his deposition that his claim arising from negligence was only directed at the Grand View coaching staff.

The defendant's motion boils down to a simple issue—are the plaintiff's claims barred by virtue of his acceptance of the release form provided to him at the start of his athletic career at Grand View and which he was required to review and accept each ensuing year? The law in Iowa regarding the ability of such forms to bar a negligence claim is well-settled:

> Exculpatory clauses, sometimes referred to as hold harmless clauses, relieve parties from responsibility for the consequences of their actions. We have repeatedly held that contracts exempting a party from its own negligence are enforceable, and are not contrary to public policy. An enforceable waiver must contain clear and unequivocal language notifying a casual reader that by signing, [he] agrees to waive all claims for future acts or omissions of negligence. An intention to absolve a party from all claims of negligence must be clearly and unequivocally expressed in the waiver.

Lukken v. Fleischer, 962 N.W.2d 71, 79 (Iowa 2021) (internal citations, quotation marks and brackets omitted). The language in the release in Lukken was found to be sufficient to bar the plaintiff's negligence claims arising from injuries she sustained while on a zip line operated by the defendant:

> In consideration of being permitted to participate in the activities offered at Mt. Crescent Ski Area I hereby agree to release, waive, discharge, and covenant not to sue Mt. Crescent Ski Area, its owners, agents, employees, volunteer staff, or rescue personnel as well as any equipment manufacturers and distributors involved with the Mt. Crescent Ski Area facilities from any and all liability from any and all loss or damage I may have and any claims or demands I may have on account of injury to my person and property or the person and property of others, including death, arising out of or related to the activities offered at Mt. Crescent Ski Area whether caused by the negligence of Mt. Crescent Ski Area, its owners, agents, employees, volunteer staff, rescue personnel, equipment manufacturers, or distributors or otherwise.

Id. at 75, 83 (summary judgment on negligence claims affirmed).[2]

The common thread that runs through the Iowa caselaw culminating in Lukken is the requirement that an enforceable release contain clear and unequivocal language advising the casual[3] reader that by accepting it, he agrees to waive all claims for future acts or omissions of negligence. See Huber v. Hovey, 501 N.W.2d 53, 55 (Iowa 1993) (form executed by plaintiff before entering pit area of racetrack covered "any and all loss or damage…on account of injury…whether caused by the negligence of the releasees or otherwise….; summary judgment affirmed); Sweeney v. City of Bettendorf, 762 N.W.2d 873, 878-89 (Iowa 2009) (permission slip which only referenced "accidents" generally did not contain language that would advise a parent that all potential claims arising from city's negligence would be waived; summary judgment reversed); Baker v. Stewarts' Inc., 433 N.W.2d 706, 709 (Iowa 1988) (form signed by patron of cosmetology school prior to application of chemical products to hair insufficient to advise casual reader that it would absolve defendant from liability for acts or omissions of its staff; form only stated that plaintiff would not "hold [defendant] liable for any damage or injury, should any result from this service;" summary judgment reversed).

Upon review of the form utilized by Grand View University, the court agrees with the defendants that it is sufficient to bar all of plaintiff's claim in the present action. From the language quoted above, the dispositive language is the concluding sentence, "I hereby release all Grand View University coaches and school officials of negligence

[2] The court in Lukken held that the release language was unenforceable as to any claims arising from the alleged willful, wanton or reckless conduct of the defendants. Id. at 82. No such claims are being made by the plaintiff herein.

[3] "Casual" in this context appears to be synonymous with a reading "that occurs in an offhand manner, without definite and serious intention." Balser v. Spectacor Management Group, 2006 WL 2035402 *2 (Mich Ct.App., Case No. 259810, filed on July 20, 2006) (unpublished).

resulting in injury and liability for any injury I sustain while participating in this extracurricular activity." There is no ambiguity in this language, and it is both clear and unequivocal that the effect of its acceptance is to "absolve [the defendants] from all claims of negligence." Lukken, 962 N.W.2d at 79.

In response, the plaintiff argues that 1) he did not actually understand the terms of the release form he reviewed and accepted;[4] 2) he never actually reviewed the content of the form; and 3) the release does not release Grand View University, only its "coaches and school officials." None of these arguments is sufficient to avoid the entry of summary judgment. First, the plaintiff provides no explanation as to how exactly he was unable to understand the exculpatory language utilized within the release. As noted earlier, the court finds that the operative language is unambiguous, clear and unequivocal in conveying the intent to have the plaintiff release all future claims of negligence associated with his pursuit of baseball. In the face of such language, the conclusory assertions of the plaintiff do the contrary do not generate an issue of material fact. Hudson v. Williams, Blackburn & Maharry, P.L.C., 2009 WL 139501*4 (Iowa Ct.App., Case No. 08-0577, filed January 22, 2009) ("The bare conclusory statements contained in Hudson's resistance and statement of disputed facts are not sufficient to defeat the motion for summary judgment;" summary judgment affirmed).

Secondly, whether the plaintiff actually reviewed the release form is irrelevant. As the validity of any release form is dependent on application of contract law, see

[4] This assertion is not expressly contained within the plaintiff's affidavit submitted as part of his resistance to the summary judgment motion; it is referenced in counsel's response to defendants' statement of undisputed facts. The affidavit itself only references the plaintiff's assertion that no one at Grand View explained the terms of the release to him. This assertion is also inadequate in light of the court's conclusion that the language did not require explanation to even a casual reader.

Lukken, 962 N.W.2d at 79 ("Exculpatory clauses reside at the intersection of tort law and contract law"); Peak v. Adams, 799 N.W.2d 535, 543 (Iowa 2011) ("The release Peak signed is a contract, and its enforcement is governed by principles of contract law"), two of the cardinal tenets of that law is that a party is charged with notice of the terms and conditions of a contract if the party is able or has had the opportunity to read the agreement, Advance Elevator Co. v. Four State Supply Co., 572 N.W.2d 186, 188 (Iowa Ct.App. 1997), and that failure to read a contract before signing it will not invalidate the contract. Peak, 799 N.W.2d at 543; see also GreatAmerica Financial Services Corp. v. Natalya Rodionova Medical Care, P.C., 956 N.W.2d 148, 156 (Iowa 2021).

Finally, the release of the university's coaches and school officials would also serve to release Grand View University as an entity. Such an entity can only operate through the actions of its agents and employees, Gabelmann v. NFO, Inc., 571 N.W.2d 476, 480 (Iowa 1997). Accordingly, any liability to the corporation arising from those actions would be vicarious in nature by virtue of the doctrine of respondeat superior. Godar v. Edwards, 588 N.W.2d 701, 705 (Iowa 1999). Iowa law is well-settled that the release of one primarily liable for negligence also serves to release that actor's principal from any claims of vicarious liability. Jones v. Glenwood Golf Corp., 956 N.W.2d 138, 146 (Iowa 2021) (owner's vicarious liability under Iowa Code §321.493); Biddle v. Sartori Memorial Hosp., 518 N.W.2d 795, 799 (Iowa 1994) (vicarious liability of employer for acts of employee). While the releases executed in Jones and Biddle arose in the context of settlements with the principal, there is no reason to distinguish these holdings where a release is executed preemptively as in the present case. The release

reviewed and accepted by the plaintiff bars not only the claims against the university's officials and coaches, but the university itself.

The defendants have established that there is no genuine issue of material fact, and that they are entitled to judgment in their favor as a matter of law. Their motion for summary judgment will therefore be granted.

**IT IS THEREFORE ORDERED** that the defendants' motion for summary judgment is granted. The plaintiff's claims are dismissed with prejudice at his cost.

State of Iowa Courts

| **Case Number** | **Case Title** |
|---|---|
| LACL149594 | BENJAMIN E JENSEN VS GRAND VIEW UNIVERSITY ET AL |
| **Type:** | ORDER REGARDING DISMISSAL |

So Ordered

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2022-11-12 12:16:28