

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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STACEY FREY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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MEMORANDUM AND ORDER  
FOR JUDGMENT  
06-C-396-S

The above entitled matter was tried to the Court on February 15, 2007 at which trial the Court determined the uncontested facts based on the submissions of the parties. These uncontested facts were read into the record at trial and are referred to herein. In addition to the uncontested facts, as a result of trial the Court determines the following findings of fact and conclusions of law:

1. The United States Marine Corps. failed to obtain parental consent for student participation in the obstacle course activity, including that of plaintiff Stacey Frey. However, the evidence presented at trial established that this was not a contributing factor to either plaintiff's fall or her injury.

2. The testimony presented at trial established that it was obvious to plaintiff Stacey Frey how to complete the obstacle course activity. When this fact is considered, the Court finds that the United States Marine Corps. provided adequate and appropriate instructions concerning how to safely traverse the

course to the students participating in the obstacle course activity, including plaintiff.

3. The evidence presented at trial established that the Marines had one representative positioned at the beginning of the obstacle course, one positioned in the middle of the course, and one positioned at the end of the course. When this fact is considered, the Court finds that the United States Marine Corps. provided adequate and proper supervision of the students participating in the obstacle course activity, including plaintiff Stacey Frey.

4. The United States Marine Corps. personnel did instill a sense of urgency in students participating in the obstacle course activity, including plaintiff Stacey Frey, to complete the course as fast as possible. However, the evidence presented at trial established that this was not a contributing factor to either plaintiff's fall or her injury because both plaintiff and Ms. Edblom testified that they did not feel threatened or endangered by the Marines' conduct.

5. There was no evidence presented at trial to confirm where plaintiff Stacey Frey fell, whether it was on the gymnasium floor itself or on the padded landing surface. However, the Court finds that had plaintiff landed on the floor this would not demonstrate causal negligence on the part of defendant United States of America because Dr. Foltz testified "if a person falls in just the right

way even on a soft surface, they can sustain the type of fracture which Ms. Frey did.”

The Court further finds that plaintiff Stacey Frey did not meet her burden to prove by a preponderance of the evidence that defendant United States of America was negligent in any manner. The Court balances the evidence presented and determines that there was not enough credible evidence presented to support plaintiff Stacey Frey’s claim of negligence.

Accordingly,

ORDER

IT IS ORDERED that judgment be entered in favor of defendant United States of America against plaintiff Stacey Frey dismissing her complaint and all claims contained therein with prejudice.

Entered this 15<sup>th</sup> day of February, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge