

Timeout! Referees Are Now Subject to the Same Standard of Care as Players in Recreational Sports

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April 1, 2025

Attorneys who represent individuals or businesses in recreational activities have, in the last 26 years, become familiar with the *Ritchie-Gamester* standard articulated in *Ritchie-Gamester v City of Berkley*, 461 Mich 73 (1999). *Ritchie-Gamester* held that the proper standard of care among coparticipants for unintentional conduct in recreational activities is reckless misconduct. A participant “acts recklessly when their conduct demonstrates a willingness to harm others or an indifference to whether such harm occurs.” This standard was historically limited to active coparticipants in recreational activities. However, the application of this standard changed on March 26, 2025, after the Court of Appeals, in a published opinion, decided two issues of first impression in *Lares v Doe I*, ___ Mich App ___ (2025) (Docket No. 370339).

The facts of *Lares* involve an indoor recreational soccer game at the Evolution Sportsplex. During the first half of the game, John Doe I fouled an opponent by pushing him out of bounds and causing him to fall face first into a wall. In the second half of the game, Mr. Lares was dribbling the ball toward the net while John Doe I followed close behind. Just as Mr. Lares planted his left foot to strike the ball with his right foot, John Doe I “stomped” on Mr. Lares’s left leg and pushed him to the ground. During both instances, the referee—John Doe II—failed to call the foul. In fact, the referee was not paying attention to the game during either foul because he was talking with an individual outside the field of play. This second foul resulted in Mr. Lares breaking his left tibia and fibula.

Mr. Lares filed a Complaint alleging, in relevant part, negligence/gross negligence and respondeat superior against Evolution Sportsplex. Evolution moved for summary disposition under MCR 2.116(C)(10) arguing that the *Ritchie-Gamester* standard of reckless misconduct applied because Mr. Lares was involved in a recreational activity when his injury occurred. In response, Mr. Lares argued that general negligence principles applied because Evolution and the referee were not coparticipants in a recreational activity. Finding that the *Ritchie-Gamester* standard applied to both Evolution and the referee, the trial court granted summary disposition in favor of Evolution.

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The reckless misconduct standard set forth in *Ritchie-Gamester* historically only applied to coparticipants in recreational activities. The newly published opinion of *Lares* now extends the *Ritchie-Gamester* reckless misconduct standard to the referees tasked with making real-time game decisions. In other words, a referee is now considered a coparticipant and will only be held liable when the referee’s conduct demonstrates a willingness to harm others or an indifference to whether such harm occurs.

The first issue decided by the Court of Appeals was whether referees officiating recreational activities owe the participants a duty to refrain from acting recklessly under the *Ritchie-Gamester* standard. To decide this issue of first impression, the Court of Appeals reviewed authorities from neighboring jurisdictions such as Ohio and Illinois. These courts found that the application of a general negligence standard to referees would have a chilling effect that would change the nature of play and discourage vigorous participation. The Court of Appeals relied on this persuasive authority in holding that referees officiating recreational activities are subject to the *Ritchie-Gamester* reckless misconduct standard.

The second issue of first impression decided was whether owners and operators of recreational sports facilities owe participants a duty to refrain from acting recklessly in facilitating recreational activities under the *Ritchie-Gamester* standard. The Court of Appeals opined that owners and operators of recreational sports facilities can expect to be sued for their carelessness and the application of ordinary negligence standards would not have the same chilling effect on the nature of play. As such, the Court of Appeals held that the *Ritchie-Gamester* standard does not apply to owners and operators of recreational sports facilities because they are not akin to active participants.

With these standards set, the Court of Appeals addressed Plaintiff's negligence/gross negligence and respondeat superior claims against Evolution. As to the direct liability claim, the Court of Appeals found that Mr. Lares failed to establish that Evolution neglected to exercise ordinary care under the circumstances. This is because there were no rules or regulations that required more than one referee to officiate the game and there was no evidence that Evolution knew that the referee was inattentive. Thus, summary disposition in favor of Evolution was proper.

As to the vicarious liability claim, the Court of Appeals found that Mr. Lares failed to establish that the referee's conduct rose to the level of reckless misconduct under the *Ritchie-Gamester* standard. It was noted that while evidence of a referee failing to call two fouls might establish the failure to exercise ordinary care, such evidence undoubtedly did not establish a willingness to harm others or an indifference to whether such harm occurs. Accordingly, summary disposition in favor of Evolution was proper.

Referees are required to make game time decisions in the middle of fast-moving games. Their calls will not always be perfect. Holding referees to the reckless misconduct standard of *Ritchie-Gamester* achieves equilibrium between the desire to encourage participation in recreational activities and the necessity of ensuring the safety of the players.

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