

Ohio Court Upholds the Enforceability of Liability Waivers

Baker v. Just For Fun Party Center, L.L.C., 185 Ohio App.3d 112

A recent decision by the First District Court of Appeals of Ohio further upholds the enforceability of liability waivers at commercial premises. In *Baker v. Just For Fun Party Center, L.L.C.*, 185 Ohio App.3d 112, 923 N.E.2d 224, the court affirmed the dismissal of a negligence action by an individual who had previously signed a liability waiver releasing all claims against the defendant Just For Fun Party Center ("Party Center").

In this case, Mrs. Baker brought her child to the Party Center for a birthday party. The Party Center offered an obstacle course and other activities for both children and adults. Upon arrival, Mrs. Baker submitted a signed a waiver/release that cleared the Party Center of liability arising from any negligent acts committed by the owners or their employees. The waiver/release required Mrs. Baker to acknowledge "a risk of injury from the equipment." With her signature, Mrs. Baker "knowingly and freely assumed all such risks," took full responsibility for her daughter and husband, and, most importantly, "released and held harmless" the Party Center and its employees.

Unfortunately, though, Mrs. Baker suffered injuries while going through the Party Center's obstacle course. She subsequently filed a lawsuit against the Party Center. The Defendant filed for summary judgment, arguing that Mrs. Baker's signed waiver/release indicated her understanding of the risks of participation and precluded any recovery for her injuries. The trial court agreed and dismissed Mrs. Baker's action.

On appeal, the First District affirmed. The appellate court noted that a participant in a recreational activity may make a "conscious choice" to "contractually relieve the operator of liability for injuries that might be negligently caused." The court further pointed out that a "conscious choice" occurs upon consent to "an agreement that states a clear and unambiguous intent to release the party from liability."

Importantly, Mrs. Baker signed a release/waiver on behalf of her child, her spouse and herself that signaled acceptance of the consequences of any negligence by the Party Center. The release specifically stated an understanding that there is a risk of injury from activities and equipment at the Party Center and that Mrs. Baker was assuming full responsibility for those she listed in the release, including herself. Therefore, the appellate court confirmed that the signed release barred recovery for Mrs. Baker. The court essentially rejected Mrs. Baker's two central arguments that the release was "unclear and ambiguous" and only applied to her daughter.

The *Baker* decision underscores the importance of a comprehensive and unambiguous liability waiver for those owners who have exposure to premises liability lawsuits. The court itself attributed its decision to the strength of the Party Center's liability waiver: "[T]he form clearly and repeatedly indicated that Just for Fun would not be liable for injuries to the participants, the signatory, or those related to the signatory[.]" Indeed, a carefully worded waiver/release not only informs guests as to the risks involved with certain activities, but it also protects owners and employees from any unintended consequences arising out of participation.

If you would like a copy of the complete decision, or assistance in drafting or reviewing a liability waiver or if you otherwise have any question regarding premises liability exposure in Ohio, feel free to contact one of our Commercial Premises Liability Practice Group attorneys.

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